

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24535 of 2021 (O&M)

Reserved on 27.10.2022.

Date of Decision: 21.11.2022

KANTA DEVI

.....Petitioner

V/s.

STATE OF HARYANA AND OTHERS

....Respondents

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

Present: Mr. Rajinder Goel, Advocate,
for the petitioner.

Mr. S.S. Pannu, DAG, Haryana.

Mr. Nitin Thatai, Advocate
for respondent No.3.

M.S. RAMACHANDRA RAO, J.

Background facts

Respondent No.4-Joginder Kumar Batla was the owner of the subject property which is a residential property bearing House No.645/19 (New), 5/30 and 578/17 (Old) measuring 30' x 36' total area measuring 120 square yards having construction on the ground and first floor situated within the area of Hidayatpur Chawani now known as Shivaji Nagar Colony within the limits Municipal Corporation, Gurugram, Tehsil and District Gurugram.

The said property was purchased by respondent No.4 under a Registered Sale Deed dt.24.09.2015.

Thereafter, he entered into an Agreement to Sell on 28.09.2015 with the petitioner, and in the said agreement, he admitted that he had received the payment of ₹22.50 Lakhs as a part sale consideration out of total sale

consideration of ₹47 Lakhs. He also delivered possession of the property to the petitioner on the same day.

However, respondent No.4 did not come forward to execute the sale deed.

The petitioner then filed a Suit for specific performance before the Civil Judge (Senior Division), Gurugram.

Without informing the petitioner, respondent No.4 applied for a loan from respondent No.3-Bank on 16.10.2015, and made a mortgage by deposit of title deeds of the above property on 27.10.2015 in favour of the Bank.

Thereafter, he defaulted in payment of loan installments and respondent No.3-Bank declared the loan account of respondent No.4 as NPA on 30.04.2017.

It also issued notice dt.09.06.2017 under Section 13(2) of the SARFAESI Act, 2002 seeking payment of ₹52,48,315/- within 60 days.

Since no payment was made, notice under Section 13(4) of the Act was also issued on 13.12.2017 by the respondent No.3-Bank to respondent No.4.

The petitioner, in the meantime, approached the Debts Recovery Tribunal-II, Chandigarh and an order was passed on 15.02.2018 by the said Tribunal in SA No.23 of 2018 recording that the petitioner would clear the loan dues of the respondent No.4 and make the full payment demanded vide notice issued under Section 13(2) of the Act. The DRT-II directed that once the payment is made by the petitioner, registration of the property be done by respondent No.3 in the name of the petitioner. This was also consented to by respondent No.4.

Thereafter the petitioner made full payment of ₹56,80,058/- to respondent No.3 and the loan account of respondent No.4 was closed on

25.05.2018. Therefore, sale certificate dt.03.11.2018 was issued to the petitioner by respondent No.3.

The petitioner alleges that respondent No. 3 is not getting the sale deed registered, and respondent No.4 was also not cooperating with the petitioner though the entire dues of respondent No.3 have been cleared by the petitioner.

It is contended that respondent No.4 had got filed 4 collusive suits against himself so as to avoid registering the property in question, and the collusive decrees were obtained vide Annexures P-7 to P-11 for recovery of amounts.

In one such Civil Suit No.1342/2016, there is also an order passed by Civil Judge (Junior Division) on 06.08.2018 restraining respondent No.4 from alienating the property.

The petitioner contends that it is not open for the respondents to avoid registering the sale deed in favour of the petitioner since full payment was made by her pursuant to the order passed by the DRT-II, Chandigarh on 15.02.2018 in SA No.23 of 2018, and any order passed by the Civil Court cannot be an impediment for execution of the sale deed in favour of the petitioner by respondents No.3 and 4.

REPLY ON BEHALF OF RESPONDENTS NO.1 AND 2

Reply is filed by respondents No.1 and 2 stating that on account of stay orders from the Civil Courts *qua* the property under dispute as disclosed by the respondent No.3-Bank and the petitioner herself, sale deed of the property could not be registered; and respondent No.2 is ready to register the sale deed, if the property is free from all encumbrances if Court stay is vacated on the same.

