IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18724 of 2017 (O&M)
Reserved on 17.05.2022
Date of Decision:27.05.2022

SH. KAPIL KUMAR AND ANOTHER ……..*Petitioners*

V/s.

ORIENTAL BANK OF COMMERCE, THE MALL, KAPURTHALA THROUGH ITS AUTHORIZED OFFICER AND OTHERS
.....*Respondents*

CORAM: ***HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO***
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aalok Jagga, Advocate,
for the petitioners.

Mr. P.S. Sobti, Advocate
for respondent No.1-Bank.

Mr. Akshay Bhan, Senior Advocate assisted by
Mr. Shaurya Khanna, Advocate
for respondent No.7 (Auction Purchaser).

***

M.S. RAMACHANDRA RAO, J.

In this Writ Petition, the Writ Petitioners had sought for quashing of the sale notice dt.16.05.2017 (Annexure P-16) by which the property of the petitioners-guarantors was put to sale, and also to set aside the sale certificate issued to the Auction Purchaser (respondent No.7) contending that he was ready and willing to clear-off the loan of the Bank, and any coercive action such as sale was not required.

Events after filing of this Writ Petition.

While issuing on 03.07.2017, this Court recorded the contentions of the writ petitioners that the total amount due as on that date is ₹4.7 Crores, and writ petitioners are ready to liquidate the entire amount along with future interest within three months, and that they would show

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document

their *bona fides* by depositing ₹2 Crores within one week from that day. The Court also directed that the sale shall not be confirmed meanwhile.

The Auction Purchaser was also impleaded as respondent No.7 in the Writ Petition.

The order dt.11.7.2017 of this Court

When the matter was again listed on 11.07.2017, the Court took notice of:

(i) the fact that a Demand Draft amounting to ₹2 Crores was handed over to counsel for respondent No.1-Bank in the Court;

(ii) the contention of counsel for respondent No.7 that it had deposited the entire auction amount of ₹6,04,00,000/-, and that it had a right vested in it to own the property which was put up for sale;

(iii) plea of petitioners that though the sale was not confirmed, yet respondent No.7 had intentionally deposited the entire amount of bid only to create an equity in its favour which does not exist;

(iv) the contention counsel for the respondent No.1-Bank that the petitioners were recalcitrant and obdurate borrowers who have not paid dues of respondent No.1-Bank, and that if relief is granted in the Writ Petition, it would send a wrong signal to the purchasers in auctions made by the Banks;

It then held on 11.7.2017 that the matter requires adjudication, and the sum of ₹2 Crores paid by the petitioners be adjusted by respondent No.1-Bank against the amount owed by the petitioners. It further directed to

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document

deposit the money paid by respondent No.7 in escrow account interest bearing short term fixed deposit. It then adjourned to matter to 28.07.2017.

The order dt.22.1.2018 of this Court

Subsequently, matter underwent some adjournments and then on 22.01.2018, this Court directed counsel for respondent No.1-Bank to apprise the actual unpaid loan amount as on that date. It also directed the counsel for respondent No.7-Auction Purchaser to furnish the details of the interest liability and cost amount incurred so far by him. It mentioned "*the Court will also consider the prayer of respondent No.7 to award him some compensation in case the petitioners' claimed is accepted.*"

The order dt.27.3.2018 of this Court

On the next date of hearing i.e. 27.03.2018, the Court was informed that a letter dt.19.03.2018 was issued by respondent No.1-Bank informing the petitioner that the outstanding dues against them are to the tune of ₹2,76,29,606/-.

Therefore, while adjourning the matter to 30.04.2018, the Court directed the petitioners to deposit the said amount without prejudice to the rights and issues which have been raised. It also directed respondent No.1-Bank to refund the amount deposited by respondent No.7-Auction Purchaser alongwith interest as may be payable in such transactions, accrued upto the date of release, but without prejudice to rights of respondent No.7-Auction Purchaser.

