

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.6795-2021 (O&M)

Date of Decision:10.09.2021

Vipin Kumar and another

...Petitioners

Versus

Punjab National Bank and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. G.S.Sullar, Advocate
for the petitioners.

Mr. C.S.Pasricha, Advocate
for respondents No.1 and 2-Bank.

JASWANT SINGH, J. (ORAL)

Petitioner No.1- Vipin Kumar and petitioner No.2- Ghanshyam (father of petitioner No.1) are guarantors of the loan amount of Rs.12,50,00,000/- availed by respondent No.3-M/s Gagan Vasu Cine Links Private Limited on 30.09.2015 from the respondent-Bank. The petitioners being owners of plot No.1707, Sector-14, Near Dr. Gupta Hospital, Hisar measuring 350 square yards had offered their property as one of the collateral security. Due to lack of financial discipline, the loan account of respondent No.3-Firm was declared NPA on 31.05.2019. It is stated that a sum of Rs.12,58,00,000/- approximately was outstanding as on 31.05.2019. Thereafter, the respondent-Bank issued a demand notice under Section 13 (2) of SARFAESI Act, 2002 on 07.06.2019 and notice under Section 13(4) of the SARFAESI Act on 12.09.2019, seeking symbolic possession of the aforesaid plot. E-auction sale notice was issued on 05.03.2021 notifying

the auction to be conducted on 22.03.2021 with a reserve price of the aforesaid plot fixed as Rs.1,50,00,000/-. Five bidders had participated in the auction with the highest bid of Rs.1,89,00,000/-. At that stage, the petitioners filed the present writ petition primarily with the plea of willingness to purchase at the price offered by the highest bidder. This Court, while issuing notice of motion on 22.03.2021, passed the following order, which reads as under:-

“Learned counsel for the petitioners inter alia contends that to get their limit enhanced, respondent No. 3 furnished six properties as collateral security with the Bank and out of the above six properties, four are owned by the family of Shiv Lal Doda and the petitioners who are family friends of Shiv Lal Doda agreed to furnish their plot as security. But now their property has been put to auction with reserve price of Rs.1,50,00,000, vide e-auction notice dated 05.03.2021 (Annexure P-4) which was mortgaged with the Bank. Petitioner No. 1 is residing in Goa and petitioner No. 2 is a senior citizen of 63 years of age and they are ready to settle the dispute with the Bank by paying Rs.1 crore to show their bona fide.

Notice of motion be issued to the respondents, returnable for 26.04.2021.

Subject to the deposit of Rs.20,00,000/- with respondent-Bank within seven days from today, the proceedings pursuant to the e-auction notice dated 05.03.2021 (Annexure P-3) shall remain stayed till the next date of hearing.”

Subsequently, the respondent-Bank moved an application bearing CM-6256-2021, praying for vacation of aforesaid interim directions.

Today at the time of hearing, learned counsel for the petitioners submits that they have a buyer who is ready and willing to offer an amount equivalent to the highest bid, since restoration of the ownership/secured

asset back to the petitioners would certainly invite the attachment towards the outstanding liabilities of the principal borrower-respondent No.3 in appropriate proceedings, such a recourse by the respondent-Bank would certainly be permissible in law and no restraining order can be passed.

Learned counsel for the respondent-Bank submits that the purchase by the buyer through a private treaty cannot be resorted to as the highest bidder is already available with the Bank.

In view of the aforesaid peculiar factual situation, learned counsel for the petitioners prays for withdrawal of the writ petition with liberty to seek appropriate remedy, in accordance with law. However he seeks direction for refund of the amount of Rs.20,00,000/-, deposited in compliance of the directions of this Court issued vide order dated 22.03.2021, to petitioner No.2-Ghanshyam, to which learned counsel for the respondent-Bank has absolutely no objection in view of the settled law.

In view of the above, the present writ petition is dismissed as withdrawn with liberty as prayed for. The respondent-Bank is directed to refund the amount of Rs.20,00,000/- to petitioner No.2-Ghanshyam within a period of 10 days from today and would be free to further proceed, in accordance with law.

Pending application(s), if any, shall also stand disposed of.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

10.09.2021
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO