

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.15359 of 2018
Decided on 26.09.2018**

Juhi Garg

Petitioner

Versus

Union of India and others

Respondents

* * *

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

Present : Petitioner in Person.

Mr. Bharat Julka, Advocate
for the petitioner.

Mr. Jitender Nara, Advocate
for Union of India.

Mr. Nitin Grover, Advocate
for respondent No.4.

Respondent No.5 in person.

Mr. Vikas Bali, Advocate
for respondent No.5.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 08.02.2018 passed by the Addl. Deputy Commissioner, Ludhiana under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') and notice dated 27.04.2018 (Annexure P-1) issued by Naib Tehsildar, Ludhiana for taking over the physical possession of the mortgaged property.

2. The petitioner had availed two loans from the respondent No.4. In one of the loan account, the petitioner is the sole borrower and in other loan account, petitioner is co-borrower with her husband. Union of India; Additional Deputy Commissioner, Ludhiana; Tehsildar-cum-Naib Tehsildar, Ludhiana west; Punjab National Bank Housing Finance Limited, Ludhiana Branch and Naveen Garg, husband of the petitioner have been arrayed as respondents No.1 to 5 respectively, in the writ petition.

3. The petitioner alongwith respondent No.5 availed a term loan of ₹28 lakhs from respondent No.1. The loan was sanctioned on 26.12.2007. The same was to be repaid in 180 equal monthly installments (EMI's). In order to secure the loan, following two properties owned by respondent No.5 were mortgaged with the bank:

1. House No. 285, Jagjit Nagar, Ludhiana (measuring 200 sq. yards) owned by husband of the petitioner.
2. Industrial plot measuring 1250 sq. yards situated at Dreem Estate Begoana, District Ludhiana owned by husband of the petitioner.

4. The petitioner alongwith her husband-respondent No.5 availed another loan for housing amounting to ₹9.85 lakhs from respondent No.4 on 02.02.2010. The loan was to be repaid in 180 EMI's. In order to secure the loan, property measuring 200 sq. yards situated at Osho Gardens, Ludhiana owned by petitioner was mortgaged.

5. There was default in repayment of the loans. The accounts were classified as Non-Performing Assets (NPAs). Respondent No.4 initiated proceedings under the Act. Ultimately, an application under

Section 14 of the Act was moved before respondent No.2. The said application was allowed vide order dated 08.02.2018. In pursuance thereto, respondent No.3 affixed a notice dated 27.04.2018 on the mortgaged property of the petitioner. It would be pertinent to mention that during the pendency of the recovery proceedings, the petitioner filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against respondent No.5. The present petition has been filed being aggrieved of the order passed by respondent No.2 and initiation of the proceedings for taking over of physical possession of the mortgaged property.

6. Notice of motion was issued vide order dated 06.06.2018.

7. Today, petitioner and respondent No.5 are present in Court in person.

8. Heard learned counsel for the parties.

9. Learned counsel for respondent No.4 stated that as on 28.08.2018, an amount of ₹29,08,040/- is due in the term loan account availed by petitioner and respondent No.5. He further stated that as on 28.08.2018, an amount of ₹10,21,661/- is due in the housing loan account of the petitioner and respondent No.5.

10. Respondent No.5 and the petitioner have filed their respective affidavits in Court today, the same are taken on record. Respondent No.5 has offered that he has no objection if the respondent No.4 recovers dues of both the loan accounts by selling two properties owned by him which are mortgaged with the bank. In case the dues of respondent No.4 are cleared by the sale of these two properties, the third property owned by the petitioner, can be released to her.

11. Petitioner has proposed that in case the due amount of

respondent No.4 is not satisfied by sale of the two properties owned by respondent No.5, she would surrender the property mortgaged by her with the respondent No.4, for the purpose of recovery of the balance outstanding amount.

12. Learned counsel for respondent No.4 stated that he has no objection to the proposal made by petitioner and the respondent No.5.

13. Learned counsel for the petitioner further contended that the respondent No.4 has already taken possession of House No.285, Jagjit Nagar, Ludhiana. Petitioner and respondent No.5 have not been allowed to take out even their personal belongings.

14. In view of the affidavits filed, the writ petition is disposed of with the following directions:

- (i) Respondent No.4 shall be entitled to recover the outstanding dues of both the term loan/housing loan accounts firstly by selling the two properties owned by respondent No.5. In case, the total dues are not cleared, only in that case the property owned by petitioner shall be put to auction.*
- (ii) If the outstanding amount of the respondent No.4 is recovered by the sale consideration of the two properties of respondent No.5, the title deeds of the property of the respondent No.4 shall be released to her.*
- (iii) The bank shall associate petitioner and respondent No.5 while selling the properties by issuing a notice informing them the date of auction fixed by the bank.*

(iv) Petitioner, respondent No.5 and officials of respondent No.4 shall make themselves present on 03.10.2018 at 10:00 A.M. in house No. 285, Jagjit Nagar, Ludhiana and thereafter, the petitioner and respondent No.5 shall collect their belongings from the said premises in the presence of the bank officials.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AVNEESH JHINGAN)
JUDGE**

September 26, 2018

pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No