

Neutral Citation No. 2023:PHHC:073366-DB
**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(223)

CWP-5363-2022

Decided on :19.05.2023

Gurinder Kaur

.....Petitioner(s)

Versus

Debts Recovery Appellate Tribunal, New Delhi and others Respondent (s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

HON'BLE MR.JUSTICE GURBIR SINGH

Present: None for the petitioner.

Mr. Aneeshh Chopra, Advocate for

Mr. Shekhar Verma, Advocate for respondent Nos.3 & 4-Bank.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India has been made to the order dated 10.11.2016 (Annexure P-1), whereby the Debts Recovery Tribunal-II, Chandigarh had allowed the SA No.247 of 2014 partly by recording a finding that the part of the property was mortgaged prior to it being re-sold, since the loan was taken on 28.07.2011. Resultantly, the said securitization application had been partly allowed by restraining the respondent-Bank to initiate any action against the property which was sold on 10.06.2010 prior to the creation of mortgage. The respondent-Bank was given liberty to proceed in accordance with law against that part of the property mortgaged with it. The petitioner was aggrieved against the possession notice dated 12.03.2014 (Annexure P-2) which has passed under Section 14 of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 by the District Magistrate, SAS Nagar.

2. Apparently an appeal was also filed against the order of the Debts Recovery Tribunal before the Debts Recovery Appellate Tribunal bearing (DRAT) Appeal No.466 of 2016 against the order of the Debts Recovery Tribunal dated 10.11.2016 (Annexure P-1) which was dismissed in default on 02.08.2021 (Annexure P-15). On account of an application being filed for restoration dated 23.12.2021 (Annexure P-16), the same was not being heard on account of the Chairperson having demitted the charge. Resultantly, the petitioner approached this Court by filing the present writ petition.

3. The following order was passed on 17.03.2022:-

“Notice of motion for 18.04.2022 to respondents No.3 to 6 only.

Since Appeal No.466 of 2016 filed by the petitioner was dismissed in default on 02.08.2021 by the Debts Recovery Appellate Tribunal, Delhi (DRAT), and since Miscellaneous Application No. 160 of 2021 filed by the petitioner to restore the said Appeal is pending consideration before the DRAT, Delhi, and since it is stated that the Chairperson of the DRAT, Delhi has not yet taken charge after the previous Chairperson demitted office on 30.10.2021, there shall be stay of all coercive process against the property purchased by the petitioner on 07.04.2014.”

4. The respondent-Bank now has filed an application bearing CM-3208-CWP-2023 for dismissal of the writ petition on the ground that the DRAT is functioning and the petitioner, thus, can have her remedy before the DRAT. It is pointed out that a sum of ₹59,90,742/- is outstanding as on 06.02.2023.

5. Keeping in view the above, we are of the considered opinion that the writ petition has been filed at that point of time on account of the fact that the office of the Chairperson of the DRAT was vacant and, thus, protection was granted. Once the said office is now filled up and judicial proceedings are being conducted, we see no valid reason to continue with the present writ petition. Accordingly, the same is disposed of as having been rendered infructuous. However, we extend the order dated 17.03.2022 for a period of 4 weeks from today, so that the petitioner can press the application for restoration and for interim orders, if so required before the DRAT.

6. The writ petition stands disposed of with the aforesaid liberty. All pending civil miscellaneous application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

19.05.2023
Naveen

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No