

CR-5237-2018

Date of Decision: 16.08.2018

Ashish Malik and another

.....Petitioners

Versus

Indian Bank and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Mr. Inderpal Singh, Advocate
for the petitioners.**DEEPAK SIBAL, J. (ORAL)**

Through the present petition filed under Article 227 of the Constitution of India, learned counsel for the petitioners seeks issuance of a direction to the Trial Court to finally adjudicate upon the application filed by the petitioners under Order 39 Rule 1 and 2 read with Section 151 CPC seeking interim protection during the pendency of the suit filed by them. According to learned counsel, the suit along with stay application was filed in May, 2018 and the same has been lingering on and in the meanwhile, on 17.08.2018, respondent No.1-Indian Bank is to auction the petitioners' property and if such auction takes place, the petitioners would suffer irreparable loss.

A perusal of the record reveals that in March, 2018 the petitioners had filed a writ petition being **CWP No.6546 of 2018 - *Ashish Malik and another versus The Debts Recovery Tribunal, Chandigarh and others*** in which petition, on March 16, 2018 this Court had passed the following order:-

“After arguing the case for some time and having realized the fact that some of the factual issues can be effectively resolved on the basis of the evidence to be led by the petitioners and other parties, learned counsel for the petitioners seeks and is permitted to withdraw this writ petition with liberty to pursue their remedy before the Civil Court.

Ordered accordingly.”

A perusal of the afore quoted order shows that after arguing the matter when learned counsel for the petitioners realised that some factual issues would arise he sought and got permission to withdraw his writ petition with liberty to the petitioners to pursue their remedy before the Civil Court.

Thereafter, the petitioners filed a civil suit seeking therein a declaration to the effect that the notice dated 24.06.2016 issued to them under Section 13 (2) of the SARFAESI Act, 2002 be set aside as the same was actuated by fraud. Injunction to restrain the respondent-Indian Bank from auctioning and selling the property mortgaged by the petitioners was also sought. Along with the suit an application under Order 39 Rule 1 and 2 read with Section 151 CPC seeking interim relief was also filed.

A perusal of the interim orders passed by the Trial Court shows that the petitioners' suit along with the application seeking interim relief initially came up for hearing before the Trial Court on 25.05.2018 on which date, though no interim stay was granted, notice on the stay application as also the main suit was issued to the defendants/respondents. The contesting defendant/respondent-Indian Bank appeared before the Trial Court and sought and got time to file reply. Thereafter, the matter was adjourned on several occasions but till date, there has been no final adjudication on the petitioner's prayer for stay. In the meanwhile, the property mortgaged by the

petitioners is sought to be auctioned by the respondent-Indian Bank on 17.08.2018.

In the light of the above facts, it is desirable that the prayer made by the petitioners seeking interim stay should at least have been considered and adjudicated upon before their property is put to auction. If the mortgaged property of the petitioners is auctioned during the pendency of their stay application in which the Trial Court had already issued notice, the petitioners shall be put to great prejudice as also third party rights would creep in. It is thus desirable that before the afore referred mortgaged property is put to auction, their prayer for stay be considered and decided.

Accordingly, the Trial Court is requested to take a final decision in accordance with law on the prayer for stay made by the petitioners within two weeks from today.

Till such decision is taken, the property of the petitioners shall not be put to auction.

It is made clear that the interim order being granted to the petitioners does not reflect any decision by this Court on the merits of the matter and the Trial Court would decide the stay matter completely uninfluenced by the same.

The petition is disposed of in the above terms.

In case, the respondents are aggrieved by the passing of the present order, they are at liberty to approach this Court through an appropriate application.

(DEEPAK SIBAL)
JUDGE

16.08.2018

Neha

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No