HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.6216 of 2016 (O&M)
Date of Decision: 11.07.2017

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M/s Kuldeep Flour Mills & Ors. ... Petitioners

VS.

State Bank of Patiala & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDHIR MITTAL

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Present: Mr. Aalok Jagga, Advocate for the petitioners

Mr. RS Bhatia, Advocate for respondents No.1 & 3

None for respondents No.4 to 7

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SURYA KANT, J. (Oral)

(1) The petitioner-borrowers have filed SA before Debt Recovery Tribunal, Chandigarh challenging the action initiated by the respondent-Bank under Section 13(2) & 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitioner-borrowers have also challenged the sale notice by way of a separate miscellaneous application. Various grounds have been taken by the petitioners before DRT which are not necessary to be mentioned here. Suffice it to observe that during the pendency of the SA, the respondent-Bank auctioned the mortgaged property consisting of a shop. The aggrieved petitioners approached the DRAT, Delhi. The Appellate Tribunal vide the impugned order dated 22.02.2016 observed that the petitioner's contention *re:* sale of property valuing more than ₹ 80 lacs for the recovery of loan amount of ₹ 28 lacs or so will be considered by the Tribunal in due course of time. Still aggrieved, the petitioner-borrowers have filed the instant writ petition.

(2) The contention of the petitioner-borrowers is limited to the extent that the possession of the auctioned property has been handed over to the

auction purchaser who is hell-bent to demolish the shop and change the nature of the auctioned property. If that is allowed to happen, the SA filed by the petitioner in a way would be rendered infructuous.

(3) Having heard learned counsel for the parties at a considerable length, we find merit in the petitioners' contention. Since the very action taken under Section 13(2) & 13(4) of the Act is under challenge and in the event of acceptance of petitioners' claim, the auction sale conducted by the Bank is liable to be set aside, we are of the view that the nature of mortgaged property auctioned by the Bank is required to be kept intact.

(4) Consequently, the instant writ petition is allowed in part to the extent that the respondent-auction purchaser as well as the respondent-Bank are directed to ensure that the nature of auctioned property is not altered/changed in any manner and the same be kept intact in the same position as it was on the date of auction, till the decision of the Tribunal in the SA filed by the petitioners. The Tribunal is directed to decide the SA expeditiously and preferably within *three months*.

(5) Ordered accordingly.

(Surya Kant)
Judge

11.07.2017
vishal shonkar

(Sudhir Mittal)
Judge

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***No***