THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6642 of 2018
Date of Decision: 4.7.2019

Rajesh Dhanda

...Petitioner

Versus

Allahaband Bank

...Respondents

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

Present: Mr.Pankaj Gupta, Advocate for the petitioner.

Ms.Kiranjeet Kaur, Advocate for
Mr.R.S.Minhas, Advocate for the respondent-Bank.

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<u>RAKESH KUMAR JAIN, J. (ORAL)</u>

The petitioner has approached this Court with a prayer to issue a writ in the nature of mandamus with a direction to the respondent Bank to return the sale consideration of ₹3.5 Crores, paid on the purchase of six properties by him in terms of the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short `the Act') on 9.2.2011 alongwith interest and compensation.

In brief, the respondent Bank had allowed credit facility to one M/s Shrishty Impex, Ludhiana and M/s RTS International. The said borrowers were in default, therefore, the bank proceeded against them in terms of the provisions of the Act and sold the mortgaged property for recovery of its dues. The petitioner purchased six mortgaged properties for a consideration of ₹3.5 Crores and the Bank issued the sale certificate dated 9.2.2011 in his favour. Since thereafter, the petitioner has been pressing hard for delivery of actual physical possession and clear all dues of the properties sold but so far the bank has not given any concrete reply and as a result thereof the petitioner had approached the bank for the purpose of refund of the amount of ₹3.5 Crores alongwith interest etc. As there is a complete lapse on the part of the respondent side in this regard also, the present writ petition has been filed for seeking a direction.

Although notice was issued in this petition way back on 16.3.2018 and it is ripe for adjudication but learned counsel for the petitioner, in all fairness, has referred to a decision of the Supreme court rendered in the case of ***Agarwal Tracom Private Limited Versus Punjab National Bank and others (2018) 1 SCC 626*** to apprise the Court that the the petitioner has the remedy under Section 17 of the Act to approach the Debt Recovery Tribunal even though he is an auction purchaser. In this regard, he has referred to paragraph 17 of the judgment in which the question has been framed by the Supreme Court to the effect that "The short question that arises for consideration in this appeal is whether the High Court was justified in holding that the remedy of the appellant (auction purchaser) lies in challenging the action of the secured creditor (PNB) in forfeiting the deposit by filing an application under Section 17 of the SARFAESI Act before the DRT or the remedy of the auction-purchaser is in filing the writ petition under Articles 226/227 of the Constitution of India to examine the legality of such action?

The answer to this question is in paragraphs 29 and 30 of the judgment which read as under:

> 29. “In our view, therefore, the expression “any of the measures referred to in Section 13(4) taken by secured creditor or his authorised officer” in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).
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> 30. The auction-purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression any person” as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act.”

Keeping in view the aforesaid facts and circumstances, the present petition is thus hereby disposed of by relegating the petitioner to his remedy of filing an appropriate application before the DRT in terms of Section 17 of the Act. The petitioner is granted 45 days' time to file such an application. It is further directed that in case the petitioner files any such application same shall be decided on merits in accordance with law but having not been influenced by any observation made by this Court.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

4.7.2019
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No