

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 5362 of 2020

Date of Decision: February 27, 2020

Paramjit Kaur

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. H.B.S. Baidwan, Advocate
for the petitioner

Sudhir Mittal, J. (Oral)

The petitioner is a vendee from the mortgagee of the land in dispute. The said land was redeemed vide order dated 24.11.2016 passed by the Assistant Collector, SAS Nagar Mohali. This order was challenged by the petitioner by way of a civil suit which was, however, dismissed vide judgment and decree dated 30.05.2019. Her appeal against the same is pending. Meanwhile, the Sub Divisional Magistrate-cum-Collector, Mohali has issued warrants of possession vide order dated 09.02.2020. It is argued that the order was passed on a Sunday and this shows the malafide intent of the Officer concerned. Moreover, the Collector has no jurisdiction to issue a warrant of possession during the pendency of proceedings before the civil Court.

A pointed question was put to learned counsel for the petitioner that these issues can be raised before the Appellate Court as well and an order of stay can be obtained from it. However, learned counsel for the petitioner has not been able to answer this question satisfactorily. His submission is that any order

passed under the Redemption of Mortgages (Punjab) Act, 1913 is subject to orders passed by the civil Court. Further, the order dated 24.11.2016 is without jurisdiction as according to Section 13 of the aforementioned Act second application for redemption is not maintainable.

The aforementioned submissions are on the merits of the case. These issues shall be decided by the Appellate Court. However, they do not answer the question regarding availability of remedy of obtaining a stay from the Appellate Court.

The next submission of learned counsel for the petitioner is that objections to the application for issuance of warrants of possession have been filed before the Collector. The Collector does not have the right to issue warrants of possession without disposing of the objections in view of Order 21 Rule 97 CPC.

This submission also does not cut ice with this Court as all these issues can be raised before the Appellate Court in support of an application for stay.

Thus, I do not find any ground to interfere in the impugned order. The writ petition is dismissed. However, the petitioner shall be at liberty to approach the Appellate Authority for stay of warrants of possession.

February 27, 2020

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No