IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15383 of 2018
Decided on : 19.03.2019

Subhash Chander and another ... Petitioners

Versus

Bank of Baroda and others ... Respondents

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

Present: Mr. Vivek Goyal, Advocate
for the petitioners.

Mr. Gaurav Goel, Advocate
for the respondent-Bank.

Mr. F.S. Virk, Advocate for
Mr. Arvind Rajotia, Advocate for respondent No.2.

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Manjari Nehru Kaul, J. (Oral)

The petitioners have approached this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *Certiorari,* for setting aside the sale notice dated 05.05.2018 (Annexure P-2) vide which the respondent-Bank had put the house in question for sale for a reserve price of Rs.94.35 lakhs on 08.06.2018 against pending dues of only Rs.23,59,187/- plus interest from 01.01.2016 coupled with the fact that petitioner No.2 being proposed buyer was ready and willing to pay the whole dues of the bank along with interest.

2. Petitioner No.1 had availed a home loan amounting to Rs.33 lakhs from the respondent-bank in the year 2010 for purchase of a house, which was to be repaid in monthly installment of Rs.39,581/-. Petitioner No.1 had been regularly paid monthly installments for almost 4½ years. Thereafter, due to personal difficulties he was unable to discharge the financial liability as a

consequence of which, his loan account was declared as Non Performing Asset on 25.12.2015. Petitioner No.2 executed a sale agreement with petitioner No.1 to purchase the property in question on 11.04.2013 and paid Rs.20 lakhs as earnest money for the same. In the meantime, the respondent-bank initiated the recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') which culminated in issuance of possession notice dated 03.03.2018 under Section 13(4) of the Act. Thereafter, the respondent-bank issued a sale notice dated 05.05.2018 for auctioning the property in question. Feeling aggrieved, the petitioner filed the present petition.

3. While issuing notice of motion on 07.06.2018, it was recorded that three bank drafts amounting to a total of Rs.15 lakhs, drawn in favour of petitioner No.1, shall be kept in a non-lien account in the custody of the Registrar (Judicial) of this Court till further orders. On 19.06.2018, two demand drafts, drawn in favour of the Bank of Baroda for Rs.5 lakhs each (totalling Rs.10 lakhs) were also produced and handed over to the Registrar (Judicial) of this Court to be kept in the safe custody.

4. In such circumstances and without expressing any opinion on the merits of the controversy, we dispose of the present petition with the following directions:

1. Petitioner No.1, who is the principal borrower, shall approach the respondent-bank within one month from the date of receipt of certified copy of this order by filing a detailed and comprehensive representation, raising all the pleas as sought to be raised in the present writ petition.

2. Petitioner No.1 shall deposit a sum of Rs.25 lakhs along with the representation.
3. Respondent-bank shall consider the representation submitted by petitioner No.1 sympathetically in accordance with law, after affording an opportunity of hearing to the petitioner and pass a speaking order.
4. The decision on the representation shall be taken at the earliest by the respondent-bank but not later than two months from the receipt of such representation.
5. It is clarified that in case petitioner No.1 fails to submit his representation or fails to deposit a sum of Rs.25 lakhs within the specified time, the respondent-bank would be at liberty to proceed in accordance with law.

5. The Registrar (Judicial) of this Court is directed to hand over the aforesaid five demand drafts to petitioner No.1 against proper receipt and identification, to enable him to deposit the amount of Rs.25 lakhs alongwith the representation with the respondent-Bank within the stipulated period.

6. It is, further clarified that till the matter is decided by the respondent-Bank, status quo shall be maintained by the parties.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

19.03.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No