IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.3687 of 2020(O&M)

Date of decision: February 11, 2020

Harjinder Kaur and others ...*Petitioners*

Versus

Authorized Officer, ING VYSYA Bank Ltd. and others ...*Respondents*

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.D.K.Singal, Advocate for the petitioners.

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Harinder Singh Sidhu, J. :

1. This writ petition has been filed praying for quashing the order dated 23.08.2018 (P-1) passed by the Debts Recovery Appellate Tribunal, Delhi (herein for short 'DRAT, Delhi') in the appeal preferred by the petitioners against order dated 27.01.2018 passed by Debts Recovery Tribunal-III, Chandigarh (herein for short 'DRT, Chandigarh') to the extent the petitioners were directed to comply with the condition of pre-deposit of 50% of the debt to the bank as per notice under Section 13(2) of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). Also impugned is the order dated 23.10.2018 (P-2) passed by DRAT, Delhi dismissing the appeal of the petitioners.

2. The petitioners state that they are the legal heirs of deceased Baldev Singh. In the year 1994, father of petitioners i.e..Baldev Singh had purchased the property i.e. Residential Plot measuring 504 sq. yards comprised in khewat/khatauni No. 683/937, Khasra No. 845/2, situated at New Asha Puri, Mai Bhasin Kaur, Gurudwara Street, Barewal Awana, Ludhiana, Punjab (hereinafter referred as "Property") vide sale deed dated 23.5.1994. Since then Baldev Singh was in exclusive possession of the property. Baldev Singh (hereinafter referred to as the deceased) died on 15.10.2013 during the pendency of the securitization application before Ld. DRT, Chandigarh. After his death, the said property was inherited by the petitioners . It is stated that the petitioners are permanent residents of Town Jajpur, Near Gurdwara, District Jajpur, Orissa.

3. It is further stated that the petitioners and deceased were residing at Orissa. With a view get a buyer and show the property to the prospective buyer/customer, the deceased had handed over the original sale deed dated 23.5.1994 to respondent No. 4 to help in the sale of the property in question. They had immense faith in Respondent No. 4 who is the son of Mohinder Kaur, the cousin sister of the deceased. The original sale deed remained in the possession of respondent No. 4 since then.

4. In the month of March, 2012 when the deceased along with the

petitioner came to Ludhiana they learnt through their caretaker that some persons had carried out measurement of the plot and informed him that the property has to be auctioned. Then on inspection of the website of Ministry of Corporate Affairs by the petitioners it was found that respondent No.4 had taken a loan of Rs.2 crore from respondent No.1. The property belonging to deceased had been equitably mortgaged in the form of collateral security which was purported to have been given by deceased by signing the alleged documents.

5. The deceased received a recall notice dated 14.08.2012 from Respondent No.1- the Authorized Officer, ING Vysya Bank Ltd. stating that the loan account of respondent No.3 had been declared as Non Performing Asset and consequently Respondent No.3 along with respondents 4 and 5 were called upon to make payment of the entire outstanding amount. The letter also mentioned about deceased being a guarantor of the property.

6. It is the case of the petitioners that neither the petitioners nor their father are borrowers, guarantors or mortgators. They have no concern or connection with the alleged commercial transaction between the borrowers i.e. Respondents No.4 to 6 who are alleged to have availed credit facilities from respondents No.1 and 2. It is their case that the documents lying in the possession of respondent No.1 and 2 in respect of the said transaction are forged and fabricated.

7. The deceased replied to the recall notice vide letter dated 24.08.2012 bringing the aforesaid factual position to its notice. However

respondents No.1 and 2 in their reply dated 25.10.2012 rejected their contentions.

8. Thereafter, the deceased filed a compliant dated 05.07.2012 with the Commissioner of Police, Ludhiana against respondent No. 4. After inquiring into the complaint an FIR No.44 dated 09.03.2013 u/s 419/420/465/467/468/471/120-B IPC was registered against the respondents. After completion of investigation challan was filed before the Ld. ACJM, Ludhiana and trial in the case has commenced.

9. However, without awaiting the outcome of the said FIR, respondents No.1 and 2 initiated proceedings under the SARFESI qua the property in question. It issued Demand Notice followed by Possession Notice dated 14.03.2013 u/s 13(4) of the Act. The deceased filed CWP No.10082 of 2013 assailing that action which was however disposed of by relegating the deceased to seek remedy in accordance with law.

10. Thereafter, the deceased filed SA No.172 of 2013 before the Debt Recovery Tribunal-II, Chandigarh. In their reply dated 02.08.2013 respondents No.1 and 2 admitted that the person who impersonated the deceased at the time of creating the mortgage was identified only on the basis of the ID card. No further verification was sought. The SA was however dismissed vide order dated 27.01.2018.

11. The petitioners being legal heirs of the deceased filed an appeal before the Ld. Appellate Tribunal. The Ld. Appellate Tribunal passed order dated 23.08.2018 directing the petitioners to make the pre-deposit of 50% of the amount mentioned in the Demand Notice u/s 13(2) of

the Act.

12. The petitioners filed CWP No.25989 of 2018 assailing the order dated 23.08.2018. However during the pendency of that petition the Ld. DRAT, Delhi vide order dated 18.11.2019 dismissed to appeal for non-compliance of the directions regarding pre-deposit. In view thereof the writ petition was dismissed as having become infructuous with liberty to the the petitioners to challenge the order dated 23.08.2018 as also the final order dated 18.11.2018.

13. It is the aforesaid orders of the Ld. DRAT dismissing the appeal of the petitioners for failure to comply with the directions of pre-deposit that have been assailed in the present writ petition.

14. It is the contention of the Ld. Counsel for the petitioner that as the petitioners are neither borrowers nor guarantors in the said transaction inter- se the respondents, the transaction being the result of forgery and fraud, the direction regarding pre-deposit are illegal and not justified.

15. It is not possible to accept the aforesaid contention. As to whether the transaction was the result of fraud or fabrication will be established during the course of the trial of the criminal case instituted by the deceased which is pending. The fact of the matter as observed by the Ld. DRT is that as per the records the deceased is a guarantor of the loan which has been secured by the equitable mortgage of the property in question, the original title deeds whereof are with the Bank.

16. It is well settled that the requirement of pre-deposit for entertaining the appeal before the DRAT is mandatory. The said

requirement is applicable not only to the borrower but also to the guarantor or mortgager.

17. In view thereof we find no illegality in the impugned orders of the Ld. DRAT.

18. Accordingly, this petition is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 11, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No