

CWP No. 19206 of 2018 (O&M)

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

**CWP No.19206 of 2018 (O&M)
Decided on : 23.08.2018**

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M/s Jindal Rice & General Mills, Nissing, Karnal and others

Petitioners

Versus

Oriental Bank of Commerce, Karnal and others

Respondents

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

Present : Mr. Vivek Goyal, Advocate
for the petitioners.

Mr. C.B. Goel, Advocate and
Mr. Gaurav Goyal, Advocate with
Sh. Ram Rattan Verma, ADGM, OBC, Karnal
for respondents No.1 and 2-bank.

Mr. Ashish Chopra, Advocate and
Ms. Sumiti Arora, Advocate
for respondent No. 3.

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AVNEESH JHINGAN, J.

The present writ petition has been filed with a prayer for quashing of sale notice dated 30.06.2018 (Annexure P-3) as the petitioner No.3-proposed buyer was willing to purchase property No.3 mentioned in the sale notice for ₹3 crores and the property was sold to respondent No.3 for ₹2.5 crores. Further, a prayer has been made seeking quashing of auction proceedings dated 31.07.2018 whereby

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the property of M/s Jindal Rice Mills alongwith plant & machinery have been sold for ₹2.5 crores to respondent No.3.

2. The petitioner No.1 is a partnership firm who borrowed loan from respondent-bank. Petitioner No.2 is the partner of the firm and petitioner No.3 is the buyer who gave the proposal to purchase the property No.3 in the sale notice.

3. Oriental Bank of Commerce, Resolution Recovery and Law Cluster, Karnal; Oriental Bank of Commerce, Karnal Branch are respondents No.1 and 2 respectively. Respondent No.3 is successful bidder in the auction. Superintendent of Police, Karnal, SHO Police Station, Nissing, Karnal, District Magistrate-cum-Deputy Commissioner, Karnal and Tehsildar-cum-Duty Magistrate, Karnal have been arrayed as respondents No.4 to 7 respectively in the writ petition.

4. Petitioner No.1 and 2 availed credit facility of ₹23 crores from respondent No.2 for business purposes. In order to secure the loan, following properties were mortgaged with the bank:

(1) Land measuring 6K-9M comprising of Khewat No. 642, Khatoni No. 1056, rect No.199, Killa No. 9 min(3-2), 10 min(3-7), kittas-2, situated at village Nissing Sub Tehsil Nissing, District Karnal vide sale deed No. 749/1, dated 22.10.2002.S. R. Nissing.	Sh. Satya Narain and Sh. Sushil Kumar s/o Sh. Kapoor Chand s/o Sh. Rulia Ram	Rs. 1,04,50,000/-
(2) Part of 1/3 share of plot No.10 & 11 now shop situated at Janta Market Nissing, Sub Tehsil Nissing District Karnal having area 133.30 sq. yards	Sh. Satya Narain and Sh. Sushil Kumar s/o Sh. Kapoor Chand s/o Sh. Rulia Ram	Rs. 28,00,000/-

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vide sale deed No. 633/1, dated 18.12.1985 and registered Will No. 38/3 dated 19.09.1997.		
3) Land measuring 20K-12M comprising of Khewat No. 778, Khatoni No. 1287, rect No.273, Killa No.18/2 min south (1-13), 19 min south (6-4), 20/1min south (3-3), 21/2(1-12), 22(8-0), Kittas-5, situated at Village Nissing Sub Tehsil Nissing District Karnal vide sale deed No. 16/1, dt. 16.04.1996, S.R. Nissing.	M/s Jindal Rice & General Mills, Nissing, District Karnal, through its partner Sushil Kumar son of Sh. Kapoor Chand r/o Nissing Karnal.	Rs. 2,47,00,000/-
4) Plot i.e. land measuring 0 Kanal 2 marla (now in shape/service station) being 2/100 share of total land measuring 05Kanal 0 Marla comprised in khewat No. 873 (new khewat No. 1018), khatoni No. 1387 (new No. 1559), khasra no. 204, rect No.1/2/1/1(5-0) as per jamabandi for the year of 1997-98 & 2007-08 read with mutation No. 7667 with all rights appurtenant thereto vide regd. Sale deed no. 188 on 06.05.2005 registered with sub registrar Nissing situated at Bhatt Colony Nissing.	Smt. Anita Rani w/o Sh. Sushil Kumar s/o Sh. Kapoor Chand and Sh. Mukesh Kumar, Dinesh Kumar s/o Sh. Sat Narain s/o Sh. Kapoor Chand in equal share.	Rs. 17,00,000/-
5) Gain Mumkin plot measuring 3K-11M being 71/190 share of 9K-10M pertaining to khewat no. 724 min, khatoni no. 1158, rect no. 149, killa no. 18/2/1(1-10) and 19(8-0) vide sale deed no. 212 registered on 3.5.2011 read with mutation no. 10852 sanctioned on 20.07.2011 of sale and mutation no. 14237 sanctioned on 23.08.2016 of inheritance.	Sh. Raghbir Singh s/o Sh. Jile Singh s/o Sh. Nanha Ram r/o Village Dachar Tehsil Nissing and Sh. Satnarain and Sh. Sushil Kuma s/o late Sh. Kapur Chand s/o Sh. Rulia Ram r/o Nissing District Karnal.	Rs. 22,36,000/-

5. The petitioners defaulted in repayment of loan and the account was declared as Non-Performing Asset (NPA) on 31.08.2017.

