IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.5565 of 2017
Date of Decision:-24.08.2017

Surinder Pal Singh ....Petitioner

vs.

Vijaya Bank and others ....Respondents

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

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Present:- Mr. Rajiv Kataria, Advocate,
for the petitioner.

None for respondent No.1.

Mr. I.P.Singh, Advocate,
for respondents No.2 and 3.

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Sudhir Mittal, J.

The dispute in this writ petition is between the auction-purchaser on one side and the principal borrower and its partner on the other side. The bone of contention is plot No.158A, New Kitchlu Nagar, Partap Singh Wala, near K.C. Marbles, Hambran Road, Ludhiana (hereinafter referred to as 'the plot in dispute'), which is the property furnished as security by the principal borrower i.e. respondent No.2 and the petitioner is the auction purchaser.

2. In the year 2008, the borrower took a loan of ₹ 48,00,000/- + cash credit limit of ₹ 25,00,000/- from respondent No.1-Bank. As stated above, the plot in dispute was mortgaged as security for the debt. The

account was subsequently declared as Non Performing Account (N.P.A.) and a sale notice was also published. Pursuant thereto, the petitioner submitted his bid of ₹ 70,05,000/- for purchase of the plot in dispute on 8.3.2010. It appears that the sale took place during the pendency of S.A. No.221 of 2009 filed by the borrower, challenging the declaration of its account as NPA and the sale notice issued pursuant thereto. In fact, the said sale was effected under orders of the Debts Recovery Tribunal-II, Chandigarh (hereinafter referred to as 'the DRT-II'), which is apparent from order dated 12.3.2010 (Annexure P-1) placed on record by the petitioner. It further becomes apparent from the said order that the borrower was granted an opportunity to bring a better buyer. At the same time, the auction purchaser was granted liberty to make payment of the consideration offered by him. Thereafter, another opportunity was granted to the borrower to bring a better buyer as the borrower showed his bona fides by offering to pay an amount of ₹ 10 lacs by way of demand draft. Dispossession was also stayed. Meanwhile, sale certificate dated 8.4.2010 (Annexure P-3) was executed by respondent No.1-Bank in favour of the auction purchaser. This order was challenged by the borrower before the Debts Recovery Appellate Tribunal (DRAT), New Delhi, by way of Miscellaneous Appeal No.192 of 2010 wherein he offered to redeem the mortgaged property by payment of the entire amount due from him. The DRAT relegated the borrower to the DRT-II, Chandigarh for raising the said issue. Consequently, as recorded in order dated 5.5.2010 (Annexure P-6), the borrower paid a sum of ₹ 63,08,169/- (amount mentioned in notice dated 27.4.2009 issued under Section 13(2) of the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') by way of demand draft before the DRT-II, Chandigarh. This amount was directed to be kept in an interest bearing 'No Lien Account' and the auction purchaser was granted liberty of filing objections. Pursuant to objections filed by the auction purchaser, the Securitization Application filed by the borrower was dismissed vide order dated 28.9.2010 (Annexure P-9). The result was that the sale in favour of the auction purchaser stood confirmed.

3. The order dated 28.9.2010 (Annexure P-9) was challenged by way of CWP No. 18056 of 2010 by the borrower but the same was dismissed by the Division Bench of this Court vide order dated 26.9.2011 (Annexure P-11) by relegating the borrower to seek his remedy by way of an appeal. The appeal filed by the borrower was dismissed vide order dated 19.2.2013 (Annexure P-12) on account of delay and that there was no power with the DRAT to condone the delay. This order was set aside by this Court in CWP No.6619 of 2013 (Annexure P-13) and the matter was remitted to the DRAT with a direction to decide the application for condonation of delay afresh. Consequently, the DRAT condoned the delay and allowed the appeal vide order dated 10.4.2015 (Annexure P-15). It was held that the borrower had legally redeemed the mortgage and was only liable to pay interest on the amount paid by him. The issue of payment of interest was put to challenge by the borrower in CWP No.19656 of 2015 dated 16.09.2015 (Annexure P-16), which was disposed of by directing the borrower to first raise his grievance before the DRAT. The DRAT rejected the application filed by the borrower in this regard vide order dated

