IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4011 of 2015 (O&M)

Date of Decision:24.08.2018

Punjab National Bank, New Delhi

.......Petitioner

Versus

Surinder Pal and others

......Respondents

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

Present: Mr. A.S. Gagrha, Advocate
for the petitioner.

Mr. (Dr.) Surya Parkash, Advocate
for the respondents.

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AVNEESH JHINGAL, J.

The present writ petition has been filed by Punjab National Bank, seeking quashing of order dated 23.01.2012 (Annexure P-16) passed by Debts Recovery Tribunal-II, Chandigarh (for short 'DRT') and order dated 21.10.2014 (Annexure P-23) passed by Debts Recovery Appellate Tribunal, Delhi (for short 'DRAT'). Further, prayer is to issue direction to the Recovery Officer, DRT, Chandigarh (respondent No.10) for taking legal measures to deliver possession of the property auctioned in the process of recovery of amount due vide Recovery Certificate No. 230 of 2008.

In this writ petition, respondents No. 1 to 5 are auction purchasers; respondents No. 6 to 9 are the borrowers/judgment-debtors and respondent No.10 is Recovery Officer, DRT, Chandigarh.

Respondents No. 6 to 9 availed cash credit facility from the petitioner and in order to secure loan, the property bearing Khewat Khatauni No.155/486, Khasra No.618(0-15) min, 619 (2-0) min, kitch 2, Land Area 2

Bigha 15 Biswa or 2750 sq. yards, land of Seona, Patiala, was mortgaged. The borrowers/Judgment-debtors defaulted in repayment of the loan amount and the Bank filed Original Application No. 15 of 2006 (O.A.) for recovery of a sum of Rs.16,14,544/-. The DRT allowed the O.A. vide order dated 11.07.2008 and consequence thereof Recovery Certificate was issued on 28.08.2008. The Recovery Officer vide order dated 08.01.2010 took on record copy of the newspaper cutting indicating the publication of notice and further directed the Bank to file photocopy of original newspaper and to file proposal of recovery. The Bank submitted the valuation report and on filing of the affidavit by the Bank regarding proclamation of sale, the Local Commissioner was appointed for identification and demarcation of the property. The Local Commissioner submitted its report stating that the mortgaged property has been sold by the Judgment-debtors, after mortgaging the same with the Bank. The said property has, further, been sold by the buyers by converting it into flats. In the report dated 12.04.2010, the sales made by the judgment-debtors/borrowers as well as by the purchasers were mentioned. The mutations so entered as a result of sale transactions were also mentioned. The entire chain of sellers and purchasers was also given in a tabulated form.

Inspite of the report, the property was put to auction on 04.05.2011 "*as is where is, basis*.' Respondents No. 1 to 5 were successful bidders and the property was sold to them for Rs.44,40,000/-. The sale was confirmed vide order dated 12.07.2011 and on deposit of entire amount, sale certificate dated 14.07.2011 was issued. The Recovery Officer vide order dated 22.07.2011 appointed a Local Commissioner for delivery of possession of the property to respondents No. 1 to 5. Letter dated

23.01.2012 was addressed to the General Manager of the petitioner-Bank for getting the mutation of the auctioned property sanctioned in favour of the auction-purchasers. Being aggrieved of the action of the Recovery Officer for handing over the possession of the property to the auction-purchasers or for getting the mutation sanctioned in favour of the auction-purchasers, the bank filed an appeal before DRT. The DRT vide order dated 01.08.2013 allowed the appeal of the Bank. It was held that the auction-purchasers cannot ask for refund of the money paid in pursuant to the auction. Being aggrieved of the order of DRT, the auction-purchasers preferred an appeal before DRAT.

The DRAT vide order dated 21.10.2014 allowed the appeal and directed the Bank to ensure handing over of the physical possession of the property and get the mutations entered in the revenue record in the name of the auction-purchasers. In the alternative, the Bank was directed to refund the amount to respondents No. 1 to 5 with simple interest at the rate of 6% per annum from the date of deposit till the date it is paid back.

Feeling aggrieved of the order of DRAT, the Bank filed the present petition.

After issuance of notice of motion, respondents No. 6 to 9 could not be served. Vide order dated 15.03.2018, the Bank was directed to furnish correct addresses of respondents No. 6 to 9 within two weeks and serve them dasti notices, to show cause as to '*why FIR should not be registered against them for committing fraud and cheating*'. Dasti notices were not served and correct addresses were not filed. On 5.7.2018 the learned counsel for the petitioner stated that the correct addresses shall be filed within three weeks and the case was adjourned. However, it was made clear that in case of failure to provide correct addresses, the petition shall be dismissed for non-prosecution qua respondents No. 6 to 9.

Learned counsel for the petitioner even today asked for more time to provide the correct addresses. The writ petition is pending since 2015 and the Bank has neither provided the correct addresses nor able to serve the respondents No. 6 to 9 by dasti process. The writ petition qua respondents No. 6 to 9 is dismissed for non-prosecution.

Learned counsel for the petitioner argued that the property was sold on "*as is where is, basis*" and the auction-purchasers having accepted the terms now cannot ask for possession of the property or for refund of the money.

Learned counsel for the auction-purchasers contended that the respondents are no longer pressing for physical possession of the auctioned property. The only submission is that the amount of Rs.44,40,000/- be refunded along with interest at the rate of 6% per annum.

The contention raised by learned counsel for the petitioner is not well founded. It has come on record that the alleged mortgaged property auctioned by Bank for recovery of dues does not exist in the name of the Borrowers. Rather, the property is in occupation of some other persons who are living there in the constructed houses and their names are duly entered in the Revenue/Municipal records. At the time of fixing the auction, the Bank was aware of the fact that the mortgaged property no longer exists as secured property has already been sold and ownership thereof is transferred. Inspite of this, by relying upon technicality that the auction is on "*as is where is, basis,*" the property was sold. The auction-purchasers were made to deposit the money. After the auction, the auction-purchasers have been left high and dry, neither the physical possession of the property has been handed over nor the mutations in the revenue record have been entered in their favour.

In such circumstances, the impugned order of DRAT cannot be faulted with. The petitioner cannot be permitted to recover the outstanding dues, in such a manner, that a non-existing property is put to auction and after deposit of the money by auction-purchasers, U-turn is taken to say that it is neither possible to handover the property nor the amount deposited would be refunded. The auction-purchasers are no longer pressing for handing over the physical possession of the property, therefore, the only alternative relief given by the DRAT survives. In the circumstances mentioned above, the Bank is liable to refund the amount along with simple interest at the rate of 6% per annum from the date of deposit till the date of payment.

No case is made out for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

The writ petition is, accordingly, dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

24.08.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No