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Notice dated 12.09.2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') was issued. Thereafter, notice dated 30.11.2017 under Section 13(4) of the Act was issued. The petitioners failed to repay the loan amount. The respondent-bank issued a sale notice dated 30.06.2018. The sale of the mortgaged properties was fixed for 31.07.2018.

6. In the present petition, the dispute is only with regard to property No.3 in the sale notice. The reserve price of this property was fixed at ₹2.47 crores. Petitioner No.1 and 2 approached the bank on 31.07.2018 and 01.08.2018 representing that they have a buyer for the property No.3 who is ready to purchase the same for ₹3 crores. The auction was held, there was only one bidder and the property was sold for ₹2.5 crores to respondent No.3.

7. Aggrieved of the auction, the writ petition has been filed.

8. Learned counsel for the petitioners, in order to show the *bona fides* produced a Cheque bearing No. 080729, dated 03.08.2018 for a sum of ₹75 lakhs in the Court and contended that the petitioner No.3 is ready to buy the property for ₹3 crores. It was stated that in case the petitioner backs out, ₹75 lakhs deposited by the petitioners be forfeited. Notice of motion was issued. It was ordered that *status quo* with regard to possession of the property shall be maintained. Learned counsel for the bank accepted notice in Court. The cheque was handed over with liberty to the bank to encash the same without prejudice to its rights. Learned counsel for respondent No.1 and 2 were

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directed to inform the bank about the interim order. On the next date, learned counsel for respondents prayed for time to file the reply. Learned counsel for the petitioners pointed out that despite the order of this Court regarding maintaining *status quo*, the possession of rice mill has been taken over from the petitioners and delivered to the purchaser. The bank was directed that it would retain the possession and in case the possession has already been handed over to the auction purchaser, the same shall be taken back. Sh. Ram Rattan Verma, ADGM, Oriental Bank of Commerce, Karnal was directed to be present in the Court on the next date of hearing.

9. Heard learned counsel for the parties.

10. Learned counsel for the petitioner handed over another Cheque No. 124953, dated 23.08.2018 of ₹75 lakhs as a payment towards the offer made of ₹3 crores. He undertakes that the balance amount of ₹1.5 crores will be deposited within three weeks from today. He also undertakes that petitioners are ready to compensate for the interest amount which would be paid to respondent No.3 on refund of his amount.

11. The Cheque is handed over to the learned counsel for the respondent-bank so that same can be encashed by the bank without prejudice to its rights.

12. Learned counsel for respondent No.3 contended that the entire sale consideration has been deposited with the bank and in case auction is to be set-aside, the amount deposited should be refunded

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alongwith reasonable interest. He further stated that the possession of the property has been handed over to the bank.

13. Learned counsel for respondents No.1 and 2 defended the auction proceedings and argued that the representation of the petitioner was received on 31.07.2018 after the banking hours. It was submitted that there was only one bidder and his bid of ₹2.5 crores has been accepted and auction has already been finalized. The learned counsel submitted that Mr. Ram Rattan Verma, ADGM, OBC, Karnal is present in Court and he tenders unconditional apology. It was only as there was communication gap that inspite of the interim order passed by this Court, the possession of the property was handed over to respondent No.3. It was stated that on realizing the mistake, the possession was taken back and the order of this Court dated 3.8.2018 has duly been complied with.

14. The Cheque of ₹75 lakhs given by the petitioner in Court has been handed over to the learned counsel for the bank. The bank shall encash the same without prejudice to its rights. The petitioners have deposited ₹1.5 crores and would be depositing ₹1.5 crores more within three weeks from today. Let this amount be kept in an FDR by the bank till the date of the auction. The auction of the property was conducted by the bank for realization of defaulted amount of loan. Public money is involved. The petitioner had brought a proposed buyer offering ₹3 crores for the property. The bank went ahead with the auction inspite of the fact that there was only one bidder and his bid of ₹2.5 crores against the reserve price of ₹2.47 crores. The said bid

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was accepted. The auction conducted is, *prima-facie*, under shadow of doubt. Firstly, there was only one bidder and secondly that the bid received was lower than ₹50 lakhs of the amount offered by petitioner No.3, yet the auction was finalized.

15. The sale notice dated 30.06.2018 and the auction held in pursuance to the notice is set aside. Property of petitioner No.1 shall be put to auction afresh. The reserved price of the property shall be fixed as ₹3 crores i.e. the bid offered by the petitioner No.3. The bank shall issue a notice of sale within 15 days of deposit of balance amount by the petitioner No.3. In case the petitioner No.3 backs out from his offer, amount of ₹75 lakhs already deposited shall be forfeited by the bank. The amount received by the bank in pursuance to the earlier auction from respondent No.3 would be refunded back to respondent No.3 alongwith interest @ 8% p.a. It is clarified that the amount of interest paid by the bank to respondent No.3 would be compensated by the petitioners.

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

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

23.08.2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No