IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-17755-2021
Date of Decision:09.09.2021

Babli Rani and others

...Petitioners

Versus

HDFC Bank through its Authorised Officer/Manager, New Delhi

...Respondents

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

Present: Mr.Nitin Jain, Advocate
for the petitioners.

SANT PARKASH, J.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

The petitioners have filed the present writ petition under Article 226/227 of the Constitution of India, seeking a writ of mandamus against the respondent-HDFC Bank to return the original sale-deed bearing Vasika No.5970 dated 30.03.2006 in favour of petitioner No.1 in respect of residential plot measuring 300 sq. yards (Property No.177) situated in Darha Mohalla near New Dharamshala Gali, Narwana and further directing the respondent-HDFC Bank to remove illegal possession as also to grant access to the land of petitioners No. 2 to 5 falling in Khata No.678/1076 and 1077 as per jamabandi for the year 2018-19 situated at village Narwana Tehsil Narwana, District Jind, having property ID No.476/17.

As per the case set out by the petitioners M/s Som Dutt Cotton and Oil Mill, which is a sole proprietorship Firm, had availed a loan facility of Rs.1,95,00,000/- from the respondent-HDFC Bank. Praveen Kumar, Prabhat Kumar and Virender Kumar stood guarantors against the said loan facility, The case of the petitioners is that property bearing No. MC Unit No.476/1, measuring 16K-0M being 320/1281 share of land measuring 64K-1M, comprised in Khasra No.468/2/2 (64-1) now 468/2/2/2 (51-7), 468/2/2/2/1 (4-0), 468/2/2/2 (8-14), Khewat No.666, Khatoni No.1140 to 1142, situated at Narwana, within MC limit of Narwana, Tehsil Narwana, District Jind was mortgaged as secured asset with the respondent-HDFC Bank to avail the said loan facility by the said Firm. Petitioner No.1 is owner of a residential plot No.300 square yards (Property No.177) situated in Darha Mohalla, near Dharamshala Gali, Narwana, by virtue of registered Sale-deed bearing Vasika No.5970 dated 30.03.2006. At the time of availing the said loan facility by the above-said Firm, the respondent-HDFC Bank had allegedly taken the original sale deed of petitioner's No.1 property.

On 29.06.2017, the said loan account was declared NPA and the proceedings under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'SARFAESI Act') were instituted by the respondent-HDFC Bank against M/s Som Dutt Cotton and Oil Mill. It is averred in the petition that in the said proceedings neither the present petitioners were inducted nor any claim qua them was raised by the respondent-HDFC Bank.

The grievance of the petitioners are that while sanctioning the said loan facility, the respondent-HDFC Bank illegally retained the original sale-deed of the above-said plot measuring 300 square yards belonging to petitioner No.1 and further under the garb of proceedings under the

SARFAESI Act, the respondent-HDFC Bank has also taken possession of the land measuring 2 acres (forming part of the land falling in Khata No.678/1076 and 1077) owned by petitioners No.2 to 5, which is not even the mortgaged property and was not depicted in the notice under Section 13 (2) of the SARFAESI Act issued by the respondent-HDFC Bank. Since the petitioners have left with no passage to the said property, which was through the main gate of the Cotton Mill, the petitioners approached the respondent-HDFC Bank many times to release the original sale-deed of the property belonging to petitioner No.1 and also remove its illegal possession over the property belonging to petitioners No.2 to 5 but of no avail. The petitioners even issued a legal notice and also lodged police complaint against the Bank authorities but no action has been initiated so far.

We have heard the learned counsel for the petitioners as also perused the material available on record.

It is the case of the petitioners themselves that the property in question does not form part of the proceedings initiated by the respondent-HDFC Bank under the provisions of SARFAESI Act and the property which allegedly belong to the petitioners is not even mortgaged property against the loan in question. On a specific query raised, learned counsel for the petitioners is not able to answer as to how the present petition in hand is maintainable before this Court. Since the factum of proving that the property in question does not form part of the mortgaged land or the possession of the land belonging to petitioners Nos. 2 to 5 has been illegally taken over by the respondent-HDFC Bank or the petitioners have been restrained access to their land, would require leading of evidence, which cannot be adjudicated upon by this Court under the writ jurisdiction.

Faced with the above-said position, learned counsel for the petitioners prays that he may be permitted to withdraw the present writ petition with liberty to approach the appropriate forum.

Resultantly, the present writ petition is dismissed as withdrawn with liberty to the petitioners to approach the appropriate court of law, if so advised.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

09.09.2021
mks

Whether speaking/reasoned:	Yes / No
Whether Reportable:	Yes / No