

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-4689-2022

Date of Decision: 09.03.2022

Ashish Bansal & Ors.

.....*Petitioners*

V/s.

Debts Recovery Tribunal-II Chandigarh & Ors.

.....*Respondents*

CORAM: **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.**
HON'BLE MR. JUSTICE H.S. MADAAN

Present: Mr.Aalok Jagga, Advocate and
Ms. Deepshikha, Advocate for the petitioners

M.S. RAMACHANDRA RAO, J. (Oral)

Notice of motion.

Mr. Gaurav Goel, Advocate takes notice for the respondent-Bank.

In this Writ Petition, the petitioners have assailed the order dt.
02.03.2022 passed in SA-12-2022 by the Debt Recovery Tribunal-II,
Chandigarh (in short, the Tribunal).

In the said application, it is the contention of the petitioners that
the respondent-Bank had violated Rule 8(5) of the Security Interest
(Enforcement) Rules, 2002 and that the auction of the property held requires to
be set aside because the reserve price was reduced without there being any
valuation of the property by the secured creditor/respondent.

Reliance is placed on the decision of the Telangana and Andhra
Pradesh High Court in **Pochiraju Industries Ltd. vs. Punjab National Bank**
(WP No.24021 of 2017) decided on 19.01.2018 reported as **2018(2) ALT 128.**

The Tribunal then refused to grant interim relief stating that:-

*“After pondering over the rival contentions of the learned
counsel for the parties and going through the record this Tribunal
is of the considered opinion that the applicant had already
approached the Hon’ble High Court to seek the same identical*

relief but did not comply with the condition for passing the restraint order and the other facts and circumstances of the case also do not make out a prima facie case in favour of the applicant. In these circumstances, no case is made out for granting interim relief.”

Assailing the same, this Writ Petition is filed.

It also needs to be mentioned that as on date, there is no Presiding Officer in DRAT New Delhi though such Presiding Officer has been appointed.

It is the contention of the counsel for the petitioners that the petitioners had earlier approached this Court in CWP-22706-2021 which was, however, withdrawn on 02.03.2022 (P24) with liberty to pursue the SA-12-2022 pending before the Tribunal, and once the Writ Petition was dismissed as withdrawn, all the interim orders passed therein including the one which is adverted to in the order passed by the Tribunal, do not survive, and it is the duty of the Tribunal to decide the matter *without reference* to the same by considering the facts and circumstances of the case.

Mr. Gaurav Goel, Advocate for the Bank however, *supported* the order and contended that no case is made out for this Court's interference with the interim order and that the respondent-Bank had not violated the provisions of the SARFAESI Act or the Rules framed thereunder.

It is elementary that the interim order *perishes* when the final order is passed in the Writ Petition. It is unfortunate that the Tribunal had not taken note of the said legal aspect and passed the order on the ground that during the pendency of the Writ Petition filed by the petitioners, there was an interim order granted, which was not complied with, and on that basis *rejected* the interim relief to the petitioners.

It is not as if the Tribunal had *agreed* with any of the contentions raised by the respondents *on merits*. It has *not gone into* the provisions of the Statute dealing with the conduct of the auction under the provisions of the Act or Rules made thereunder and has also not recorded any *prima facie* finding on the said aspect either.

Therefore, the order dt. 02.03.2022 passed in SA-12-2022 cannot sustain and the same is accordingly set aside; the Writ Petition is allowed and the matter is *remanded* to the Tribunal to consider afresh the issue keeping in mind the *facts and circumstances of the case* and the *contentions of the parties* apart from the *statutory provisions*. It shall dispose of the application for interim relief within **4 weeks** from the date of receipt of certified copy of this order.

Pending passing of the fresh order by the Tribunal, the auction purchasers who are respondents No.3&4 before the Tribunal *shall not* deal with the property or *alter the physical features* of the property in any manner.

Ordered accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(H.S. MADAAN)
JUDGE

09.03.2022

V.Vishal

<i>Whether speaking / reasoned</i>	:	<i>Yes /No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>