IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26838 of 2018 (O&M)

Date of Decision: 17.10.2018

Ram Pal

.......Petitioner

Versus

UCO Bank, Municipal Corporation Building, Mata Rani Chowk Ludhiana and others

......Respondents

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

Present: Mr. Amandeep Singh Nirmaan, Advocate for the petitioner.

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AVNEESH JHINGAL, J.

The present writ petition has been filed seeking quashing of order dated 09.04.2018 (Annexure-P6) passed by the Debts Recovery Tribunal-III, Chandigarh (for short 'the Tribunal').

2. The petitioner is a borrower of loan. UCO Bank, Municipal Corporation, Building, Mata Rani Chowk, Ludhiana has been arrayed as respondent No.1. Respondents No. 2 to 4 are the guarantors/mortgagors.

3. The petitioner availed credit facility from UCO Bank, Mata Rani Chowk, Branch Ludhiana. In order to secure the credit facility availed, property of respondents No 2 to 4 bearing H. No.1932/2, Street No.3, Surinder Nagar, Near Haldi Ram Depot Shivpuri, Ludhiana, was mortgaged.

4. The petitioner failed to maintain financial discipline, consequently, respondent No.1 initiated proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act'). Notice under Section 13(2) of the Act was issued on 16.01.2007. As per notice, there was an outstanding amount of

Rs. 46,20,690/-. Respondent-Bank filed an Original Application (OA No. 2193 of 2017). The petitioner filed Securitization Application (SA) before the Tribunal alleging that respondents No.2 to 4 have used forged and fabricated sale deed in order to avail the loan. The SA was dismissed vide order dated 31.10.2017. The petitioner was given liberty to initiate criminal proceedings. The OA filed by respondent No.1 was allowed vide order dated 09.04.2018. It was held that respondent-Bank is entitled to recover a sum of Rs. 46,20,690/- alongwith simple interest at the rate of 12% per annum.

5. In the meantime, criminal proceedings were initiated by the petitioner against respondents No. 2 to 4 in which the respondents were acquitted.

6. The petitioner also filed a suit for declaration to the effect that the plaintiffs are owners in continuous possession of the mortgaged property.

7. The present writ petition has been filed being aggrieved of order passed by the Tribunal allowing the OA filed by the Bank. The petitioner has alternative remedy available under Section 18 of the Act against the order of the Tribunal.

8. The Supreme Court in the case of ***United Bank of India Versus Satyawati Tondon and others*** **(2010)8SCC110** has held as under:

> "27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues."

9. In consonance with the decision of the Apex Court, the present writ petition is dismissed with liberty to the petitioner to avail alternative remedy in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17.10.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No