

In the High Court of Punjab and Haryana at Chandigarh

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**(1) RA-CW No.112 of 2020 (O&M) in
CWP No.32315 of 2019**

.....

Date of Decision: 21.02.2022

Ravi Kumar and others

.....Petitioners/Non-Applicants

Vs.

The Regional Director, Reserve Bank of India and others ...Respondents

.....

**(2) RA-CW No.114 of 2020 (O&M) in
CWP No.716 of 2019**

.....

Ravi Kumar and others

.....Petitioners/Non-Applicants

Vs.

The Regional Director, Reserve Bank of India and others ...Respondents

.....

**Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
 Hon'ble Mr. Justice Harinder Singh Sidhu**

.....

**Present: Mr. Ashish Aggarwal, Advocate for the applicant-respondent
 No.4/Auction Purchaser.**

Mr. Vikas Bali, Advocate for the non-applicants/petitioners.

**Ms. Puja Chopra, Advocate for non-applicants/respondents
No.2 and 3.**

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M.S. Ramachandra Rao, J.

The background facts

RA-CW No.112 of 2020 and RA-CW No.114 of 2020 are filed
seeking review of the order dated 26.02.2020 passed in CWP No.32315 of

2019 and CWP No.716 of 2019 respectively.

The applicant in both these review applications is the 4th respondent (Mandeep Singh) in each of these Writ Petitions.

The parties will henceforth be referred as per cause title in the Writ Petitions.

M/s Cholamandalam Investment and Finance Company Limited (2nd respondent in the Writ Petitions) had advanced a home equity loan of ₹1.75 Crores under three separate loan accounts on the basis of a mortgage created by the Writ Petitioners in the year 2015 in respect of three properties.

The loan account of the petitioners was declared as Non Performing Asset (for short – 'NPA') on 20.09.2016 and a demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (hereinafter referred to as 'SARFAESI Act') was issued by the 2nd respondent to the petitioners claiming ₹1,78,13,747.73 alongwith interest.

Later on, on 16.01.2017, the 2nd respondent also issued possession notice under Section 13(4) of the SARFAESI Act.

A sale notice dated 24.12.2018 was issued by respondents No.2 and 3 for sale of the mortgaged properties (Items No.1 and 3) fixing 14.01.2019 as the date of the auction.

This was challenged by the petitioners by filing CWP No.716 of 2019.

Property No.2 had been put to auction by respondent No.2 on

04.10.2018 and the applicant in the review applications became successful bidder for a sum of ₹90 Lacs and he deposited ₹9 Lacs on 03.10.2018 and the rest of the amount later, and on 12.12.2018 sale certificate was also issued in his favour.

Accordingly, CM No.5649-CWP of 2019 was filed by the Writ Petitioners in CWP No.716 of 2019 to implead the applicant in the Review Application as 4th respondent in the Writ Petition.

The said application was allowed on 02.12.2019 and the applicant in Review Application-CW No.114 of 2020 was impleaded as 4th respondent in CWP No.716 of 2019.

It was the contention of the Writ Petitioners in CWP No.716 of 2019 that due to the ill health of the first petitioner i.e. Ravi Kumar, he could not pay the loan amount, that there was no other earning member in the family, and in order to settle the loan accounts with respondents No.2 and 3, they arranged a prospective buyer, namely, Ashwani Uppal for the sale of property No.2, since he was interested in purchasing the same. It was also their case that they intended to settle their account under the One Time Settlement (for short – 'OTS') with respondent No.2, that an MOU dt. 09.03.2018 was also entered into with respondents No.2 and 3 for settlement by paying ₹1.7 Crores; and ₹5 Lacs was paid through a demand draft on 09.03.2018. It was also their case that subsequently, another person, namely, Kuldeep Khanna showed interest in purchasing the petitioners' property, but respondents No.2 and 3 did not wait and issued the sale notice dt. 24.12.2018 for sale of items No.1 and 3 mortgaged by the

petitioners.

The petitioners subsequently, filed CWP No.32315 of 2019 to quash the sale certificate dt. 12.12.2018 issued by respondents No.2 and 3 in favour of 4th respondent in CWP No.716 of 2019 in respect of item No.2 property mortgaged by the petitioners to respondents No.2 and 3.

They contended that pursuant to certain orders passed in CWP No.716 of 2019, they had already deposited ₹1,80,50,000/- much more than the OTS agreed under the MOU between the petitioners and respondents No.2 and 3 of ₹1,70,00,000/-, and so the title deeds of the three properties, which had been mortgaged by the petitioners with respondents No.2 and 3, need to be released to them.

A short reply vide CM No.2160-CWP of 2020 had been filed by the 4th respondent in CWP No.716 2019 on 31.01.2020 through his counsel Shri Ashish Aggarwal opposing the grant of relief to the Writ Petitioners in the said petition.

A similar short reply was filed by the 4th respondent on 31.01.2020 in CWP No.32315 of 2019 vide CM No.2166-CWP of 2020.

