

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

102+206

**CM-11972, 11973 & 12665- CWP-2021 in/and
CWP-10840-2021 (O&M)**

Date of Decision: 11.10.2021

Naveen Kumar

.... Petitioner

Versus

The Debts Recovery Tribunal-2, Chandigarh
and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate for the petitioner.

Mr. Jai Singh Yadav, Advocate for respondent No.2.

Mr. Vikram Singh, Advocate
for respondent No.3-Auction Purchaser.

G.S.SANDHAWALIA, J. (ORAL)

In the present writ petition filed under Article 226/227 of the Constitution of India directions are sought against the respondents not to take physical possession of the shop in question forcibly and illegally from the petitioner. Challenge has also been raised to the order dated 12.02.2021 (Annexure P-9) passed by the respondent No.1-DRT, whereby the prayer for interim relief has been denied in a miscellaneous application.

On 25.11.2020 in CWP No.16311 of 2020 (Annexure R-3/5), it was noticed by the Coordinate Bench that the petitioner had approached this Court and the possession had been delivered to the auction purchaser and the writ petition had been rendered infructuous. The said fact was rather noticed on 11.11.2020 but the counsel for the petitioner had not put in appearance. The said order was reproduced on the next date of hearing i.e.

25.11.2020, which reads as under:-

“Case has been heard through Video Conferencing in view of COVID-19 Pandemic.

On November 11, 2020 following order was passed in this case:-

“Case has been heard through Video Conferencing in view of COVID-19 Pandemic.

Learned counsel appearing for respondent No.3- Company submits that the property in question has now been auctioned and the possession has also been delivered to the auction purchaser. Thus, present petition has been rendered infructuous.

However, there is request for adjournment on behalf of counsel for the petitioner on the ground that he is suffering from fever. In the interest of justice, adjourned to 18.11.2020.”

In view of above, it is evident that present petition has been rendered infructuous and is dismissed as such.”

It is not disputed that the said order had never been modified and neither the petitioner approached this Court seeking to clarify the fact that the possession had not been taken from him and delivered to auction purchaser. He however chose to approach the DRT on 29.12.2020 (Annexure P-6) wherein an impression was given that he was still in physical possession and accordingly, it was ordered that no cause of action, as such, has accrued in favour of the applicant. The SA was accordingly dismissed as premature. Another application was filed on 12.02.2021 (Annexure P-9) in which the Tribunal further passed an order that prayer of any kind of interim relief is not allowed. Challenging the same, the petitioner came to this Court.

Instead of appending the order dated 25.11.2020 as annexure, in paragraph 26 of the instant petition, mention of the said writ petition was made and it was averred that the same was dismissed as having been rendered infructuous as the petitioner was granted 3 days' time to make the payment of Rs.8,21,331/-. Necessary averments read as under:-

“That the petitioner has earlier approached this Hon'ble Court by filing a writ petition No.16311 of 2020 for challenging Notice dated 14.02.2021 and Auction Notice dated 02.09.2020, in which notice of motion was issued on dated 11.11.2020 and the petitioner was granted 3 days time to make the payment of Rs.8,21,331. However, the petitioner was not able to arrange that amount and ultimately the same was dismissed as rendered infructuous on dated 25.11.2020. Thereafter, the petitioner approached the Ld. Debts Recovery Tribunal-2 for redress of his grievances by filing SA No.126 of 2020.”

While issuing notice of motion on 09.06.2021, this Court protected the petitioner and the respondents were restrained to take physical possession of the shop keeping in view that no evaluation report had been taken as contemplated under Rule 8 (5) of the Security Interest (Enforcement) Rules, 2002.

Keeping in view the said fact, an application for vacation of stay bearing No.CM-8244 of 2021 was filed on 07.07.2021 by the applicant/respondent No.3/auction purchaser, in which it has been specifically alleged that possession was already delivered to the applicant before filing of the present petition and even sale certificate dated 27.10.2020 (Annexure R-3/3) was issued and sale deed dated 04.01.2021 (Annexure R-3/4) was also executed.

In the reply to the said application, the said factum of the possession as such having delivered to the auction purchaser and the sale certificate and sale deed having been issued have not been denied in response to paragraph no.3 wherein specific averments were made. Rather a perusal of the said document would go on to show that auction purchaser had paid a sum of Rs.18,80,000/- for the shop in question. The said sale deed also take notice of the fact that the demand notice had been issued on 25.06.2019 and possession notice was issued on 14.12.2020 and borrower had surrendered possession and Bank had taken possession under law.

Thereafter, CM-11973-CWP-2021 was filed by the auction purchaser for restoration of the property by specifically alleging that possession was with him since 27.10.2020. The petitioner along with other have broken the locks of the shop on 31.07.2021 and entered in the same. The matter had been reported to the police on the same day (Annexure R-3/7) and even photographs as such were placed on record. Notice was issued to the counsel for the petitioner to file reply on 23.09.2021, which has not been done.

Senior Counsel for the petitioner has mainly tried to touch the merits of the case that proper valuation had not been done to engage the attention of the Court.

However, keeping in view the fact that there has been concealment of the facts, this Court is of the opinion that question of hearing the petitioner on merits does not arise. It is the settled principle that in extraordinary jurisdiction, the writ Court has to keep in mind the conduct of the parties to invoke its extraordinary writ jurisdiction. The petitioners

candidly having not stated the truth or having suppressed the facts as noticed above, are not entitled for hearing on merits.

The benefit of interim relief as such was taken by not disclosing the correct facts to this Court that on an earlier occasion the writ petition had been dismissed as infructuous on account of the fact that possession has already been delivered to auction purchaser. This fact was suppressed from this Court which had passed the interim order in his favour. After taking the interim order, the petitioner as such has also interfered in the possession of the auction purchaser forcing him to file CM-11973-CWP-2021 for restoration of the possession.

Resultantly, the principles laid down by the Apex Court in the case of '*M/s Prestige Lights Ltd. Vs. State Bank of India*', 2007 (9) SCR 112 would come into play. In the said case the writ petition had been dismissed in limine by the High Court and the matter was taken to the Apex Court, which had ordered stay of dispossession, subject to deposit Rs.20 lakhs per month which was conditional regarding the default on payment, stay would stand vacated. The same was not complied with. It was noticed that the appellant-company had shifted the machinery to some other place and a collusive suit had also been filed and that when the company had approached the High Court, it had not candidly stated all the facts to the High Court. Resultantly, it was held that if there was suppression of material facts or twisted facts had been placed before the Court, the writ Court may refuse to entertain the petition and dismiss it without entering into the merits of the matter. Relevant portion of the said judgment reads as under:-

“34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent- Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under [Article 226](#) of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also

that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court.”

The present case is also one such case where parties whose hands are soiled, cannot ask for hearing on merits. As noticed above, the petitioner was taking chances before different Courts and doing forum shopping subject to his convenience. He had approached this Court initially and having not succeeded in the first round of litigation, approached the Tribunal and then the present litigation was initiated. Therefore, in view of the conduct of the petitioner, he does not deserve any hearing on merits. The writ petition is, accordingly, dismissed.

The restoration application CM-11973-CWP-2021 filed by the auction purchaser-respondent No.3 is allowed and possession be restored to him in view of the fact that he has got the sale deed in his favour by paying Rs.18,80,000/- and question of petitioner retaining the possession does not arise.

The District Magistrate, Karnal shall ensure that the possession is restored to the auction purchaser within a period of 10 days from the receipt of copy of this order, by ordering police help.

(G.S.SANDHAWALIA)
JUDGE

(SANT PARKASH)
JUDGE

11.10.2021
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes