

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

**CWP No. 15715 of 2019
Date of Decision: July 25, 2022**

Smt. Sukhvinder Kaur and another

...Petitioners

Versus

State of Haryana and others

...Respondents

**Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
 Hon'ble Mr. Justice H.S. Madaan**

Present:- Mr. Jai Parkash Dhull, Advocate for the petitioners.

Mr. S.S. Pannu, Deputy Advocate General, Haryana.

Mr. Arvind Rajotia, Advocate for respondent No. 4.

M.S. Ramachandra Rao, J. (Oral)

Mr. Jai Parkash Dhull, Advocate has appeared, and filed vakalatnama on behalf of petitioners, which is taken on record.

The petitioners are the auction purchasers in an auction conducted by the 4th respondent, and a sale certificate dt.16.8.2018 had also been issued to the petitioners. On the basis of the said sale certificate, the petitioners and the 4th respondent had even executed a sale deed, but when they approached the 3rd respondent, the 3rd respondent had refused to register the sale deed.

This Writ Petition had been filed by the petitioners seeking a

direction to the 3rd respondent to register the said sale deed.

It is not in dispute that the 4th respondent had filed a Writ Petition similar to that of the Writ petitioners in CWP No. 30165 of 2018, which was disposed of on 29.11.2018 directing the respondent No. 3 to take a decision on the 4th respondent's representation dt.29.10.2018 in accordance with law, and pass a speaking order.

Such a speaking order was passed by the respondent No. 3 on 9.1.2019 stating that there is a Civil Revision No. 2010 of 2017 pending in this Court arising out of a Civil Suit No. 4040 of 2013 for specific performance in respect of the very same property on the basis of an agreement to sell dt.20.12.2012, and in the said suit there was an order preventing the Court of Civil Judge, Senior Division, Kurukshetra from passing a final judgment. The 3rd respondent took a stand that unless the High Court vacates the stay in Civil Revision No. 2010 of 2017, he cannot register the sale deed produced by the petitioners, and the 4th respondent.

Admittedly in that suit the borrower/5th respondent is defendant.

In the written reply filed by the 3rd respondent before this Court, the 3rd respondent has further stated that on 7.5.2013 the borrower/5th respondent had made a statement that he would not dispose of the suit property till the decision in the Civil Suit No. 4040 of 2013, but he violated the said undertaking, and created a mortgage in favour of 4th respondent on 7.6.2013. It is also his contention that on the basis of statement of the borrower/5th respondent, the interim injunction application came to be disposed of on 7.5.2013, and since the 5th respondent could not have mortgaged the property to the 4th respondent, the 4th respondent cannot sell

the property to the petitioners, and so the sale deed cannot be registered.

The petitioners, and the 4th respondent contend that the plaintiff in the Civil Suit referred to above had moved an application S.A. No. 658 of 2017 before the DRT-I, Chandigarh to stop the sale of the property, but the said application had been dismissed on 9.11.2017 by the Debts Recovery Tribunal-II, Chandigarh; that the said order has attained finality; and the reasons assigned by the 3rd respondent for refusing to register the sale deed are not tenable because there is no direction to the 3rd respondent not to register any transaction of sale in respect of the properties specifically; and since the attempt by the 4th respondent by selling the property to the petitioners is to recover the loan dues of the 5th respondent, public interest will suffer if the sale deed is not registered.

Mr. S.S. Pannu, Deputy Advocate General appearing for the State of Haryana, however, reiterates the stand taken by the 4th respondent that the sale deed cannot be registered as long as the suit is pending in view of the undertaking given by the 5th respondent to the civil Court though the same has been violated by the 5th respondent.

We have noted the contentions of the parties.

It is not in dispute that the 4th respondent had extended certain credit facilities to the 5th respondent on the basis of the mortgage of the subject property executed in its favour by the 5th respondent on 7.6.2013, and had committed default in payment of the same, and the loan account of the 5th respondent had been declared an NPA on 31.12.2014 itself. Thereafter, the 4th respondent had initiated proceedings under the SARFAESI Act, 2002 by issuing notice under Section 13(2) of the said Act on 11.12.2017, and has attempted to recover its dues by putting the property

to sale, and in the public auction conducted by the 4th respondent, the petitioners were successful bidders, and they were even issued a sale certificate on 16.8.2018 after depositing the bid amount.

If the sale deed in favour of the petitioners is not allowed to be registered by the 4th respondent, naturally the petitioners would want to take back their bid amount with interest, and the 4th respondent bank would have no means of recovery of its dues since it might take considerable time for the High Court to decide the Civil Revision No. 2010 of 2017 pending before it, and till the same is decided, no final judgment would be pronounced in the Civil Suit No. 4040 of 2013 pending before the Civil Judge, Senior Division, Kurukshetra in respect of the subject property.

The 5th respondent has been evading service, and it is the contention of the 4th respondent that the 5th respondent has been declared a proclaimed offender on 25.9.2018.

Recoveries of public money cannot be stalled indefinitely in this manner, and a solution has to be worked out which would not cause prejudice to any party.

In our considered opinion, even if the 5th respondent had given any undertaking in the civil Court that he would not alienate the subject property, but he violated the said undertaking and created a mortgage in favour of the 4th respondent, primarily it would be the 5th respondent who would be probably committing contempt of Court, and the 4th respondent cannot be blamed unless it is proved that the 4th respondent had knowledge of the undertaking given by the 5th respondent in the civil Court when it accepted the mortgage.

The pendency of the civil proceedings in the civil Court cannot

be an impediment for the registration of the sale deed in favour of the petitioners since OA No. 658 of 2017 filed by the plaintiff in the said civil suit against the 4th respondent was also dismissed on 9.11.2017.

Therefore, this Writ Petition is disposed of directing the 3rd respondent to register the sale deed presented by the petitioners to the 4th respondent, and the same shall abide by the result in Civil Suit No. 4040 of 2013 which is pending on the file of the Civil Judge, Senior Division, Kurukshetra. Such registration shall be done within four weeks from the date of receipt of a copy of this order.

(M.S. Ramachandra Rao)
Judge

(H.S. Madaan)
Judge

July 25, 2022

P.Singh

Whether speaking/reasoned?

Yes/No

Whether Reportable?

Yes/No