Thereafter, the matter was listed on 03.02.2020, and an order was passed in both Writ Petitions. Only the contentions of the petitioners in both the Writ Petitions and respondents No.2 and 3 appear to have been considered, though the said order indicates the presence of counsel for 4th respondent as well.

Both the matters were next listed on 26.02.2020 and both the Writ Petitions came to be disposed of.

The order dated 26.02.2020 passed in both Writ Petitions does not disclose that the 4th respondent was given any notice of such hearing on that date, or that the 4th respondent's counsel was also heard on that date. Also the replies already filed on 31.01.2020 by the 4th respondent in both these Writ Petitions were not considered before disposing of the Writ Petitions.

For this reason RA-CW No.114 of 2020 is filed by applicant/4th respondent in CWP No.716 of 2019 and RA-CW No.112 of 2020 was filed by him in CWP No.32315 of 2019.

It is the contention of the applicant/4th respondent in both these applications that while passing the order on 26.02.2020 in both the Writ Petitions, this Court had completely overlooked applications No.2160-CWP of 2020 and 2166-CWP of 2020 filed on 31.01.2020 by him for placing on record his short reply in those Writ Petitions, and without considering the case of the applicant, the Court has passed a common order on 26.02.2020 only on the basis of statement of counsel for respondents No.2 and 3 by giving a direction that all the three mortgaged properties be released to the petitioners within two weeks from 26.02.2020 with the title deeds.

It is the contention of the applicant in both the Review Applications that he is bona fide purchaser of item No.2 of the property mortgaged by the petitioners to respondents No.2 and 3, that in an auction held on 04.10.2018 of the said property, he had become the highest bidder and paid the entire consideration of ₹90 Lacs and had also been issued a sale certificate on 12.12.2018. It is also his contention that subsequent thereto he made certain improvements in the property purchased by him for running his

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business, and he has objection for handing over possession of the said property to respondents No.2 and 3.

Heard Shri Ashish Aggarwal, counsel for the Review Applicant, Shri Vikas Bali, counsel for the Writ Petitioners in both the Writ Petitions and Ms. Puja Chopra, counsel for respondents No.2 and 3 in the Writ Petitions. Shri Ashish Aggarwal reiterated his contentions raised by the applicant in both the Review Applications referred to above.

Shri Vikas Bali, counsel for the Writ Petitioners/non-applicants in the applications opposed any review of the order dated 26.02.2020 passed by this Court pointing out that on the previous date of hearing on 03.02.2020 the applicant's counsel was present, and the matter was adjourned to 26.02.2020, and the applicant, therefore, was aware of the listing of the cases on 26.02.2020.

Ms. Puja Chopra, counsel for respondents No.2 and 3 contended that respondents No.2 and 3 had, in fact, filed Review Application-CW No.103 of 2020 in CWP No.716 of 2019 and Review Application-CW No.104 of 2020 in CWP No.32315 of 2019, but they have been dismissed on 06.03.2020, and respondents No.2 and 3 filed SLP Nos.15285 and 15288 of 2020 before the Hon'ble Supreme Court and they are pending.

But neither Shri Vikas Bali, counsel appearing for the Writ Petitioners nor Ms. Puja Chopra, counsel for respondents No.2 and 3 could dispute the fact that the order dt. 26.02.2020 was passed without hearing the applicant's counsel, who was 4th respondent in both the Writ Petitions.

Also this Court appears to have not noticed that the applicant had

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filed CM No.2160-CWP of 2020 in CWP No.716 of 2019, and CM No.2166-CWP of 2020 in CWP No.32315 of 2019 to place on record the short reply of the applicant/4th respondent in those Writ Petitions.

Admittedly, no orders were passed on the said applications, and contents of the said short replies were not considered while disposing of the Writ Petitions on 26.02.2020.

It appears that by oversight the Division Bench did not notice that there was a 4th respondent in both the Writ Petitions, who had engaged a counsel Shri Ashish Aggarwal, and that the 4th respondent in the Writ Petitions had also filed short replies on 31.01.2020 vide CM No.2160-CWP of 2020 in CWP No.716 of 2019 and CM No.2166-CWP of 2020 in CWP No.32315 of 2019 and it had disposed of the Writ Petitions behind the back of the applicant. This has caused grave prejudice to the applicant because even item No.2 of the mortgaged properties, which had been sold vide sale certificate dated 12.12.2018 in favour of the applicant, had been directed to be restored to the Writ Petitioners by respondents No.2 and 3 in the said order.

In this view of the matter, we are of the opinion that there is an error apparent on the face of record warranting exercising of jurisdiction of review conferred on this Court under Order 47 Rule 1 CPC read with Article 226 of the Constitution of India.

Accordingly, both RA-CW No.112 of 2020 and RA-CW No.114 of 2020 are allowed; the order dated 26.02.2020 in CWP No.716 of 2019 and CWP No.32315 of 2019 is set aside; both the Writ Petitions stand restored

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to the file of this Court; and it may be listed before the Bench having provision as per roster after obtaining suitable orders from Hon'ble the Chief Justice. No costs.

(M.S. Ramachandra Rao)
Judge

February 21, 2021.

(Harinder Singh Sidhu)
Judge

hsp

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