

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

CWP No. 22063 of 2017 (O&M)
Decided on : 12.09.2018

M/s Jain Teleshop & Furniture House, Ludhiana

..... Petitioner

Versus

Presiding Officer, Debts Recovery Tribunal, Chandigarh-III and others

..... Respondents

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

Present : Mr. Pardeep Bajaj, Advocate
for the petitioner.

Ms. Jaspreet Kaur, Advocate for
Mr. Nakul Sharma, Advocate
for respondents No.2 and 3.

Mr. A.S.Gagrha, Advocate
for respondent No.4.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 14.09.2017 (Annexure P-1) passed by Debts Recovery Tribunal-III, Chandigarh (for brevity, 'DRT') and auction notice dated 14.08.2017 (Annexure P-2) published in the newspaper on 15.08.2017.

2. The petitioner is a proprietorship concern and the petition is being filed by its proprietor. The Presiding Officer, Debts Recovery Tribunal, Chandigarh; the Authorised Officer, Allahabad Bank, SME Finance Branch, Sunder Nagar Branch, Ludhiana and the Manager, Allahabad Bank, Sunder Nagar Branch, Ludhiana, have been arrayed as respondents No.1 to 3 respectively in the present writ petition.

3. The petitioner firm availed credit facilities from respondent No.2

i.e. ₹30 lakhs as cash credit limit and ₹10 lakhs as term loan. In order to secure the credit facilities, residential property of proprietor situated in Simranjit Nagar, Tibba Road, Basti Jodhewal, Ludhiana and property of the firm measuring 158 square yards, registered in the name of the mother of the proprietor Smt. Sheela Jain, was mortgaged. The firm also hypothecated its stock, book debts and machinery.

4. There was a default in repayment. The respondent-bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') on 01.01.2014. As per the notice, there was an outstanding amount of ₹38,23,439/-. After the issuance of notice, the petitioner deposited a meagre amount of ₹1 lakh. Thereafter, notice dated 04.03.2014 was issued under Section 13(4) of the Act. Being aggrieved of the said notice, the petitioner filed Securitization Application (SA) under Section 17 of the Act. During the pendency of the SA, the bank fixed e-auction of the mortgaged property. Notice dated 14.08.2017 was published in the newspaper on 15.08.2017. The petitioner filed an application before the DRT challenging the auction proceedings. The petitioner offered to pay a sum of ₹4 lakhs with request to pay rest of the amount in one time settlement (OTS) and a prayer was made for staying the auction proceedings. The application was dismissed vide order dated 14.09.2017.

5. Being aggrieved of the auction notice and dismissal of the stay application, the present petition has been filed.

6. On 27.09.2017, learned counsel for the petitioner submitted before this Court that the petitioner will deposit ₹4 lakhs within a period of one week, and after settling the account with the respondent-bank, pay the

entire amount within a period of three months.

7. Notice of motion was issued and it was ordered that the sale in terms of auction notice dated 14.08.2017 shall not be confirmed subject to petitioner's depositing ₹4 lakhs on or before 29.09.2017. On 11.12.2017, learned counsel for the petitioner handed over two demand drafts of ₹1.5 lakhs each to the learned counsel for the bank.

8. During the pendency of the writ petition, an application was moved by auction purchaser for impleading him as respondent No.4 in the writ petition. Notice was issued in the said application. It would be pertinent to note that the auction purchaser submitted a bid amounting to ₹30,66,000/- towards property No.1 and a bid amounting to ₹27,69,970/- towards property No.2.

9. On 08.05.2018, the proprietor of the petitioner made an offer before this Court to pay an amount equivalent to the highest bid received for the secured assets as 'One Time Settlement', offer was subject to adjustment of payment made by him during the pendency of the writ petition. He sought 4-5 months time to pay the said amount in installments along with interest. He further agreed that he would be liable to pay interest which the bank would have to pay to the auction purchaser. Considering his offer to be genuine, it was ordered that bank should consider the same sympathetically and bank would be at liberty to refund the amount deposited by the auction purchaser along with interest.

10. We have heard learned counsel for the parties.

11. During the course of the arguments, it was pointedly inquired from learned counsel for the petitioner if the petitioner has made an offer to the bank and has he deposited the balance amount as per his offer in

compliance with order dated 08.05.2018. It was stated that neither any offer nor any payment in compliance with order dated 08.05.2018 has been made.

12. The petitioner filed an application before DRT in August 2015 for staying the auction proceedings and offered to deposit ₹4 lakhs immediately and rest of the outstanding payment to be made as per OTS with the bank. Since the dismissal of the application almost two years have passed, apart from the payment made during the pendency of this writ petition for availing the interim protection, the petitioner has not made any endeavour to clear the outstanding dues. The offer made before this Court on 08.05.2018 to pay the amount equivalent to highest bid received has been scorned. The petitioner had been making offers and not adhering with the same. Consequently, the bank and the auction purchaser have to suffer and the recovery proceedings of the respondent-bank have been delayed. The money deposited by the auction purchaser with the bank has been blocked because of non-confirmation of the sale.

13. The writ petition has not been instituted bonafide. It has been filed only to delay the confirmation of the auction of mortgaged properties. No case is made out for interference in exercise of the writ jurisdiction under Article 226 of the Constitution of India. The writ petition is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 12, 2018
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Whether speaking/reasoned: Yes
Whether reportable : Yes