

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

**CWP No. 20399 of 2018
Decided on 27.08.2018**

Mamta Sethi

Petitioner

Versus

Small Industries Development Bank of India, Chandigarh and others

Respondents

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

Present : Mr. Aalok Jagga, Advocate
for the petitioner.

Mr. Anand Chhibbar, Senior Advocate with
Mr. Vivek Verma, Advocate
for respondent No.2.

Mr. Abhilaksh Grover, Advocate
for Auction Purchaser.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking directions to the Recovery Officer, Debts Recovery Tribunal-II, Chandigarh [for brevity 'DRT'] to adjourn the recovery proceedings emanating from an *ex-parte* decree dated 09.09.1998 till the decision of Miscellaneous Application filed under Order 9 Rule 13 CPC for setting aside the *ex-parte* order dated 09.09.1998. Further, prayer has been made for direction to DRT that Miscellaneous Application filed under Order 9 Rule 13 CPC be decided in a time bound manner.

2. Small Industries Development Bank of India, Chandigarh;

M/s India SME Asset Reconstruction Company Ltd., Mumbai; Presiding Officer, DRT, Chandigarh and Recovery Officer, DRT, Chandigarh are respondents No.1 to 4 respectively. Respondents No.5 to 7 are the borrowers of loan from respondent No.1.

3. On 13.02.1995, respondent No.5 to 7 availed a loan facility of ₹50 lakhs from respondent No.1. In the sanction letter, one of the condition was that Subhash Sethi, deceased husband of the petitioner would stand guarantor and would mortgage his immovable property i.e. land measuring 1 Bigha, 15 Biswa comprised in Khewat No. 612, Khata No. 866, Khasra no. 3872/1868 within Municipal Limit of Gurgaon.

4. It is alleged in petition that the late husband of the petitioner was neither the borrower nor a guarantor for the loan availed by respondent No.5 to 7.

5. There was a default in repayment of loan and respondent No.1 issued recovery notice dated 13.11.1996. As per notice, an amount of ₹61,82,573/- was due. The respondent No.1 filed an Original Application (OA) No.302 of 1997 on 21.02.1997. The said application was decreed on 09.09.1998. Respondents No. 5 to 7 were held jointly and severally liable for recovery of the amount. It was further ordered that the loan amount can be recovered from the property of the husband of the petitioner.

6. The petitioner lost her husband on 06.02.2006 and it was only on 24.04.2016 that she came to know about the *ex-parte* order passed by DRT. An application under Order 9 Rule 13 of CPC was filed on 29.11.2016. Another application dated 08.03.2018 was filed

for condonation of delay.

7. On 10.03.2016, the property of deceased husband of the petitioner was put to sale, for recovery of the outstanding amount. The date of auction was fixed for 04.05.2016. Highest bid of ₹12.80 crores was received. The petitioner filed objection against the confirmation of the sale. Thereafter, a request was made before the Recovery Officer for adjourning the proceedings to await outcome of application filed under Order 9 Rule 13 of CPC. The Recovery Officer rejected the request and the matter was fixed for 17.08.2018. Being aggrieved, the present writ petition has been filed.

8. On 16.08.2018, notice of motion was issued for 27.08.2018 and the Recovery Officer was directed to adjourn the matter beyond the date fixed by this Court.

9. Respondent No.2-contesting respondent has filed the written statement.

10. We have heard learned counsel for the parties and perused the paper book.

11. Without expressing any opinion on the merits of the case, respondent No.3 is directed to decide the applications filed by petitioner under Order 9 Rule 13 of CPC and also the application for condonation of delay, in accordance with law. The decision would be taken within a period of one month from the receipt of certified copy of this order. Till the decision of the applications, respondent No.4 shall keep the proceedings in abeyance.

12. Further, in case the decision in the applications is against the petitioner, the order passed shall not be implemented for one week

thereafter to enable the petitioner to avail remedies available to her in accordance with law.

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

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

27.08.2018
pankaj baweja

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No