

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

217+101

**CWP No.8057-2019 (O&M)
Date of Decision:27.08.2019**

Vikram Gupta and others

....Petitioners

Versus

Central Bank of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Ms. Radhika Suri, Senior Advocate with
Mr. Manpreet Singh Kanda, Advocate
for the petitioners.

Mr. Anuj Jain, Advocate
for respondent No.1.

Mr. Gaurav Jain, Advocate
for respondents No.2 to 5.

RAKESH KUMAR JAIN, J. (ORAL)

CM-8344-CWP-2019

This application is filed for placing on record the replication to the reply filed by the respondent No.1-Bank and for exemption from filing certified/fair typed copies of Annexure P-25 to Annexure P-27 and for permission to file photo copies of the same.

For the reasons mentioned the application, the same is allowed and the documents are taken on record.

CWP No.8057-2019 (O&M)

The prayer made in this petition is for the issuance of a writ in the nature of certiorari for quashing the auction notice dated 25.08.2018 in respect of the property i.e. Plot No.72, Block-B, Kirti

Nagar, Warehousing Scheme, New Delhi.

In brief, the petitioner No.3 secured a term loan of ₹11.20 crores and Cash Credit Limit of ₹50 lacs. Petitioner No.1 stood as a guarantor. The account of petitioner No.3 became irregular, declared Non-Performing Asset (NPA) and a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') was issued to the borrower on 10.08.2016 and after the issuance of notice under Section 13(4) of the Act, symbolic possession was taken on 18.01.2017. Respondent No.1 filed an application before the Chief Metropolitan Magistrate, New Delhi under Section 14 of the Act to assist them to take possession of the mortgaged property. The said application was allowed on 08.02.2018 and the Court Receiver was directed to take physical possession of the property in question. Thereafter, the possession was taken and the property was put to auction on 28.09.2018.

To be more precise and brief, the petitioner has allegedly made an offer of ₹4.25 crores to purchase the mortgaged property and in that process offered ₹50 lacs. The case of the petitioner is that they received the intimation about E-Auction on 25.08.2018 in which the reserved price was fixed at ₹4.23 crores. There is another facet of this dispute an alleged tenant had filed an appeal before the DRAT, New Delhi and during the pendency of the appeal, the petitioner had allegedly made an offer of ₹4.25 crores as well. Not only that one

Madhu Khandelwal had also offered to purchase the property in question at ₹4.35 crores.

The DRAT did not pass any favourable order to the petitioner, on 28.09.2018 the property was sold in E-Auction and sale was confirmed on 16.10.2018 for a sum of ₹4,23,50,000/-. Sale Certificate was also issued on 30.11.2018. However, before that the petitioner has already filed a writ petition before Hon'ble Delhi High Court which was withdrawn on 26.11.2018.

The petitioner thereafter filed a Securitization application bearing SA No.337 of 2018 before the DRT-I, New Delhi. In the said SA, the petitioner has challenged the auction. The petitioner also filed IA No.338 of 2019 in the said SA for staying further auction proceedings but the said application was dismissed and no appeal thereafter was filed against the said order. However, the SA is admittedly pending but the petitioner has filed the present writ petition with the same prayer which has been made in the SA. Since the petitioner has challenged the auction notice dated 25.08.2018 and the property has already been sold with possession to the auction purchaser who is also present before us and the petitioner had earlier gone to the DRT with the SA which is pending adjudication, the writ petition in the present form is not found maintainable.

Faced with these observations, learned counsel for the petitioners has prayed for withdrawal of the petition and also made a request that the learned DRT-I, New Delhi who is seized of SA No.337 of 2018 may be directed to expedite the hearing of the said petition and

also to decide the same in a time bound manner. She has also prayed that she may be allowed to raise all the issues which have been raised in the present petition as well as in the SA before the said tribunal.

Counsel for the respondent-Bank has not raised any objection in this regard as the present petition is being withdrawn by the petitioners only on the ground that the petitioners have already chosen a forum and cannot simultaneously invoke the extraordinary jurisdiction of this Court in the presence of the ordinary jurisdiction which has been availed.

The legal question about the effect of Section 13(8) of the Act or Rule 9(2) of the Security Interest (Enforcement) Rules, 2002 and various precedents cited before us would be appropriately seen and considered by the DRT-I, New Delhi while deciding SA No.337 of 2018 filed by the petitioner.

With these observations, the present petition is hereby dismissed as withdrawn but with a direction to the DRT-I, New Delhi who is seized of SA No.337 of 2018 to expedite the trial and decide the same as early as possible but preferably within a period of three months from the date of appearance of the parties i.e. on the date already fixed and by passing a speaking order on the issues involved.

At this stage, learned counsel appearing on behalf of the petitioners has also prayed that in the meantime the auction purchaser may be directed not to further alienate the suit property. We are afraid that this prayer cannot be considered because the petitioners have withdrawn the writ petition but, if any, such application is filed or is

to be filed may be considered by the said Court in accordance with law.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

27.08.2019
Kothiyal

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