IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11877-2018
Date of Decision: May 11, 2018

Surinder Kaur

.....Petitioner

Versus

Bank of Baroda and others

......Respondents

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

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**

....

Present: Mr.B.B.Bagga, Advocate for the petitioner.

....

SURYA KANT, J.

The petitioner assails the order dated 16.05.2017 passed by the Debts Recovery Tribunal-III, Chandigarh, whereby her SA No.212 of 2017 (Old Case No.167 of 2013) has been dismissed.

[2] The facts, as revealed from the record, are that the loan account of respondent No.2-firm-borrower was declared as 'NPA' and after serving a Notice dated 06.07.2009 on the borrower in respect of default in the deposit of credit facilities, the respondent-Bank filed OA No.34 of 2009 against the borrower-guarantors. OA was allowed and money decree was passed.

[3] The petitioner appears to be the guarantor, whose property comprising a residential house was also mortgaged with the Bank. She filed SA No.212 of 2017 (Old SA No.167 of 2013) taking a plea that the house in question was never mortgaged in favour of the Bank in respect of loan of

respondent No.2 and that the documents showing such mortgage were forged and fabricated. The Tribunal has turned down the plea after observing that in the OA filed by the Bank, relevant documents were duly attached and at page No.49 it was clearly mentioned that the land measuring 2 marla 3 sarsai, 4 marla 6 sarsai was mortgaged in favour of the Bank. The Tribunal further observed that in the legal notice the petitioner never questioned the mortgage of her property qua the loan account in question.

[4] Be that as it may, it is undeniable that the above-mentioned order dated 16.05.2017 passed by DRT-III, Chandigarh is appealable before the Debts Recovery Appellate Tribunal. Almost one year has passed and the petitioner has not chosen to avail such remedy. She is said to have filed an application for review/recall of the order passed by the DRT in the OA filed by the Bank.

[5] It is also pertinent to mention here that the petitioner had earlier approached this Court in CWP No.11422 of 2009 in respect of housing loan in which she gave an undertaking to deposit ₹5.00 lac to show her *bona fide*. However, the petitioner did not honour the said undertaking, hence, her writ petition was dismissed on 07.09.2009.

[6] In respect of the present loan account, the petitioner had earlier filed CWP No.4890 of 2013 but that was dismissed as withdrawn on 18.03.2013. As the facts would speak for themselves, the petitioner, instead of availing the remedy as provided under the Statute, is approaching time and again this Court on a pure question of fact as to whether or not the documents regarding mortgage are forged or genuine. Such like questions cannot be effectively adjudicated by this Court.

[7] Consequently, the writ petition is dismissed though with liberty to the petitioner to avail the remedy of appeal, without expressing any views on the point of limitation.

(SURYA KANT)
JUDGE

May 11, 2018 **(SHEKHER DHAWAN)**
meenuss **JUDGE**

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