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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-27534-2013

Date of decision : 02.02.2017

Surinder Kumar (deceased through LRs)

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. M.S. Attwal, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. Harit Sharma, Advocate
for respondent Nos.2 and 3.

AMIT RAWAL, J. (ORAL)

The petitioners are aggrieved of the impugned notices dated 06.11.2013 (Annexure P-6) and 31.08.2012 (Annexure P-1), whereby they have called upon to pay the amount of ₹ 11,72,293/-.

Mr. Sunil Chadha, learned Senior Counsel assisted by Mr. M.S. Attwal, learned counsel appearing on behalf of the petitioner submits that the respondent(s)-Bank had vide notice dated 31.08.2012 (Annexure P-1), raised the first demand for the recovery of the amount and thereafter kept silent and woke up vide Annexure P-6. An amount of ₹ 3,00,000/- and ₹ 8,72,293/- has been deposited on 21.09.2012 and 31.12.2013, respectively. The Bank is only asking for an amount which is close to ₹ 41 Lacs. This Court while issuing the notice of motion had granted

interim protection qua auction of the property.

He further submits that in the impugned notices, under challenge, there is no change in the figure, in essence, the Bank had not demanded any interest. Since the aforementioned amount had already been paid, the auction proceedings cannot proceed. If at all, some amount of interest is required to pay, it should be reasonable one.

On the contrary, Mr. Harit Sharma, learned counsel appearing on behalf of the Bank/respondent Nos.2 & 3, submits that for obtaining the Cash Credit limit of ₹ 10 Lacs, deceased Suinder Kumar son of Bua Dass and Bua Dass mortgaged the property which was sought to be sold for recovery of the awarded amount. The terms and conditions of the mortgage are sacrosanct and cannot be deviated, even by the Court. The parties are bound by that. He has also drawn the attention of this Court to the R-3/2, when Surinder Kumar, during his lifetime, had undertaken to pay a sum of ₹ 32 Lacs an odd amount in installments. Having not stuck to the promise, the proceedings of auction were initiated and therefore, the present writ petition is liable to be dismissed.

I have heard the learned counsel for the parties and appraised the paper book. The factum of deposit of the amount of ₹ 3,00,000/- and ₹ 8,72,293/-, as indicated above, is not in dispute, much less, notices (Annexure P-1 and P-6) also reveal a particular amount to an outstanding amount being demanded. If at all the Bank was asked for the interest, it could have been included. However, the award does not specify the payment of interest, but on going through the vernacular of the same, it reveals that the Bank has been held to be liable to charge interest, in case, the payment is not paid within the period of 60 days.

Considering the peculiar facts and circumstances of the case that both the petitioner Surinder Kumar and Bua Dass have died and more than principal amount has been deposited, I dispose of the present writ petition with a direction to the Bank/respondent No.3 to decide the rate of interest by keeping in view the recession in market and as well as the simple interest after affording the opportunity of hearing to the petitioners.

In the meantime, the Bank/respondent No.3 will not proceed with the mortgaged property and on settlement of the amount, shall issue the NOC.

Let this exercise be done within a period of 3 months from the date of the receipt of the certified copy of this order.

With the aforementioned observations, the present writ petition stands disposed of.

02.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No