IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(136) **CWP-5440-2023**
Decided on: 21.03.2023

Surinder Singh

....Petitioner(s)

Versus

Canara Bank and another

.... Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr.Vinay Puri, Advocate for the petitioner(s).

Ms. Rahish Pahwa, Advocate for the respondent-Bank.

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G.S. Sandhawalia, J.(Oral)

The present case is a classic case where litigants misuse the indulgence of the Courts and make attempts to deny the recovery of the public money, apart from that wastage of Court time is also entailed. The basic principle which lies with the Writ Court that if a person has not come to the Court with clean hands and there is a concealment of facts, he has no right to be heard on merits in view of the law laid down by the Apex Court in **Prestige Lights Ltd. vs. State Bank of India, 2007 (4) RCR (Civil) 46.**

2. Claim herein for directions is sought to respondent-Bank to accept One Time Settlement (OTS) dated 19.10.2022 for deposit of rest of the money upto 31.07.2023 on the ground that as the Bank had already got the initial deposit of ₹1,03,000/- and balance of ₹6,79,451.95 is pending. Resultantly, sale notice dated 11.04.2022 qua the House No.2913/60A, Piara Singh Colony, Near Mulla Atta Chakki, Tehsil Ropar, Punjab

measuring 185 square yards, is sought to be quashed. The notice impugned as such has been issued under Section 13 (4) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 and the property has been put to auction and the reserve price was fixed @ ₹52,80,000/-.

3. Counsel for the respondent-Bank on advance notice has pointed out that the petitioner's son namely Harminder Singh filed a Civil Suit bearing No.922 of 2022 wherein the grounds pleaded were that the property is ancestral and he had right being a coparcenor. The son has got an interim order against the petitioner, who was defendant No.1 and defendant No.2 Gurminder Singh, his brother on the claim of having 1/3rd share in the suit property. The Bank-defendant No.3 was directed to grant 15 days time to clear the outstanding loan and if the applicant fails to do so then it was free to pursue with their legal remedy, which would be clear from the order dated 14.11.2022 passed by the Civil Judge (Jr. Division), Rupnagar. The relevant portion of the said order reads as under:-

> "4. After hearing the counsel for applicant/plaintiff and going through the material on record, it comes out that already a civil suit for recovery has been filed by Canara Bank against defendants no. 1 and 2 which is reflected from the copy of the plaint of civil suit titled "Canara Bank Vs. Surinder Singh & ors", wherein, the details of property of said suit and present suit is same. Further the copy of order dated 13.10.2022 has also been placed on file by the counsel for applicant/plaintiff, wherein, the said civil suit for recovery has been adjourned to 12.11.2022 for compromise in Lok Adalat as one time settlement. Further the applicant/plaintiff Harminder Singh has been personally present in the Court and stated that though defendants no. 1 and 2 are not thinking about his interest in the

> house in question but he is concerned about each and every family member and is ready to pay the entire pending loan amount. Though applicant/plaintiff has alleged coparcenary and his share in the house in question on the basis of coparcenary but said fact is to be proved on the basis of evidence but at this stage, considering the right of shelter of applicant/plaintiff and his family members especially in the light of the fact that he is ready to repay the entire pending loan amount, it is concluded that applicant/plaintiff is able to establish the prima-facie case in his favour and further balance of convenience lies in his favour. Accordingly, defendant no. 1 and 2 are restrained from selling or alienating the house in question till further orders. However, defendant no. 3 has each and every right to recover the loan amount and they cannot be restrained from pursuing their legal remedy, however, they are directed to grant 15 days time to applicant/plaintiff to clear the outstanding loan and if applicant/plaintiff fails to do so then they can pursue their legal remedy.
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> 5. Notice of suit as well as application be issued to respondents/defendants for 23.11.2022. Plaintiff is directed to obtain dasti summons and to procure the service of respondents/defendants for the date fixed. Plaintiff is also directed to deliver to the opposite party or to send by registered post immediately a copy of application along with a copy of affidavit filed in support of application, copy of plaint and copy of documents relied upon by the plaintiff. Compliance of Order 39 Rule 3 CPC be also made immediately, failing which this order shall stand vacated automatically."

4. Thereafter, an application was filed that the Bank has not entertained their request for clearing the loan and the stay be extended as the Bank has gone on to auction the house in question. Accordingly, the stay was extended till 20.12.2022, which would be clear from order dated

23.11.2022. Now the stay is stated to be extended till 17.03.2023. Subsequent order dated 23.11.2022 reads as under:-

> "Sh. Ranbir Singh Gill, Advocate has filed Power of Attorney on behalf of defendants No. 1 and 2. Sh. Sunil Kumar, Advocate has filed Power of Attorney on behalf of defendant no. 3. Now the case stands adjourned to 20.12.2022 for filing regular Power of attorney and for filing written statement on behalf of defendants No. 1,2 and 3.
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> Plaintiff has placed on file the copy of the application filed by defendant no. 1 Surinder Singh with defendant no. 3 I.e Canara Bank for disclosing the entire outstanding amount. The counsel for plaintiff has stated that despite filing this application, defendant no. 3 has not entertained their request as they are willing to pay of the loan. Further requested that stay be extended further as despite this application, the defendant no. 3 is bent upon to auction the house in question in recovery of loan amount. Heard. In view of the application and submissions of counsel for plaintiff, the stay order is extended till further date for 20.12.2022. In the present writ petition nothing has been mentioned regarding the pendency of the suit and rather a categorical averment has been made that there is no appeal, revision or any other petition filed in this Court or in the Supreme Court. Even though the petitioner was defendant in the said suit, there is an injunction which is against him. Pleadings would also go on to show that the order dated 13.10.2022 passed in the Civil Suit bearing No.596 of 2021 filed by the Bank has also been appended as Annexure P-4."

5. In such circumstances, we are of the considered opinion that the petitioner has concealed the material facts of the pendency of the suit filed by his son and the orders passed against him in an attempt to get an interim order and, therefore, necessarily will have to pay exemplary costs. Accordingly, the present writ petition is dismissed. However, keeping in view the fact that the petitioner is aged around 72 years and suffering from

various diseases, as per medical record which has also been appended, we are of the considered opinion that costs of ₹20,000/- would be adequate in the facts and circumstances. The said amount be deposited with the District Legal Services Authority, Rupnagar, for wasting the time of the Courts. In case the amount is not deposited, the District Collector, Rupnagar shall ensure the recovery of the same.

The writ petition is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

21.03.2023
Naveen

Whether speaking/reasoned :	✓Yes	No
Whether Reportable :	Yes	✓No