

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

124

CWP-24791 of 2022 (O&M)

Date of decision: 28.10.2022

Krishan Kumar Gupta @ Krishan Lal

...Petitioner

Versus

Bank of India and others

...Respondents

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

Present: Mr. Aalok Jagga, Advocate with
Mr. A.P.S. Madaan, Advocate for the petitioner.

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

Notice of motion.

Mr. Gaurav Goel, Advocate and Mr. Devender Rattan,
Advocate accepts notice on behalf of respondent/caveator No.1, Mr.
Akshay Jain, Advocate accepts notice on behalf of respondent No.2, and
Mr. Harsh Garg, Advocate with Mr. Pulkit Goyal, Advocate accepts
notice on behalf of respondent No.3.

Counsel for the petitioner states that he does not press for
any relief against respondent No.4. Therefore, respondent No.4 is deleted
as party respondent in the matter.

Petitioner is aggrieved by the order passed by respondent
No.5 on 28.09.2022 in SA-59-2021. The said SA was filed seeking the
following reliefs:-

- i. Set aside the sale notice dated 12.02.2021 issued by the Respondent and further restrain the Bank from initiating any coercive action, as the entire action of the Bank is without jurisdiction.
- ii. Restrain the Bank from initiating any further action under the process of Securitization Act, 2002 as the aspect of sale, sought to be conducted by the Respondent, is completely without jurisdiction and not maintainable in view of apparent violations of the basic provisions of the Securitization Act 2002.
- iii. Restrain the Bank from taking physical possession of the property, in question and further restrain from creating any third party rights and if created, set aside the same.
- iv. Summon the original records of all the Creditors, including the compliance of Section 13 (9).
- v. It is still further prayed that this Hon'ble Court may be pleased to issue any other appropriate order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
- vi. Cost of the present petition may be awarded to the applicant in terms of Section 19.
- vii. Set aside all such consequential actions, if initiated.

The petitioner had filed an interim application in the SA. The petitioner had also sought interim relief for staying the sale to be held by respondent No.1-Bank pursuant to an auction cum sale notice dt. 12.02.2021.

After hearing the counsel for the petitioner, interim relief was granted on 16.03.2021, staying the auction cum sale pursuant to the notice dt. 12.02.2021 till further orders. Thereafter, IA-522-2022 was filed by respondent No.1 for vacating the said order.

On 05.09.2022, arguments were heard in the IA-522-2022

for vacation of the stay, and a docket order was passed that the matter would be listed on 06.09.2022 for pronouncement of the order on the said IA.

The matter was then taken up on 20.09.2022, and adjourned to 22.09.2022 again for hearing arguments in the IA.

Then on 28.09.2022, respondent No.5 not only allowed IA-522-2022 filed by respondent No.1-Bank, but went on to dismiss the SA itself as infructuous.

This is assailed in the writ petition by the petitioner.

Counsel for the petitioner contends that arguments in the SA were never heard, and only the arguments in the IA were heard, and the docket dt. 05.09.2022 confirms this fact, and the Tribunal had indicated its mind only to decide the said IA, and to pronounce order in the said IA on 06.09.2022, and so the Tribunal could not have decided the main SA on 28.09.2022 without hearing argument in the SA.

Though counsel for the respective respondents contend that the main SA itself was argued before the Tribunal, the docket dt. 05.09.2022 of the Tribunal does not support their contention.

We are of the opinion that when the Tribunal had heard only arguments in the IA-522-2022 as evidenced by the docket dt. 05.09.2022, and intended to pronounce orders only in the IA as per said docket order, respondent No.5 could not have decided the main SA, and any submissions made by the applicant in support of the order for stay could not have been taken as arguments in the main SA. Merely looking at the

clauses in the prayer, the Tribunal could not have proceeded to hold that the SA itself had become infructuous without noting other contentions raised including the contention raised in para No.25 of the SA regarding the mention in the sale notice of the land as freehold which is an issue pending consideration before the NCLT, and which is adverted to in the order dt. 16.03.2021 passed by respondent No.5.

Anyway we are not expressing any opinion on the merits of the contentions of the parties at this stage, but we are of the opinion that the disposal by the Tribunal of the SA itself as infructuous on 28.09.2022 was not warranted when the Tribunal had heard only arguments in IA-522-2022.

Accordingly, the writ petition is allowed to the extent that respondent No.5 had dismissed the SA-59-2021 as infructuous; the said order to that extent is set aside. The SA is remitted back to DRT-II, Chandigarh and shall be decided by the said Tribunal after hearing both sides within three months from today.

All contentions of parties are left open for consideration.

Till the SA is decided, status quo in all respects qua proceedings under SARFAESI Act, 2002 shall be maintained with regard to the secured asset.

(M.S. RAMACHANDRA RAO)
JUDGE

28.10.2022
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No