IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.21454 of 2016
Date of Decision: February 12, 2018

Authorized Officer, IDBI Bank Ltd. And another ......Petitioners

versus

District Magistrate, Amritsar and others .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE RAJBIR SEHRAWAT.

***

Present: Mr.Tajender K.Joshi, Advocate, for the petitioners.
Mr.Sahil Sharma, DAG, Punjab.
Mr.Anil Chawla, Advocate, for respondent No.5.

-.-

Surya Kant, J. (Oral)

Petitioner is a banking Company and is a 'Financial Institution' within the meaning of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It advanced loan to respondent Nos.3 & 4 but the borrowers having failed to repay the same, their accounts were classified as NPA and measures under the provisions of 2002 Act were taken. The petitioners have also applied to the District Magistrate, Amritsar under Section 14 of the 2002 Act for taking physical possession of the secured asset comprising a plot measuring 460 square yards situated at Sultanwind, G.T.Road, Amritsar.

The Additional District Magistrate, Amritsar apparently for considerations other than the merit of the case and in clear violation of his powers vested under Section 14 of the 2002 Act, framed issues and passed the impugned order dated 13/18.01.2016 holding that respondent Nos.4 & 5 are the *bonafide* purchasers of substantial part of the said property measuring 306.66 square yards.

With a view to stall the delivery of possession of secured assets, respondent Nos.4 & 5 also filed a civil suit in the Civil Court at Amritsar seeking injunction against borrower-respondent No.3-Ankush Sood as well as the petitioner-bank claiming themselves to be *bonfide* purchasers of the subject property where construction was also raised. Their suit has since been dismissed by the Civil Judge (Junior Division), Amritsar vide judgment and decree dated 21.09.2017 holding that they have not approached the Court with clean hands.

Needless to say that the original sale deed of the property is in the custody of the bank and the same was produced before this Court on January 12, 2017. It is obvious that when the original title deeds are lying with the bank, the so called sale by one of the borrower is a sham transaction and the vendees were not expected to pay consideration without ascertaining the clear title of vendor. The sale is obviously meant to defeat the rights of the bank under the provisions of 2002 Act. The District Magistrate, Amritsar has also, *prima-facie,* played in the hands of the borrowers and the purchasers.

For the reasons aforestated and keeping in view the findings returned by the Civil Court, we are satisfied that the impugned order cannot sustain in law. The same is set-aside and the writ petition is allowed with a cost of Rs.25,000/- to be paid by the Additional District Magistrate, Amritsar who has passed the impugned order. The same is personally recoverable from him and shall not be reimbursed by the State. The cost shall be paid to the petitioners. The District Magistrate, Amritsar (other than the officer who passed the impugned order) is directed to pass a fresh order on the application under Section 14 of the 2002 Act within a period of <u>two weeks</u> in accordance with law. In the event of acceptance of such application, the Commissioner of Police, Amritsar is directed to provide police assistance to the petitioners to take physical possession of the secured assets. Respondent Nos.4 & 5, the alleged *bonafide* purchasers, shall be at liberty to take action against respondent No.3 who is alleged to have duped them. The bank shall also be at liberty to get the plot measuring 406 square yards evaluated and give offer to respondent Nos.4 & 5 to pay the full sale consideration for entire property.

The writ petition stands disposed of.

[SURYA KANT]
JUDGE

February 12, 2018
mohinder

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No