The order dt.30.4.2018 of this Court

On the adjourned date i.e. 30.04.2018, it was reported to this Court that the petitioner had also deposited the balance loan dues of

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document

₹2,76,29,606/- ; that counsel for respondent No.1-Bank stated that the petitioners are still liable to pay certain charges including the interest incurred by the auction purchaser/payable to him. It then directed that the details of such charges still payable by the petitioners be furnished in a tabulated form on the next date of hearing which was fixed as 04.09.2018.

CM-9860-2018 filed by petitioners

The petitioners then filed an application bearing No. CM-9860-2018 for a direction to respondent No.1-Bank to hand over physical possession of the secured assets.

In this application, notice was ordered for 21.08.2018 on 26.07.2018.

The order dt.21.8.2018 of this Court

On 21.08.2018, this Court directed that the possession of the mortgaged property-cum-secured asset be returned to the petitioners without prejudice to the legal rights of respondent No.7-Auction Purchaser which would be determined in the main Writ Petition. It also directed the petitioners not to alter the nature of the property or to create any third party rights including taking loan against the said property.

The matter then underwent some adjournments, and was listed before this Bench on 05.05.2022, and orders thereafter were reserved on 17.05.2022 after hearing arguments of the counsel for the parties.

Consideration by the Court

As per the affidavit filed by respondent No.1-Bank following facts are evident:-

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document

"1. That the deponent is working in the Oriental Bank of Commerce RRL Cluster Jalandhar, as Chief Manager. The deponent has dealt with the loan file of the Petitioners/Borrowers and is fully conversant with the facts of the case.

2. That the auction purchaser has deposited 25% of bid amount of ₹1,51,00,000/ on 05-07-2017 and balance 75% of Bid Amount of ₹4,53,00,000/- on 07-07-2017. Total amount of ₹6,04,00,000/- was deposited by the auction purchaser.

3. That the petitioner deposited a sum of ₹2,00,00,000/- on 12-07-2017 and a sum ₹2,76,29,606/- as per detail given in Annexure A/7 dt. 19.03.2018, total amounting to ₹4,76.29,606/- i.e. the amount outstanding in the loan account of M/s Sh. Gopal overseas and others. Apart from this the borrower firm is also liable to pay the amount i.e. charges on account enforcement agent, future interest and expenses payable from 31.01.2018 and any claim of successful bidder.

4. That the respondent bank has refunded a sum of ₹6,04,00,000/- to the auction purchaser on 27-04-2018"

Counsel for the petitioners contended that respondent No.7-Auction Purchaser had not acquired any right in the property since the petitioners/borrowers had a right to redeem the property which was not extinguished in view of order dt.03.07.2017 passed by this Court staying the confirmation of the sale. He further pointed out that once the entire dues of the Bank had been paid off, the property mortgaged stood redeemed, and the title in it reverts to the petitioners.

In support of his contentions, he placed reliance on Section 60 of the Transfer of Property Act, 1882 and the decision of this Court rendered in **Pal Alloys and Metal India Pvt. Ltd. and Others Vs.**

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document

Allahabad Bank and Others[1] and also the following decisions of the Supreme Court:-

1. **Narandas Karsondas v. S.A. Kamtam**[2];
2. **Gajraj Jain v. State of Bihar**[3];
3. **M/s L.K. Trust v. EDC Ltd. and Others**[4];
4. **Allokam Peddabbayya and another v. Allahabad Bank and others**[5].

In the aforesaid decisions, it was held that a mortgagor would not lose right of redemption just because the secured property was put to auction, and the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a Registered Deed in favour of the purchaser.

The aforesaid legal position is not disputed by the counsel for the respondents.

Thus, it is clear that a right of redemption would be available to the borrowers *before* issuance of sale certificate in favour of Auction Purchasers, and such a right would continue *till* execution of a conveyance i.e. issuance of a sale certificate in favour of the mortgagee.

Admittedly, the dues of the Bank have been fully cleared and the principal amount deposited by the respondent no.7-auction purchaser has since been refunded.

