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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 26987 of 2017
Decided on 29.08.2018

Seema Rani and others

Petitioners

Versus

UCO Bank, Ludhiana

Respondent

* * *

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

Present : Mr. Rohit Suri, Advocate
for the petitioners.

Mr. Shekhar Verma, Advocate
for the respondent.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed with a prayer for quashing of possession notice dated 08.11.2016 (Annexure P-5) and application dated 23.06.2017/27.10.2017 for permission to take over physical possession of the residential house.

2. Petitioner No.1 is the wife of Late Sh. Rakesh Kumar and petitioners No.2 & 3 are the son and daughter of Late Sh. Rakesh Kumar. UCO Bank, B-17, Phase-IV, F, Dhandari Kalan, Ludhiana has been arrayed as respondent in the writ petition.

3. Rakesh Kumar took a housing loan amounting to ₹9,40,000/- in March 2012 from the respondent-bank. The loan was to be repaid in 276 equal monthly installments [EMI's] of ₹9,450/- each. On 08.11.2015, unfortunately Sh. Rakesh Kumar expired. A sum

of ₹8,91,973/- was outstanding. The petitioners did not pay the balance EMI's on the ground that while sanctioning the loan, insurance cover was issued under the UCO Griha Raksha Yojana Scheme (hereinafter referred to as 'the Scheme'). It was averred that because of insurance cover, on the death of the borrower, the remaining EMI's were covered under the insurance policy. The dispute has been raised before Consumer Court, Ludhiana and the same is still pending. In the meantime, the respondent started proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act'). The respondent moved an application under Section 14 of the Act. The Additional District Magistrate, Ludhiana vide order dated 23.06.2017, granted the permission to take over the physical possession of the residential house.

4. The entire case of the petitioners in the present writ petition is that at the time of sanctioning of loan, an insurance cover was issued under the Scheme and a sum of ₹42,500/- was deducted towards insurance. Hence, on the death of Rakesh Kumar, the balance EMI's are not to be paid as the sum is covered by the aforesaid insurance.

5. Heard learned counsel for the parties.

6. Learned counsel for the respondent-bank disputed the factum of issuance of Insurance cover. He relied upon Annexure R-2, letter dated 10.05.2012 written by Rakesh Kumar to the respondent-bank that Rakesh Kumar and Seema Rani are not interested in taking insurance policy for their loan account. He, further, relied upon the

loan account statement of account (Annexure R-3) to show that there is an available credit amount of ₹42,500/-. He stated that because of the letter (Annexure R-2) the insurance expenses were not debited to the loan account of Rakesh Kumar.

7. The controversy raised in the present writ petition involves disputed questions of fact. The petitioners are pursuing their remedy before the Consumer Court also. The writ petition is dismissed with liberty to the petitioners to avail alternative remedy in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

29.08.2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No