

226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17938 of 2018
DECIDED ON: OCTOBER 16, 2018

CHOLAMANDALAM INVESTMENT & FINANCE CO. LTD.

.....PETITIONER

VERSUS

DISTRICT MAGISTRATE -CUM- DEPUTY COMMISSIONER,
FATEHGARH SAHIB & OTHERS.

.....RESPONDENTS

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

Present : Ms. Puja Chopra, Advocate
for the petitioner.

Mr. Mehardeep Singh, Addl. AG, Punjab.

Mr. Vishal Gupta, Advocate
for respondents No.4 to 6.

Mr. Avnish Mittal, Advocate
for respondent No.7.

AVNEESH JHINGAN, J

The present writ petition has been filed seeking directions to respondents No.1 and 2 to take appropriate legal action under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (for brevity 'the Act') and to take the possession of the mortgaged property in compliance of order dated 24.04.2018 (P-4).

2. Petitioner is a Non Banking Finance Company and a financial institution within the meaning of Section 2 (1) (m) of the Act. District Magistrate-cum-Deputy Commissioner, Fatehgarh Sahib; Sub Divisional Magistrate, Amloh, District Fatehgarh Sahib; Senior Superintendent of Police, Fatehgarh Sahib have been arrayed as respondents No.1 to 3, respectively in this writ petition. Respondents No.4 to 6 are borrowers and co-borrowers of loan. Sonia Rani wife of Bharat Arya-respondent No.6 has been arrayed as respondent No.7.

3. Respondents No.4 to 6 approached the petitioner-Company to avail loan facility to the tune of ₹3,05,50,000/-. The amounts to the tune of ₹35,50,000/- and ₹2,70,00,000/- were sanctioned vide agreements dated 30.06.2012 and 26.04.2013, respectively. In order to secure credit facilities, following properties were mortgaged with the petitioner-Company.

(a) Property measuring 10 Biswas or 500 Sq Yards comprised in Khasra No. 1702/426 (2-7-0) situated in village Kukkar Maajra, Tehsil Amloh, District Fatehgarh Sahib, registered vide sale deed No. 856, dated 21.06.1988 in favour of Smt. Suman Rani;

(b) Property measuring 14 Biswas or 700 Sq Yards Kukkar Maajra, Tehsil Amloh and District Fatehgarh Sahib registered vide sale deed No. 763, dated 13.06.1988 in favour of Ashok Kumar s/o Saroop Chand.

4. The borrowers failed to maintain the financial discipline and their loan accounts were declared as Non Performing Asset (NPA) on 05.01.2017.

A notice under Section 13(2) of the Act was issued on 23.03.2017. There was

an outstanding amount of ₹5,50,37,564.98/-, as on 08.03.2017. Thereafter, petitioner-Company issued a notice dated 03.08.2017 under Section 13(4) of the Act. The petitioner-company moved an application under Section 14 of the Act. Respondent No.1 vide order 24.04.2018 allowed the afore-said application and directed that police help be provided to take over the possession of mortgaged properties. But, the possession of the mortgaged properties could not be taken over, as respondent No.7 had filed a complaint bearing No. 378, dated 20.03.2014 under the Protection of Women from Domestic Violence Act, 2005 (for short 'the Domestic Violence Act'). Sub-Division Magistrate, Amloh (SDM) vide order dated 24.03.2014 issued an order to respondents (i.e. respondents No.4 to 6 in the present writ petition) restraining them from ousting the complainant i.e. respondent No. 7 from the house in dispute, as well as from alienating the said house.

5. It is pertinent to note here that the respondents in the complaint never disclosed the fact to the Sub Divisional Magistrate, Amloh that the house in dispute has already been mortgaged with the petitioner-Company and order has been passed under Section 14 of the Act, to take over the possession of the mortgaged properties. However, the order passed by SDM was handed over to the petitioner-Company when the physical possession of the mortgaged properties was being taken.

6. It would be important to note at this stage that in the mortgaged properties, a tenancy was also created and the suit was filed by the tenant in Civil Court for permanent injunction and in that case also a stay order was obtained. The said issue is subject matter of CWP No. 18736 of 2018. The

same is also fixed for today. However, in the said petition, it has been stated that tenant has vacated the premises and has handed over the possession to the borrowers.

7. There is no dispute that respondents No.4 to 6 have to discharge liability of ₹4,50,00,000/-.

8. During the course of hearing, it transpired that the borrowers have built a two storeyed house in two plots (i.e mortgaged properties). The property measures 1200 Sq Yards. The taking over of the physical possession of the mortgaged property has been stalled on the basis of order passed under the Domestic Violence Act.

9. Section 19 of the Domestic Violence Act reads as under:

19. Residence orders.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

- (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;*
- (b) directing the respondent to remove himself from the shared household;*
- (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;*
- (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;*
- (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or*

- (f) *directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:*

Provided that no order under clause (b) shall be passed against any person who is a woman.

- (2) *The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.*
- (3) *The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.*
- (4) *An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.*
- (5) *While passing an order under sub -section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.*
- (6) *While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.*
- (7) *The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.*
- (8) *The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to*

10. From the perusal of Section 19(1) (f) of the Domestic Violence

Act, it is evident that the respondents in the complaint has to secure same level

of alternate accommodation for the aggrieved person as enjoyed by her in the share household or to pay rent for the same, if the circumstances so require.

11. In the present case, the property was mortgaged in the year 2012 and 2013, whereas, the complaint under the Domestic Violence Act was filed in the year 2014. The recovery of public money has been hampered by the borrowers on the basis of an order passed in an application under the Domestic Violence Act. The same cannot be allowed to be used as a tool against the petitioner-Company.

12. The right of respondent No.7 can be protected by providing her rent, as per clause (f) of sub-section (1) of Section 19 of the Domestic Violence Act. It would be appropriate that the order dated 24.03.2014 passed by Sub Divisional Magistrate, Amloh is modified to the extent that she (respondent No.7) would be entitled to a monthly rent of ₹7,000/-. The said rent shall be deposited by the petitioner-Company in her bank account, the details of which shall be provided by respondent No.7 to the petitioner-Company. It is, however, clarified that the amount, so paid shall be debited to the loan account of the borrowers.

13. Respondent No.7, who is present in Court, submitted that she may be given some reasonable time to vacate the house and to arrange for an alternate accommodation. It is ordered that respondent No.7 shall, on or before 10.11.2018, shift to the First Floor of the house and thereafter, vacate the house on or before 30.11.2018.

14. Respondents No.1 to 3 shall ensure that the possession of the ground floor of the mortgaged house is taken over and handed over to the

petitioner-Company, immediately after 10.11.2018 and physical possession of the rest of the mortgaged house be taken immediately after 30.11.2018.

15. In case, respondent No.7 has a grievance with regard to the amount of ₹7,000/- awarded to her for monthly rent, she would be at liberty to approach the SDM for enhancement of the said amount.

16. At the same time, petitioner-Company would also be at liberty to participate in the proceedings under the Domestic Violence Act with regard to the issue that payment of the rent is to be made by respondent No.6. It is clarified that the petitioner-Company shall carry on to deposit ₹7,000/- per month till the issue of payment of rent is decided in the Domestic Violence Act proceedings.

17. The writ petition is, accordingly, disposed of.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

OCTOBER 16, 2018
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<i>Whether speaking/reasoned:</i>	<i>Yes / No</i>
<i>Whether reportable :</i>	<i>Yes / No</i>