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

Decided on : 14.05.2019

CWP No.20187 of 2017 (O&M)

Sharmila ...... Petitioner

Versus

State Bank of India & ors. ...... Respondents

CWP No.3472 of 2018 (O&M)

Society for Education & Research (SER) ..... Petitioner

versus

Debt Recovery Appellate Tribunal, New Delhi & ors. ..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. S.K.Garg, Sr. Advocate with
Mr. Rahul Deswal, Advocate
for the petitioner in CWP No.20187 of 2017.

Mr. V.K.Sachdeva, Advocate
as amicus curiae.

Mr. Rakesh Gupta, Advocate
for respondent No.1-Bank.

Mr. Zorawar Singh, Advocate
for respondent Nos.2 and 3.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Mukul Aggarwal, Advocate
for respondent No.4 in CWP No.20187 of 2017 and
for the petitioner in CWP No.3472 of 2018.

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Manjari Nehru Kaul, J.

This order shall dispose of the abovesaid two writ petitions as the issue involved in both the writ petitions is the same. The brief facts of the case are being extracted from CWP No.20187 of 2017.

2. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for setting aside the impugned order dated 19.05.2017 (Annexure P-25).

3. It would be pertinent to give a brief run up to the sequence of events leading to the filing of the instant writ petition, which are as follows:

Respondent No.1-bank vide agreement dated 22.02.2008 sanctioned credit facilities of ₹ 6.60 crores to respondent No.4 – Society for Education and Research (for short 'Society') against the collateral security of the property i.e. land measuring 79 kanals 19 marlas, 5 kanals 2 marlas and 5 kanals 13 marlas situated at village Kalawad, Tehsil Jagadari, District Yamuna Nagar, Haryana. The petitioner along with respondents No.2 and 3 stood as guarantors for the said credit facility by mortgaging their residential house/s as security i.e. House No.1855, Sector 23, Urban Estate (HUDA), Sonepat, Haryana measuring 315 sq. yards and House No.1556, Sector 6 Urban Estate (HUDA), Karnal, Haryana.

4. In the year 2011, respondent No.4-Society defaulted in making payments, as a result of which, its loan account was declared as Non Performing Asset on 29.03.2011. Consequently, the respondent-bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and of Security Interest Act, 2002 (in short 'the Act') and issued demand notice dated 16.06.2011 under Section 13(2) of the Act. In the meantime, respondent-bank floated a 'One Time Settlement Scheme' (for

brevity 'OTS Scheme') to which respondent No.4 proposed to settle the account for a sum of ₹ 5,63,01,993/-. The respondent-bank vide letter dated 06.08.2013 approved the settlement but failed to give break-up of the OTS Scheme. Though the respondent-bank took symbolic possession of the property of the borrower-respondent No.4 but was unable to take the physical possession of the said property. Consequently, on 12.02.2013 respondent-bank moved an application under Section 14 of the Act before the District Magistrate, Sonepat for taking physical possession of the mortgaged properties i.e. residential house/s of the petitioner and respondents No.2 and 3, who vide order dated 03.07.2013 directed the Superintendent of Police to provide adequate police protection for taking physical possession of the property of the petitioner. The petitioner and respondents No.2 and 3 by way of filing SA No.240 of 2013 then challenged the order dated 03.07.2013 before the Debts Recovery Tribunal, Chandigarh (for short 'the Tribunal'). However, on 14.01.2014 respondent-bank published an auction notice for sale of the mortgaged properties of the petitioner and respondents No.2 and 3. The petitioner moved IA Nos.171 and 172 of 2014 in the said SA for early hearing of the SA as well as for stay of the auction proceedings. However, the auction could not take place as no bidder came forward to purchase the said properties. The petitioner meanwhile, filed an application for staying the auction of the mortgaged properties. Finally, while hearing the application for stay of the auction proceedings, the Tribunal vide order dated No.31.03.2014 directed that the "sale shall be subject to the outcome of the said SA". Thereafter the respondent-bank again published a fresh e-auction notice dated 13.06.2014 for auctioning of all the mortgaged properties. The petitioner and respondents No.2 and 3 challenged the said auction by moving an application i.e. IA No.702 of 2014 before the Tribunal. The Tribunal vide its order dated 15.07.2014 again directed that the "sale of the applicant's properties would be subject to the outcome of the SA". However, respondent-bank went ahead and auctioned the property of the petitioner to the sole bidder i.e. respondent No.5 on 18.07.2014 and transferred the title in his favour. Sale deed dated 05.01.2015 was also executed in favour of respondent No.5 by the respondent-bank. Feeling aggrieved, the petitioner preferred an application bearing IA No.70 of 2015 in SA No.240 of 2013 before the Tribunal seeking stay of further proceedings qua transfer of rights, title, interest and physical possession of her residential house/mortgaged property. The Tribunal vide order dated 30.01.2015 stayed further proceedings qua the property of the petitioner. On 30.07.2015, the Tribunal while observing that the respondent-bank was trying to dispossess the petitioner despite the stay granted by it vide order dated 15.07.2014, confirmed the stay order till the disposal of SA No.240 of 2013. It would be pertinent to mention that during the intervening period, respondent-bank received two FDRs amounting to ₹ 68 lakhs and ₹ 25.38 lakhs respectively from respondent No.4- Society. The Tribunal vide order dated 25.01.2016 allowed the SA by directing the respondent-bank to sell all the mortgaged properties of the borrower-Society but set aside the sale of the residential house of the petitioner. On 08.02.2016 respondent No.5 –

