IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No. 9794 of 2020
Date of Decision: 13.07.2020

Suhail Goyal ....Petitioner

VERSUS

State Bank of India ....Respondent

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Aalok Jagga, Advocate for the Petitioner.

Mr. Rakesh Gupta, Advocate for the Respondent/Bank.

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S. MURALIDHAR, J.

1. This is the second round of litigation at the instance of the present Petitioner. Earlier, he had filed CWP No. 7785 of 2019, in which initially an order was passed on 20th March, 2019 recording an undertaking by the Petitioner to deposit some sums with the Respondent and on that basis it was directed that dispossession of the Petitioner would remain stayed.

2. At this stage, it should be noted that the Petitioner, who is neither himself a borrower or guarantor, states that he is the son of the one of the Directors of the borrower i.e. Surya Healthcare Ltd. ('SHL'), which Director according to the Petitioner is currently unavailable. The Petitioner states that the property in question, which is sought to be put to public auction by the lender i.e. State Bank of India ('SBI'), is in his actual possession at present.

3. Subsequent to the order dated 20th March, 2019 passed in CWP No. 7785 of 2019, the writ petition was again heard on 15th January, 2020, when the following order was passed by this Court:

> "Respondent Bank is directed to consider the offer made by petitioner for a sum of ₹5,25,00,000/-, as reflected in the

> order dated 20.3.2019. The decision be taken within 4 weeks from today.
>
> In view of this, present petition is disposed of with liberty reserved to writ petitioner to approach this Court in the eventuality of any adverse order being passed against him.'

3. It terms of the above directions, SBI has on 6th February, 2020 passed a speaking order rejecting the representation of the Petitioner. The operative portion of the said order reads thus:-

> "5. Thus as stated above, the above representations submitted by the Petitioner have been considered by the consortium Banks in the JLM, it is decided as under:-
>
> a) That the Representations/OTS has been given by Sh. Arvind Kumar, who is not competent to offer the OTS to the Banks since he is neither the director nor the guarantor in the account of M/s Surya Healthcare Ltd. Therefore, the OTS offer is rejected.
>
> (b) That since the outstanding dues in the case of the borrower are ₹220 crores and there are several judgments of the Hon'ble Supreme Court that efforts should be made to sell the property by way of open auction so that it fetches best price. Earlier the auction was fixed when the bank did not have the possession. Now the bank wants to put the property to sale by way of open auction after taking actual physical possession so that the auction attracts best possible price. The market value of the property as per the latest valuation report is ₹5.85 crore. The reserve price will be fixed by the competent authority as per the settled parameters of the bank and you will be free to participate in the open auction. Since the property has not been put to sale even once with actual physical possession of the bank, it did not attract bidders, but the bank is of the view that once the actual physical possession is taken up, the auction may attract competitive bidding so as to get the bet possible market price. As such your request for sale of the property by way of private treaty cannot be accepted."

4. Learned Counsel for the Petitioner has drawn the attention of the Court to the consequential public notice for e-auction for sale of the immoveable property in Sector 18-C, Chandigarh, wherein the reserve price is indicated as ₹ 6.31 crores. According to learned Counsel for the Petitioner, in not accepting the representation of the Petitioner and now fixing the reserve price at a higher

amount, thereby rejecting the Petitioner's offer that the property in question should be sold to him through private treaty, the Bank acted contrary to the Standard Operating Procedure ('SOP') dated 1st November, 2017. According to him, since the Bank has already exhausted the options of attempting to sell the property in question through a public auction on three occasions, it is not open to it to once again put the property up for sale through a public auction.

5. In response to the submissions of learned Counsel for the Respondent/Bank that it has been prevented from taking actual physical possession of the property in question and that once it does so, the property is likely to fetch a better price, learned Counsel for the Petitioner places reliance on the judgment of the Hon'ble Supreme Court in ***ITC Limited v. Blue Coast Hotels Ltd.***, ***AIR 2018 (SC) 3063*** and urges that for the property to be sold by way of auction, actual physical possession of such property by the lender, in this case the SBI, is not necessary.

6. Learned Counsel for the Respondent/Bank has pointed out how the Petitioner has been resisting the SBI taking over possession of the property in question on the strength of the interim order passed earlier by this Court in the first round of litigation.

7. Having heard learned Counsel for the parties, the Court is not persuaded that the impugned order dated 6th February, 2020 passed by the SBI rejecting the representation of the Petitioner requires to be interfered with.

8. Even assuming for a moment that in terms of the SOP, the proposed purchaser need not himself be a borrower or guarantor, the fact remains that it is entirely for the bank to decide to go in for the best possible price that the property can fetch. It is obvious that as long as somebody is in occupation of the property in question, it cannot be expected to fetch the best possible price. The

observations of the Hon'ble Supreme Court in ***ITC Limited (supra)***, on this aspect, far from assisting the case of the Petitioner actually underscores the difficulties that might be faced by the prospective purchaser if some other person continued to be in occupation of the property even after it was purchased. It is a no-brainer that a property, peaceful possession of which can be immediately delivered to the prospective purchaser, is bound to fetch a better price, in contrast with a property which is already in occupation by someone other than the purchaser. In that view of the matter, the call taken by the SBI that it desires to put the property up for sale by way of public auction, after taking actual physical possession so that the auction attracts the best possible price, can hardly be faulted.

9. For the aforementioned reasons, the Court finds no grounds made out to interfere with the impugned order dated 6th February, 2020 of the Respondent/Bank. The Court makes it clear that the Petitioner cannot on the strength of the earlier orders passed by the Court or even on the strength of the present order continue to resist the actual physical possession of the property in question being taken over by the Bank. It is further clarified that it is open to the Petitioner to participate in the proposed public auction for sale of the property in question.

10. The writ petition is dismissed.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

13th July, 2020
jk

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