IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17551 of 2018
Date of Decision: November 06, 2019

M/s Durga Agencies

...Petitioner

VERSUS

Debt Recovery Tribunal-II, B Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.V.K.Sachdeva, Advocate
for the petitioner.

Mr.Gaurav Goel, Advocate
for respondent No.2.

Mr.Suresh K. Jindal, Advocate
for respondent No.3.

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the impugned order dated 12.07.2018 passed by learned Debt Recovery Tribunal-II, Chandigarh, vide which Securitization Application No.369 of 2017, filed by the petitioner, under the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short 'Act'), has been dismissed, on the ground that the application is pre-mature because physical possession of the mortgaged property has not been taken by the respondent-Bank and also prayed for quashing the rejection letter dated 05.02.2018 by which the respondent-Bank has rejected the application of the petitioner filed with a proposal for the one time settlement under the OTS Policy-2017.

In brief, the petitioner had availed credit facilities from the respondents i.e. Cash Credit Limit of ₹15 lakh for his business and housing loan of ₹3 lakh. Since, the petitioner could not maintain the payment schedule, therefore, both the accounts were declared NPA and notice under Section 13(2) of the Act was issued to the petitioner on 18.05.2006 demanding a sum of ₹23,23,693/-, determined as on 18.05.2006 i.e. ₹21,04,650/- in the CC account and ₹2,19,042.80 in Term Loan account. The symbolic possession of the residential house was taken by the respondent-Bank on 19.07.2006 and sale notice was issued on 23.08.2006 for the auction of the residential house (mortgaged property) at the reserve price of ₹20 lakh.

The petitioner has allegedly paid a sum of ₹7,14,427/- between the period from May 2006 to January 2007 against the amount of ₹23,23,693/-, leaving the balance of ₹16,09,266/-. It is alleged that despite receiving a sum of ₹7,14,427/- and agreeing to settle the loan account, respondent-Bank had issued a second auction notice at the reserve price of ₹20 lakh for 26.02.2007. Ultimately, the mortgaged property (house of the petitioner) was sold on 26.02.2007 for a sum of ₹20.56 lakh to respondent No.3.

The petitioner filed a Securitization Application (SA) No.18 of

2007 before the Debt Recovery Tribunal. In the said proceedings, the petitioner also impleaded the auction purchaser. The DRT granted status quo in respect of the property in question but dismissed the SA on 25.07.2012 on the ground of limitation. Aggrieved against the order of dismissal, the petitioner filed an appeal before the Debt Recovery Appellate Tribunal, New Delhi, in which, notice was issued and petitioner was directed to deposit ₹6 lakh and the confirmation of the sale was stayed. The order dated 25.07.2012 by which the DRT had dismissed the SA of the petitioner, was set aside on 11.03.2014, with the direction to decide the SA on merits. It is alleged that petitioner had deposited ₹11 lakh before the DRT and thus the total deposit on behalf of the petitioner with respondent-Bank is ₹18.14 lakh.

Learned counsel for the petitioner has submitted that during the pendency of the SA, the respondent-Bank has come out with One Time Settlement Scheme namely (SBI) OTS 2017, in which cases pending before the DRT were included. In order to avail the benefit of OTS scheme, the petitioner deposited 5% of the outstanding amount of ₹5,09,266/- and undertook to deposit the remaining amount upto 31.12.2017. The petitioner also filed an application before DRT i.e. IA No.110 of 2018 to place on record the Settlement Proposal dated 31.10.2017 but the said proposal was rejected by the respondent-Bank on 05.02.2018 and returned the bank draft of ₹25,500/- dated 31.10.2017. It is submitted that vide impugned order dated 12.07.2018, DRT, Chandigarh, not only dismissed the application of the petitioner as pre-mature but also vacated the order of status quo dated 15.05.2007, on the ground that bank has not taken physical possession.

Accordingly, payment of the total amount of ₹23 lakh i.e. ₹18,14 lakh paid before DRT and ₹5.10 lakh before this Court, has already been made and the auction purchaser is now backing out from the auction sale as he is now seeking refund of ₹20.56 lakh deposited with the respondent-bank along with interest.

Learned counsel for the petitioner has further submitted that DRT has erred in dismissing the application vide order dated 12.07.2018, terming it as premature on the ground that no action under Section 13(4) is taken because the petitioner has not lost physical possession, which is a pre-condition for maintaining an application under Section 17 of the Act

It is submitted that now the issue is no more *res integra* because this Court has taken a decision in ***CWP No.19318 of 2018*** titled as ***'M/s Shree Shayam Cotex Private Limited vs. State Bank of India and another, decided on 15.11.2018*** that losing of physical possession is not a pre-condition to maintain the application under Section 17 of the Act before the DRT.

In respect of second prayer, it is submitted that petitioner has already challenged the order of rejection of the proposal under the OTS scheme by the respondent-Bank but he has been fair enough to submit that since the matter has already been brought to the notice of the DRT by the petitioner, therefore, in view of the decision rendered by the Hon'ble Supreme Court in ***M/s Sardar Associates and others vs. Punjab & Sind Bank & Ors, 2009(3) RCR (Civil) 927*** and judgment rendered by the Hon'ble Single Bench of this Court in CWP No.17151 of 2009, titled as M/s Coventry Coil-O-Matic (Haryana) Ltd. vs. Reserve Bank of India and others, decided on 27.11.2009, the DRT would have the jurisdiction to decide the issue regarding acceptance or rejection of OTS scheme made by the petitioner. Further, he has submitted that he may be allowed to challenge the order of rejection passed by the respondent, which has been challenged in this Court, before the DRT.

Mr.Goel, counsel for the respondent-Bank could not dispute the position of law with regard to the decision of the Hon'ble Supreme Court in ***M/s Sardar Associates and others' case (supra)*** as well as in ***M/s Coventry Coil-O-Matic (Haryana) Ltd. case (supra)***. However, it is submitted that order of rejection has rightly been passed because number of opportunities were given to the petitioner, which it did not avail.

Be that as it may, since, we are relegating the petitioner to the remedy of pursuing the application (SA No.369 of 2017), after setting aside the impugned order dated 12.07.2018 (Annexure P-1) and also permitting him to challenge the order dated 05.02.2018 by which proposal under the OTS scheme has been rejected by the respondent-Bank. Respondent-Bank is also provided with the liberty to raise all the issued in regard to maintainability of the order dated 05.02.2018 before the DRT.

At this stage, learned counsel for respondent No.3 has made a prayer that their amount lying with the respondent-Bank, having been deposited in the year 2007, may be refunded to them, as they are no more interested in purchasing the property. In this regard, respondent No.3 may also appear before the DRT and raise all the issues, which are in their favour for the purpose of refund.

With the aforesaid discussion, the present writ petition is allowed and the impugned order dated 12.07.2018 is set aside. The petitioner is relegated to remedy to raise all the issues with regard to the validity of the order dated 05.02.2018 before the DRT. The parties are directed to appear before DRT on 13.11.2019.

(RAKESH KUMAR JAIN)
JUDGE

November 06, 2019
Vgulati

(SUVIR SEHGAL)
JUDGE

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