So the sale notice dt.16.05.2017 (Annexure P-16) conducted by the respondent No.1-Bank of the petitioners' secured asset is required to be set aside; Respondent No.1-Bank has to return to the petitioners, the

---

[1] Passed in CWP No.6402 of 2019 dt.23.12.2021 (DB) PHHC
[2] (1977) 3 SCC 247
[3] (2004) 7 SCC 151
[4] (2011) 6 SCC 780
[5] (2017) 8 SCC 272

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document

Title Deeds of the secured asset/s which are in its custody ; and the restriction imposed on the petitioners vide order dt. 21.08.2018 not to alter the nature of the property or create any third party rights including taking loan against the property, has to be also set aside.

However, counsel for respondent No.7-Auction Purchaser sought to contend that the Auction Purchaser should be compensated appropriately for a larger amount other than by simply awarding interest on the refunded amount of ₹6,04,00,000/- from the respective dates of deposit till 27.04.2018 when it was refunded to him.

In this regard, we wish to state that one of the measures adopted by the Court to compensate a person deprived of use of his money is, by award of interest.

Several statutes contain such provision for award of interest for ex: Sec.34 CPC, Sec.110CC of the Motor Vehicles Act,1988, Sec.28 and 34 of the Land Acquisition Act,1894 etc.

In **Union of India v. Pramod Gupta**[6], the Supreme Court has recognized this by stating:

> "*Statutory provisions are made for payment of interest with a view to compensate a party which had suffered damages owing to a positive action or inaction of the other resulting in blockade of money which he would otherwise have received.*"

In **Municipal Committee v. Krishan Kumar Bansal**[7], this Court held:

> *"Interest is awarded on the principle that the person who keeps the amount and deprives the other of the profit which he would have earned on that amount should be compensated."*

[6] (2005) 12 SCC 1, at page 47
[7] 2002 SCC OnLine P&H 174 : (2002) 2 RCR (Civil) 580 (2) : (2002) 3 ICC 134 : 2002 Supp Arb LR 320, at page 580

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document

We sought to know from counsel for respondent No.7-Auction Purchaser whether there is any statute or precedent supporting his contention for granting higher compensation for deprival of amounts due to it, in a situation where the sale itself was not confirmed because of an order passed by a Court, as in the instant case. But he was not able to cite anything in this regard.

Also in auctions sales, normally market price is not realized. In expectation of getting the secured asset at a cheaper price, respondent No.7-Auction Purchaser might have participated in the auction, and took the risk of the secured asset being redeemed by the borrowers. He cannot complain that because of the order passed by this Court staying confirmation of the sale on 03.07.2017, he suffered any prejudice because it is settled law that an act of the Court shall prejudice no man.

Therefore, in the facts and circumstances of this case, we reject the plea of respondent No.7-Auction Purchaser that he is entitled to be compensated by way of compensation *other than* by way of awarding interest on the amount refunded (for the period the amount was in the Bank's custody).

Conclusion:-

Accordingly, Writ Petition is disposed of setting aside the sale notice dt.16.05.2017 (Annexure P-16) conducted by the respondent No.1-Bank of the petitioners' secured asset ; Respondent No.1-Bank shall restore to the petitioners the Title Deeds of the secured asset/s which are in its custody within two weeks from the date of receipt of certified copy of this

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document

order; and the restriction imposed on the petitioners vide order dt. 21.08.2018 not to alter the nature of the property or create any third party rights including taking loan against the property, is set aside.

The respondent No.1-Bank is directed to pay interest @7% per annum to respondent No.7-Auction Purchaser from the respective dates of deposit of the bid amount of ₹6,04,00,000/- till 27.04.2018 when the principal amount was refunded to it. The said refund shall be made within four weeks from the date of receipt of a certified copy of this order.

No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

May 27, 2022
Ess Kay

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

SURESH KUMAR
2022.05.27 16:56
I attest to the accuracy and
integrity of this document