REPLY ON BEHALF OF RESPONDENT NO.3

Respondent No.3 has also filed a Written Statement admitting the case of the petitioner as regards the payment of entire dues of respondent No.4 by the petitioner, order dt.15.02.2018 passed by the DRT-II, Chandigarh, issuance of sale certificate dt.03.11.2018 in favour of the petitioner, and closure of the loan account on 25.05.2018 as regards the loan granted to respondent No.4 by respondent No.3. It is also stated that the petitioner was handed over the original title deed in respect of the property on 03.11.2018.

It is stated that it is for the petitioner to get the sale deed registered from the relevant authorities, and that as per the sale certificate, the sale of the property was free from all encumbrances known to the secured creditor.

CONSIDERATION BY THE COURT

From the rival contentions of the parties, it is clear that the petitioner had purchased the secured asset and a sale certificate dt.03.11.2018 was also issued to the petitioner by respondent No.3, but sale deed could not be registered in favour of the petitioner though she had made full payment to respondent No.3 as per the order dt.15.02.2018 passed in SA No.23 of 2018 by the DRT-II, Chandigarh, and the loan account of respondent No.4 with respondent No.3 was closed.

The only impediment for registration of the sale deed in favour of the petitioner appears to be that certain orders had been passed by the Civil Courts because of which respondent No.2 could not register the sale deed. These orders are Annexures P-9 and P-10.

In a suit filed by the third party against respondent No.4 in a Civil Suit bearing C.S.No.1342 of 2016, the Civil Judge, Junior Division, Gurugram had

passed order dt.06.08.2018 restraining the defendants from alienating the property. Likewise, in a Civil Suit filed by another third party against respondent No.3-Bank and respondent No.4 bearing C.S.No.2360 of 2019, there is a similar order dt.30.10.2019 restraining respondent No.4 from alienating the suit property.

Respondent No.4 has evaded notice in this Writ Petition and has not taken any stand.

In our opinion, where the sale is conducted under the provisions of the SARFAESI Act, 2002 the Civil Courts have no jurisdiction to come in the way of the actions taken by the Banks/Financial Institutions against the secured assets. This principle has been laid down by the Division Bench of this Court in **Allahabad Bank, Branch at Industrial Area A, Link Road, Ludhiana through its Chief Manager/Authorized Officer Sh. Nishant Shukla Vs. District Magistrate, Ludhiana and others¹**. Thus the interim orders passed by the Civil courts *qua* the subject property are without jurisdiction and void.

They cannot therefore be pressed into service by the respondent No.2 to deny registration of the sale deed executed in petitioner's favor by the respondent no.3-Bank.

Even otherwise the sale in favour of the petitioner vide the sale certificate was on 03.11.2018, much before Annexure P-10 order passed in C.S.No.2360 of 2019 by the Civil Judge (Junior Division), Gurugram on 30.10.2019, and the restraint therein is only against respondent No.4 and not against respondent No.3-Bank. Therefore, the said interim order cannot be considered to be an impediment for registration of any sale deed by respondent No.2 in favour of the petitioner which is being executed by respondent No.3.

¹ Passed in CM No.3178-CWP-2011 in CWP No.4916 of 2020 dtd. 06.09.2021

Even the order dt.06.08.2018 passed in C.S.No.1342 of 2016 passed by the Civil Judge, Junior Division, Gurugram is directed only against the defendant therein i.e. respondent No.4 in this Writ Petition and not against respondent No.3-Bank.

So, there will be no difficulty for respondent No.2 to register the sale deed being executed by respondent No.3 in favour of petitioner in respect of the subject property.

Therefore, this Writ Petition is allowed. Respondent No.2 is directed to register the sale deed executed by respondent No.3 in favour of the petitioner within three weeks from the date of presentation of the sale deed by the petitioner as well as the representative of respondent No.3-Bank subject to fulfillment of all the formalities such as payment of stamp duty and registration fees.

No costs.

Pending application(s), if any, is disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(HARMINDER SINGH MADAN)
JUDGE

November 21, 2022

Ess Kay

Whether speaking / reasoned : *Yes /No.*

Whether Reportable : *Yes/No*