

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10502-2018

Date of Decision: April 30, 2018

Rajiv Puri and another

.....Petitioners

Versus

District Magistrate, UT, Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.I.S.Ratta, Advocate for the petitioners.

Mr.Vipul Dharmani, Advocate for the Caveator-respondents.

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SURYA KANT, J.

Notice of motion.

[2] Respondent Nos.2 and 3 are on caveat. Mr.Vipul Dharmani, Advocate, accepts notice on their behalf.

[3] The petitioners are aggrieved by the order dated 13.04.2018 passed by District Magistrate, Chandigarh in purported exercise of his powers under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, whereby assistance has been ordered to be provided to take physical possession of the residential house of the petitioners.

[4] We have heard learned counsel for the parties in brief and it

appears that genesis of the controversy revolves around sanctioning of the

payment of ₹09.00 lacs by the respondent-financial institution in favour of one Raminder Kaur on 13.08.2013. While petitioners' case is that they never authorised or requested to release such payment from their account, counsel for the financial institution relies upon a document to show that there was a written consent given by both the petitioners. Be that as it may, the said issue appears to be seriously debatable and requires adjudication on appreciation of evidence. Suffice to observe that a criminal complaint on the same set of allegations is already pending before the Court of competent jurisdiction.

[5] Learned counsel for the petitioners is right in contending that DRT, Chandigarh, regardless of the orders passed by this Court, does not entertain petitions where physical possession of the secured assets is still with the borrowers and all such petitions are dismissed on this ground alone.

[6] In peculiar facts and circumstances of this case, learned counsel for respondent Nos.2 and 3 very fairly states that they will not raise any objection and DRT be directed to decide the petition on merits, which may be filed by the petitioners even if physical possession of the mortgaged property is with the petitioners at the time of filing of such petition.

[7] In this view of the matter, the writ petition is disposed of with liberty to the petitioners to approach DRT within one week. It is directed that status quo re: physical possession shall be maintained for a period of one month and meanwhile the DRT shall consider the prayer for interim stay subject to just and equitable terms and conditions, as it may deem appropriate.

earliest and preferably within four months. It is clarified that we have not expressed any views on merits of the claim or the counter-claim and the same shall be decided by DRT only.

**(SURYA KANT)
JUDGE**

April 30, 2018
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**(SHEKHER DHAWAN)
JUDGE**

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