

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C.) No.4582 of 2021

1. M/s City Mall Developers Pvt. Limited City Mall 36, N H - 6, G.E. Road, Raipur 492 006 Chhattisgarh Through Its Director Sanjay Gupta.
2. Mr. Sanjay Gupta S/o Shri K.K. Gupta Aged About 48 Years City Mall 36, N H - 6, G.E. Road, Raipur 492 006 Chhattisgarh.
3. Smt. Pinki Gupta W/o Shri Sanjay Gupta Aged About 46 Years City Mall 36, N H - 6, G.E. Road, Raipur 492 006 Chhattisgarh.
4. Smt. Neelam Gupta W/o Shri Arun Gupta Aged About 50 Years City Mall 36, N H - 6, G.E. Road, Raipur 492 006 Chhattisgarh.

---- Petitioners

Versus

- Allahabad Bank (Now Indian Bank) Shyamnagar Branch Telibandha, Raipur, Chhattisgarh Through Its Authorised Officer

---- Respondent

For Petitioners	– Mr. Ankit Singhal, Advocate.
For Respondent	– Mr. Prafull N. Bharat, Sr. Advocate with Mr. Harishankar Patel, Advocate.

S.B.- Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16-11-2021

1. Heard.
2. It is submitted by learned counsel for petitioners that the respondent bank has advertised E-auction of the mortgaged assets by notice dated 29.10.2021 in the newspapers. The petitioners have filed petition before D.R.T. Jabalpur along with application praying for stay, but for the reason that the seat of the presiding officer of D.R.T. Jabalpur has fallen

vacant, therefore, their petition and the application for stay is unheard. Therefore, this petition has been filed. Relying on the orders passed by this Court in W.P.(C.) No.4350 of 2021 dated 10.11.2021 and W.P.(C.) No.4214/2021 dated 21.10.2021. It is prayed that the petitioners interest may be protected.

3. Learned counsel for the respondent opposes the application for interim relief and the submissions made in that respect.
4. Reliance has been placed on the judgment of Supreme Court in the case of Authorized Officer, State Bank of Travancore And Another Vs. Mathew K.C. reported in (2018) 3 SCC 85, in which, it has been held that grant of stay against the recovery of dues of banks, financial institutions etc. have serious adverse impact.
5. Further, relying on the judgment of Supreme Court in the case of I.C.I.C.I. Bank Limited And Others Vs. Umakanta Mohapatra And Others reported in (2019) 13 SCC 497. It is submitted that the Supreme Court has deprecated exercise of jurisdiction under Article 226 of Constitution of India by the High Court in the cases under SARFAESI Act, 2002.
6. It is further submitted that the petitioner has adopted the *modus-operandi* by which the auction preciously held have failed and this is the third time, the auction notice has been issued. Hence, the interim application may be rejected.
7. In reply, it is submitted by learned counsel for the petitioners that the reason for invoking the jurisdiction of this Court under Article 226 Constitution of India is very clear that the D.R.T. Jabalpur is not functional at present, therefore, the petitioner is entitled for relief.
8. Considered on the submissions, there is no denial that the petitioner is

the borrower from respondent and the amount is outstanding for payment. In W.P. No.23851 of 2021 before the High Court of Madhya Pradesh between the parties M/s. Mishra Stone Crusher Vs. Punjab and Sind Bank And Another. The stay order was granted in such a case by imposing conditions. Hence, the prayer made by the petitioners is allowed on following conditions:-

(a) The petitioners are directed to make deposit of Rs.2,00,00,000/- with respondent bank within a period of 15 days from today, which shall be subject to further order that may be passed by D.R.T. Jabalpur.

(b) Subject to payment, as ordered, the auction proceeding initiated against the petitioners shall remain stayed until the application for stay filed before the D.R.T. Jabalpur is decided, subsequent to appointment of the presiding officer of D.R.T. Jabalpur.

9. With these observations and directions, this petition is disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge