

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

115

CWP-21171-2021.

Date of Decision: 14.10.2021.

Satyawan

....Petitioner.

Versus

Deputy Commissioner-cum-District Magistrate, Panipat and others

...Respondents.

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

.....

Present: Mr. Balkar Singh, Advocate for the petitioner.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. SANDHAWALIA, J. (Oral)

The present petition is for setting aside of the E-Auction Sale Notice (Annexure P2) issued by the respondent-Bank under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') read with proviso of Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, on account of already paid loan amount to the respondent-Bank of the half share of the petitioner.

Counsel has argued that perusal of impugned auction notice would show that the description of the land which is sought to be possessed by respondent-Bank is a house and the same is residential in nature even. Counsel further argued that even otherwise he is ready to pay half of the amount of his share. The said agreement has also been rejected by the Division Bench of this Court in earlier litigation in CWP-25353 of 2017 decided on 07.09.2018 (Annexure P1).

Challenge in the said writ petition as noticed is that cash credit facilities to the tune of Rs.5 Lakhs and term loan of Rs.6,19,995/- were taken and both partners of M/s Shiv Dairy mortgaged their land measuring 23 Kanal 9 Marla and 14 Sarsai. There was some dispute between the partners and there was a default in repayment of loan and the respondent-Bank issued notice dated 29.05.2015 under Section 13(2) of the Act. As per notice, an amount of Rs.44,55,198/- was due. The other partner Jai Singh died in the year 2017 and thereafter, challenge had been raised under Section 14 of the Act.

The writ petition was dismissed on account of the fact that the petitioner had undertaken to deposit Rs.10 Lakhs initially and thereafter, he changed his stand that he has to deposit half share of the loan amount. The same was not done and resultantly while referring to Section 25 of the Indian Partnership Act, 1932 and placing reliance on decision of Hon'ble Apex Court on **Sahu Rajeshwar Nath Vs. Income Tax Officer, C-Ward, Meerut and others (1969) 72 ITR 617**, the petition was dismissed. The operative part of order dated 07.09.2018 reads as under:-

“It is pertinent to note that while the notice of motion was being issued, it was stated that the petitioner would deposit Rs.10 lakhs and pay the balance thereafter to save the property mortgaged to secure the loan. Lateron, the stand was changed to the effect that petitioner would only pay half of the amount due i.e. his share. The undertaking was given on 16.01.2018 before this Court that the petitioner would deposit Rs.3 lakhs more within two months. The said undertaking was flouted. Even today, learned counsel for the petitioner submitted that the petitioner is not in a position to pay Rs.3 lakhs as undertaken before this court.

The petition lack bona fide. The alleged dispute between the partners is being used as a tool to deprive the respondent No.3-bank from recovering the outstanding dues. The property mortgaged was in joint ownership yet the endeavour is to get partial mortgaged property released.

No ground is made for interference in exercise of the writ jurisdiction by this Court under Article 226 of the Constitution of India.

The writ petition is, hereby, dismissed.”

Keeping in view the said background, the bona fide of the petitioner is lacking and he did not even deposit Rs.3 Lakhs and the offer of the counsel that petitioner now is willing to pay sum of Rs.2 Lakhs would not satisfy the respondent-bank in any manner as a huge of amount over Rs.44 Lakhs is to be paid.

No ground is made for interference in exercise of the writ jurisdiction by this Court under Article 226 of the Constitution of India.

The writ petition is, hereby, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(SANT PARKASH)
JUDGE

14.10.2021

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Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No