IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

126

CWP No.28372 of 2019
Date of Decision: 04.10.2019

Babita Maheshwari .....Petitioner

Versus

Debts Recovery Tribunal-III, Chandigarh and others .....Respondents

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

Present : Mr. Harsh Manchanda, Advocate for
Mr. B.S. Bhalla, Advocate for the petitioner.

****

RAKESH KUMAR JAIN, J. (ORAL)

Before coming to this Court, the petitioner had filed SA No.61 of 2018 which was disposed of by order dated 23.07.2018 which is reproduced as under:-

> "*Arguments heard. The counsel for the applicant has submitted that the applicant is neither a guarantor nor has taken a loan but is a 3rd party and does not have any link with the property which has been mortgaged with the bank. The bank is intentionally trying to auction the same after taking the possession of it and therefore the bank shall be restrained from doing so.*
>
> *That the counsel for the Bank has submitted that Bank is proceeding against the property which is under mortgage and the Bank is not taking any action against the property of the applicant.*
>
> *The arguments of both the parties is heard and have gone through the record of the case.*
>
> *The applicant has filed the aforesaid SA on the ground that the applicant is a 3rd party and Bank is initiating the proceedings to auction the property of the applicant after taking the possession of the same. It is*

admitted fact that the property of the applicant is different from the property mortgaged with the Bank and the applicant does not have any objection if the Bank takes possession of the mortgaged property after taking possession of it. In the circumstances the dispute between the parties is that the applicant has an apprehension that the Bank is intentionally taking the possession of the property of the applicant and trying to auction the same whereas the bank has refused from it. In these circumstances the Bank is directed to get the demarcation of the property under its mortgaged from the concerned Patwari of the revenue department and thereafter possession of the said property may be taken and put to auction. It should be made sure that if the property of the applicant is different from the property under mortgage then no interference should be made. The bank after getting the mortgaged property Demarcated may take its possession and recover it amount after putting the same to auction. In this way the aforesaid SA is disposed of. File be consigned to the record room. Copy of the order be given to the parties as per rules."

It is submitted that the respondent Bank has now issued a notice of fifteen days for the sale of immovable secured asset and affixed the said notice on the property of the petitioner as well. The petitioner has thus approached this Court to challenge the said notice by way of issuing a writ in the nature of certiorari.

We have heard counsel for the petitioner and after examining the record, are of the considered opinion that the writ petition is totally misconceived because the petitioner has already been protected by the Debts Recovery Tribunal-III, Chandigarh (for short, "the Tribunal") vide order dated 23.07.2018 in which it is categorically provided that until and unless the mortgaged property is demarcated by the Bank through the concerned Patwari, the possession cannot be taken thereof.

It is needless to mention that until and unless the mortgaged property is demarcated and the possession is taken thereof, it cannot be put to sale as the petitioner is stated to be a co-sharer in the property who is neither a borrower nor a guarantor.

Faced with this observation, counsel for the petitioner prays for withdrawal of the present petition at this stage to file a detailed reply to the notice issued by respondent No.2 (**Annexure P-11**).

In case any such reply is filed by the petitioner within a period of one week from the date of receipt of certified copy of this order, the respondent Bank is directed to consider the said reply/objection positively and decide the same before proceeding further in respect of the sale of the mortgaged property. The petitioner may, if so advised, apply under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 before the Tribunal who had passed the order dated 23.07.2018.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

04.10.2019
Vinay

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