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

CWP No.24677 of 2017
Decided on : 09.07.2018

Rajinder Kaur

. . . Petitioner

Versus

Punjab National Bank and others

. . . Respondents

* * *

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

Present : Mr. Rahul Sharma-I, Advocate
for the petitioner.

Mr. Vikas Agnihotri, Advocate for
Mr. C.S.Pasricha, Advocate
for respondent No.1.

Mr. Balwinder Singh Sudan, Advocate
for respondent No.6.

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AVNEESH JHINGAN, J.

This present writ petition has been filed with a prayer to prohibit the respondent from taking over the actual physical possession of sole dwelling house of the petitioner i.e. Flat No. 1206, Aryan Enclave, New Light Society, Sector 51-B, Chandigarh.

2. Respondent No.1 in the writ petition is Punjab National Bank, Sector 19-C, Chandigarh; respondent No.2 is Debt Recovery Tribunal-I, Chandigarh; respondent No.3 is Debt Recovery Appellate Tribunal, New

Delhi; respondent No.4 is Authorized Officer of Debt Recovery Tribunal-I, Chandigarh; respondent No.5 is the company who borrowed the loan and respondent No.6 is the private party who purchased the flat in e-auction.

3. Respondent No.5-a private limited company, took a term loan of ₹ 1.10 crores and availed cash credit limit of ₹ 2.50 crores from respondent No.1. The sister-in-law, daughter and husband of petitioner were Directors in respondent No.5-company. In order to secure cash credit limit and term loan, the petitioner stood as a guarantor and mortgaged her house with the bank. Respondent No.5 defaulted in payment of loan amount. A notice dated 10.04.2015, under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') was issued by the bank as there was a default in payment of ₹ 3.23 crores. Thereafter, notice dated 02.09.2015 under section 13(4) of SARFAESI Act was issued and possession notice (symbolic) was issued on 17.09.2015.

4. Respondent No.5 filed a S.A. before Debt Recovery Tribunal. Petitioner also moved an application for being impleaded as a party. The application was dismissed as the petitioner had a separate remedy. Petitioner filed a separate S.A. which was registered as S.A. No.301 of 2016. In the meantime, the bank issued a public notice for e-auction of the property. On issuance of notice, petitioner filed an application for interim relief. The said application was dismissed on 14.12.2016. Aggrieved of the said order, petitioner filed CWP No. 2808 of 2017, which was withdrawn on 15.02.2017 with liberty to approach Debts Recovery Appellate Tribunal. Thereafter, M.A. No. 112 of 2017 was filed before the Appellate Tribunal. During the pendency of the same, no interim protection was granted.

5. E-auction was held in which respondent No.6 was successful bidder and the bid was accepted on 17.12.2016. In pursuance of acceptance of the bid of ₹ 90,60,000/-, respondent No.6 deposited ₹ 9 lacs as earnest money on 14.12.2016. A sum of ₹ 13,75,000/- was deposited at the time of the acceptance of the bid i.e. on 17.12.2016. The balance amount of ₹ 67,85,000/- was deposited on 31.12.2016.

6. Now, the petitioner has approached this Court on the ground that the sole dwelling unit has been auctioned by the bank.

7. Notice of motion was initially issued vide order dated 31.10.2017 to respondent No.1 only and *status quo* regarding possession was ordered to be maintained in the meantime.

8. After filing of the written statement by respondent No.1, on 19.01.2018, the petitioner took a stand that she is ready to offer a sum of ₹ 90,60,000/- alongwith interest to the auction purchaser. Thereafter, notice of motion was issued to respondent No.6 also. Respondent No.6 has filed the reply. Learned counsel for respondent No.6, on instructions, contended that she is ready to accept ₹ 90,60,000/- alongwith interest at the rate as determined by this Court. In order to put an end to her suffering, he contended that respondent No.6 had paid the entire money taking ₹ 35,00,000/- from her husband who had retired from service on 31.12.2016. She had also availed a loan of ₹ 40,00,000/- from the bank, but till date the bank has not delivered the possession of the flat.

9. In view of the stand taken by the petitioner on 19.01.2018 and keeping in view the statement made by learned counsel for respondent No.6, the writ petition is disposed of with a direction that the petitioner would pay ₹ 90,60,000/- within two months from today. Alongwith principal

amount, the petitioner shall pay interest @ 8% per annum from the date respondent No.6 deposited the amount with the bank till the date of payment.

10. Learned counsel for the petitioner undertakes that in case of failure of the petitioner to pay the said amount within specified time, the petitioner would raise no objection and would deliver the possession of the flat to respondent No.6 within one month thereafter.

11. The writ petition is disposed of accordingly.

[AJAY KUMAR MITTAL]
JUDGE

[AVNEESH JHINGAN]
JUDGE

09.07.2018
pankaj baweja

Whether speaking/reasoned ?	*Yes / No*
Whether reportable ?	*Yes / No*