IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12280 of 2018
Decided on : 08.10.2018

Dheeraj ...... Petitioner

Versus

United Commercial Bank of India and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Sunita Punia, Advocate
for the petitioner.

Mr. Sanjiv Gupta, Advocate
for respondents No.1 and 2.

None for respondent No.3.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notice dated 01.05.2018 (Annexure P-13) issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act').

2. United Commercial Bank of India, Naya Gaon Branch, District SAS Nagar (Mohali), United Commercial Bank of India, Kolkata and Mukesh Kumar son of Phool Singh have been arrayed as respondents No.1 to 3 respectively in the present writ petition.

3. The grievance of the petitioner is that neither he is the borrower nor the guarantor of the loan advanced by the respondent-bank but his property is being attached for recovery of the outstanding dues of respondent No.3.

4. The necessary facts as transformed from the paper-book are that Chhote Lal had purchased 2 marlas of land from Vikram Singh. The

said land was part of joint khasra and 2/15916 share of the property. The mutation was entered in the name of Chhote Lal.

5. Chhote Lal sold one marla of land alongwith house constructed on it to respondent No.3. Remaining one marla land was sold to Ram Safal, father of the petitioner. Respondent No.3 availed a cash credit facility from respondent No.1 and mortgaged the property purchased by him from Chhote Lal.

6. There was a default in repayment of loan amount and the respondent-bank initiated recovery proceedings by issuing a notice under Section 13(2) of the Act. Thereafter, a notice dated 19.03.2012 was issued under Section 13(4) of the Act and the same was pasted outside the house of the petitioner. Aggrieved of the proceedings under the Act, the petitioner filed a Securitisation Application (SA) before the Debt Recovery Tribunal-II, Chandigarh (for brevity, 'the Tribunal'). The application was numbered as SA No.177 of 2012. During the pendency of the SA, Local Commissioner was appointed. However, on the basis of the statement made by the petitioner that he shall clear the amount of ₹3,54,015/- as per notice under Section 13(2) of the Act, the SA was disposed of vide order dated 21.10.2016.

7. Heard learned counsel for the parties.

8. Learned counsel for the petitioner argued that the petitioner is neither the borrower nor the guarantor yet recovery is being made from the petitioner. It was further argued that the father of the petitioner had purchased one marla of land and house built on it from Chhote Lal.

9. Learned counsel for the respondent-bank argued that respondent No.3 availed a cash credit facility and had mortgaged one

marla of land alongwith house built on it. The physical possession of the property mortgaged by respondent No.3 is being taken in order to recover the outstanding liability. It was further contended that the petitioner made a statement before the DRT that he would deposit the outstanding liability but thereafter the present writ petition has been filed.

10. There are disputed questions of fact involved in the present petition. There is dispute as to whether the father of the petitioner had purchased one marla of land only or the land on which the house was built, was purchased. In order to decide the lis, evidence would be required to be adduced.

11. Keeping in view the disputed factual position, the petitioner is relegated to avail alternative remedy of Civil Court or any other remedy available in accordance with law.

12. During the pendency of the writ petition, an interim order regarding status quo of the physical possession of the property in dispute was granted. Keeping in view the facts of the case, the interim protection granted shall continue further for a period of three months from today. It is, however, clarified that the extension of the interim protection shall not be construed as an expression on the merits of the case by this Court.

13. The writ petition is disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 08, 2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No