

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-2688-2017

Date of decision: 14.02.2017

Suman Devi and another

..... Petitioners

Versus

The SDO (Civil) and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Varun Gupta, Advocate for the petitioners.

RAMENDRA JAIN, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have, *inter alia*, prayed for issuance of a writ of *Certiorari* for setting aside the impugned order dated 24.05.2011 (Annexure P-2) and the order of attachment dated 22.05.2015 (Annexure P-4) passed by the Sub Divisional Officer (Civil), Narnaul. Further a writ of mandamus has been sought directing the respondents to waive off the debt of the petitioners being wrongly calculated by the respondent No. 2-Bank.

2. Put pithily, the petitioners had obtained a loan of ₹ 4,35,000/- (₹3,85,000/- for the purchase of tractor and ₹ 50,000/- for KCC) from

respondent No. 2-Bank, by mortgaging their agricultural land measuring 25 kanals 5 marlas. The mortgage deed was executed on 20.11.2007 in favour of respondent-Bank. Since, the petitioners did not repay the said loan amount in due time, the respondent-Bank filed an application dated 21.02.2011 (Annexure P-1) under Section 8(1) of the Haryana Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1973 before the Sub Divisional Officer (Civil)-cum-Prescribed Authority, Narnaul, (hereinafter referred to as 'the Prescribed Authority') for recovery of debt amount along with interest. The Prescribed Authority, vide impugned order dated 24.05.2011 (Annexure P-2) passed an ex-parte decree in favour of respondent No. 2-Bank, without affording an effective opportunity of hearing to the petitioners. Thereafter, respondent No. 2-Bank had filed the execution petition dated 23.01.2013 (Annexure P-3) under Order 21 Rule 11 CPC before the Prescribed Authority, for recovery of loan along with interest and the Prescribed Authority passed an order dated 22.05.2015 (Annexure P-4) attaching the mortgaged land. For that purpose, respondent No. 2-Bank had issued a publication Annexure P-5 in the newspaper for auction on 07.09.2016. Knowing the whole episode, the petitioners had filed an application dated 21.10.2016 (Annexure P-6) for staying the auction proceedings before the Prescribed Authority. They had also deposited an amount of ₹ 50,000/- with the respondent No. 2-Bank in order to show their *bona fides* and joint statement of petitioner No. 1-Suman Devi and Birender Singh husband of petitioner No. 2-Lali Devi dated 07.11.2016 (Annexure P-7 Colly) was also recorded in this regard. The aforesaid joint statement was acceptable to respondent No. 2-Bank. However, no decision

on the said application has so far been taken and the case is fixed for 17.02.2017. Hence the present writ petition.

3. According to the petitioners, the Prescribed Authority, passed the ex-parte decree Annexure P-2 without affording an effective opportunity of hearing to them. Since, the loan was an agricultural loan, therefore, no compound interest could be levied upon the petitioners as per instructions of the Reserve Bank of India. At the most, interest at the rate of 4% per annum could be levied upon them.

4. After giving our thoughtful consideration to the submissions made by learned counsel for the petitioners, we find no merit in the instant petition. Admittedly, the petitioners had already filed an application before the Prescribed Authority, for staying the auction proceedings. They also made a joint statement Annexure P-7 (Colly.) before the Prescribed Authority and perusal of the same shows that the matter was compromised between the parties. Accordingly, the petitioners were ready to deposit an amount of ₹ 7,00,000/- including ₹ 50,000/- already deposited by them, which was accepted by respondent-Bank and the next date of hearing was fixed as 17.02.2017. Thereafter, no further proceedings have taken place. The petitioners have already availed the remedy and no coercive action has been adopted till date against them. By filing the present petition, the petitioners want to retract from the settlement already made on 07.11.2016. The petitioners cannot take the advantage of parallel proceedings before this Court, inasmuch as, they have already filed an application dated 21.10.2016 (Annexure P-6) in the execution proceedings for the stay of the attachment order Annexure P-4 before the Prescribed Authority.

5. In view of the above, no ground for interference by this Court under Articles 226/227 of the Constitution of India is made out. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

6. Registry is directed to send a copy of this order to respondents to avoid its concealment by the petitioners.

**(RAMENDRA JAIN)
JUDGE**

February 14, 2017
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**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No