16.10.2015 (Annexure P-18) which was challenged by the borrower in CWP No. 27615 of 2015. During the pendency of this writ petition, communication dated 11.7.2015 issued by respondent No.1-Bank asking the borrower to pay ₹ 41,78,309.66 towards interest was withdrawn and an undertaking was made to submit fresh calculations. Accordingly, order dated 16.10.2015 (Annexure P-18) passed by the DRAT was set aside and the matter was remanded once again to the DRAT. Thereafter, respondent No.1-Bank recalculated the interest due and reduced the same to ₹ 17,13,062/-. The borrower disputed this amount and came up with a figure of ₹ 10,05,061/-, out of which ₹ 6,05,419/- had already been paid and thus, the borrower alleged that it was liable to pay only ₹ 3,99,642/-. Thereafter, the Bank further reduced the interest component to ₹ 15,76,818/-. The DRAT, in its order dated 24.3.2017, directed the borrower to pay a lump sum amount of ₹ 4.00 lacs towards full and final interest liability and put the matter to rest. It is not in dispute that the said amount of ₹ 4.00 lacs has also been paid by the borrower.

4. In the present writ petition, the auction purchaser has laid challenge to the order dated 10.4.2015 (Annexure P-15), whereby, the appeal of the borrower was allowed by the DRAT and redemption of the mortgage property had been permitted. The petitioner has also sought handing over of vacant possession of plot in dispute.

5. At this stage, it is pertinent to notice that respondent No.1-Bank had challenged the order dated 24.3.2017 passed by the learned DRAT vide CWP No.14606 of 2017. The said writ petition has been dismissed by us vide the judgment dated 11.7.2017.

6. In view of the fact that the matter has already been settled by us by upholding order dated 24.3.2017 passed by the DRAT and that claim of respondent No.1-Bank has been satisfied by the borrower, this writ petition should also be dismissed.

7. However, we further deem it appropriate to examine this case on merits.

8. Learned counsel for the petitioner contends that before the borrower could clear his dues, the sale in favour of the petitioner had already been accepted and sale certificate had already been issued. Thus, the order of the learned DRAT dated 10.4.2015 was flawed and was liable to be set aside.

9. On the contrary, learned counsel for the borrower contends that the Debts Recovery Tribunal-II, Chandigarh (DRT-II) has powers to restore status-quo ante in case the situation so warrants and that where the borrower pays the amount due to the secured creditors, the law creates an interdict against the secured creditors to proceed further with the sale of a secured asset under the SARFAESI Act. In case any illegality is found to have been committed by the Bank post notice under Section 14(4) of the SARFAESI Act, the same can always be nullified by it and status-quo ante can be restored.

10. Before examining the merits of the arguments raised by the opposing parties, it would be appropriate to reproduce Section 13(8) of the SARFAESI Act as under:-

> "13(8) Where the amount of dues of the secured creditor together with all costs, charges and

> expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-
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> (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and
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> (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

11. A perusal of the above-mentioned provisions leaves no manner of doubt that in a situation where a borrower pays the amount demanded from him, the secured creditor is barred from proceeding with the process of transfer of the secured assets. In the present case, the borrower paid the amount demanded through the notice under Section 13(2) of the SARFAESI Act (Annexure P-6) on 5.5.2010. At that stage, the DRT was seized of the matter regarding sale of the security. Even though respondent No.1-Bank had issued the sale certificate in favour of the petitioner, the sale was subject to orders of the DRT. In fact, the DRT permitted the borrower to deposit the amount claimed by respondent No.1-Bank and, therefore, by interdict of Section 13(8)(ii) of the SARFAESI Act, the secured creditor was barred from proceeding further with the completion of the sale

transaction. It may be remembered that possession of the plot in dispute continued to remain with the borrower at the stage when the claim of respondent No.1-Bank was satisfied. Reliance by the learned counsel for the petitioner upon para 54 of the judgment in the case of **Mardia Chemicals Limited and others vs. Union of India and others, (2004) 4 SCC 311,** is misplaced.

12. On the contrary, the observations in the said para go in favour of the borrower as it has been held therein that the right of redemption can be exercised till the sale procedure, is complete.

13. In view of the above, the order dated 10.4.2015 (Annexure P-15) cannot be faulted with. Accordingly, the writ petition is dismissed with no orders as to costs.

(SURYA KANT)
JUDGE

(SUDHIR MITTAL)
JUDGE

August 24, 2017
poonam

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**