auction purchaser filed MA No.15 of 2016 for refund of the sale amount deposited with the respondent-bank. The Tribunal vide order dated 04.05.2016 allowed the said MA and directed the respondent-bank to refund the sale amount to respondent No.5. On 13.01.2017, respondent No.4 -Society entered into OTS Scheme with the respondent-bank and paid 25% of the OTS amount. However, the Debts Recovery Appellate Tribunal (for short 'the Appellate Tribunal') vide order dated 19.05.2017 allowed MA Nos.105 and 207 of 2016 arising out of SA No.240 of 2013 filed by the respondent-bank and directed to deliver the physical possession of the residential house of the petitioner to respondent No.5. The Appellate Tribunal further directed that in case respondent No.5-auction purchaser was not willing to take possession, then the money deposited by him with the respondent-bank would stand forfeited. The Appellate Tribunal also directed to take possession of the mortgaged properties of respondent No.4 – Society. It was in this background, the petitioner and the Society approached this Court by way of present writ petitions.

5. Vide order dated 09.06.2017, this Court had issued notice of motion in the following terms:

> *"It has been asserted before this Court that the respondent is taking the possession of the only residential house of the petitioner who is guarantor to the loan despite assurance given before the Debt Recovery Tribunal that they would proceed against the guarantor only if they have exhausted their remedies against the properties of the principal borrowers.*
>
> *Notice of motion to respondent-Bank for 6.7.2017.*
>
> *Till that time alone, the petitioner shall not be*

dispossessed."

6. During the proceedings, a joint application was moved by the parties for referring the matter to the Lok Adalat pursuant to which vide order dated 01.05.2019 the matter was referred to Lok Adalat for amicable settlement between the parties. Finally, the matter was settled between the parties and a compromise deed was executed on 02.05.2019 before the Lok Adalat.

7. Keeping in view the compromise executed between the parties, the present petitions are disposed of with the following directions:

i) The auction sale in favour of respondent No.5-auction purchaser is declared to be non-operative in view of compromise between the parties. The original sale deed and sale certificate executed in favour of the auction-purchaser shall be returned to the bank.

ii) The original title deeds and other relevant documents of HUDA qua residential house i.e. House No.1855, Sector 23, Sonepat, would be handed over to the petitioner by the auction-purchaser-respondent No.5.

iii) The petitioner will give certificate to the bank qua the receipt of the said documents.

iv) Thereafter, the respondent-bank will refund the auction amount to respondent No.5-auction purchaser along with simple interest @ 9% from the date of deposit till the date of refund.

v) The principal borrower shall deposit the amount in terms of the compromise entered between the parties, whereupon the original title deeds of the principal-borrower shall be released to him.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

14.05.2019
sonia

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