2023:PHHC:058910-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-18217-CWP-2022 IN/AND
CWP-9252-2022 (O&M)
DATE OF DECISION: 25.04.2023

SUKHJINDER SINGH AND ANOTHER

......PETITIONERS

VS.

STATE BANK OF INDIA AND ANOTHER

.........RESPONDENTS

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

Present: Ms. Neha Jain, Legal Aid Counsel, for the applicants-petitioners.

None for the non-applicant/respondents.

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HARPREET KAUR JEEWAN, J.

CWP-9252-2022 (O&M)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India seeking setting aside of the sale conducted by the respondent Bank on 06.01.2021 and further seeking a direction to the respondent Bank to accept the amount under the '*Rinn Samadhan Scheme*' 2020-21.

2. As per the averments made in the petition, petitioner No. 1 has availed a loan from the respondent Bank on 07.02.2006 and the house in question was mortgaged with the Bank. As per the written reply filed by the respondent-Bank, the account of the petitioner was declared as NPA on 10.05.2014. The proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for

short 'the Act') were initiated. As per the contents of the reply of the Bank dated 12.01.2021 (Annexure P-4), the physical possession of the property was taken on 09.02.2019. The petitioner approached the Debt Recovery Tribunal-I, Chandigarh (for short 'the Tribunal') challenging the sale dated 06.01.2021 which was held under the provisions of the Act by way of filing SA No. 23 of 2019 (Annexure P-13). As such, the present petition is not maintainable, as the alternative remedy has to be availed.

3. Learned counsel for the petitioners submits that petitioner No. 1 wants to save his only residential house which was already sold in auction and further submitted that the petitioner is willing to pay the entire outstanding amount, if an opportunity granted to him.

4. We have considered the submissions made by learned counsel for the petitioners.

5. As per the paper-book, the petitioner had approached the Tribunal by way of filing SA No. 23 of 2021 raising a challenge to the sale of the mortgaged house, which took place in e-auction for a sum of ₹11,00,000/-. As per the order dated 18.02.2021 (Annexure P-8) the Tribunal passed an interim order granting *status quo* regarding the mortgaged property and directed the petitioner to approach the Bank and deposit the entire outstanding amount along with expenses within a period of 03 days. The paper-book further goes on to show that the petitioner filed an application dated 18.02.2021 (Annexure P-9) before the Bank and requested to deposit the entire outstanding amount after deducting the penal interest. As per the order dated 06.09.2021 (Annexure P-13), the Tribunal observed that there was a dispute regarding the remaining outstanding of

₹7,35,016/- even though the petitioner had approached the Bank along with the demand draft of ₹6,65,282/. The petitioner was again given liberty to approach the Bank to deposit the said remaining amount. Ultimately, the said SA was dismissed by the Tribunal by passing the order dated 21.04.2022 (Annexure P-14) holding that no ground is made out to allow the application. The relevant part reads as under:-

> *"7. I have considered the rival contentions.*
>
> *8. The question which arises for consideration is, 'whether the applicants are entitled to get the sale set aside even after the sale certificate has been issued and it has been registered?*
>
> *9. As per Section 13 (8) of the Securitization Act, in case, the debtor tenders the dues along with costs, charges and expenses of the secured creditor at any time before the date of publication of notice, then the secured creditor will not transfer the property. In the case in hand, even till today the amount has not been tendered. The loan was taken in the year 2006. Even after 16 years a sum of Rs. 12,59,108/- is due.*
>
> *10. The Hon'ble Supreme Court in Shakeena's case (supra) after relying upon Dwarika Prasad's (supra) case has held as under:-*
>
>> *"Further the amended Section 13 (8) of the 2002 Act which has come into force w.e.f. 1st September, 2016, will now share at the face of the appellants. As per the amended provision, stringent condition has been stipulated that the tender of dues to the secured creditor together with all costs, charges and expenses incurred by him shall be at any time before the "date of publication of notice" for public auction or inviting quotations of tender from public or private deed for transfer by way of lease assessment or sale of the secured assets. That*

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I attest to the accuracy and authenticity of this order/judgment

> *events before the institution of the subject writ petitions by the appellants."*
>
> *11. I am of the considered view that no ground is made out to allow the application. The application is hereby dismissed. Interim orders, if any, stand vacated and interim applications pending, if any, also stand dismissed.*
>
> *12.A copy of this order be given to both the parties and file be consigned to record room."*

6. However, after failing to get the relief before the Tribunal to the sale in question, the present petition has been filed by raising a challenge to the same sale, which took place in securitisation proceedings initiated by the respondent Bank under the Act.

7. In view of the above, we are of the considered opinion that remedy of appeal is provided against the order of the Tribunal under Section 18 of the Act, which reads as under:-

> ***"18. Appeal to Appellate Tribunal.—***
>
> *(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.*
>
> *Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:*
>
> *Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery*

Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

8. The Apex Court in **Varimadugu Obi Reddy Vs. B. Sreenivasulu and others, 2023 (1) RCR (Civil) 34** while discussing an similar issue held that the orders passed by the Tribunal are appealable and it is not for the Writ Court to exercise its extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

9. Resultantly, we are of the considered opinion that the present writ petition is not maintainable under Articles 226/227 of the Constitution of India and the same is, accordingly, disposed of with liberty to the petitioner to avail his remedy under Section 18 of the Act. In the meantime, the interim order dated 02.08.2022 shall continue for a period of four weeks.

CM-18217-CWP-2022

10. By way of this application, the applicants-petitioners seek impleadment of the auction purchaser of the suit property namely Kamaljeet Singh, son of Harnek Singh as respondent No. 3 in this petition.

11. Since the petition itself has been dismissed by this Court today itself with liberty to the petitioner to avail appropriate remedy under Section 18 of the Act, as such this application has been rendered infructuous and is disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

April 25, 2023
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Whether Speaking	Yes
Whether Reportable	Yes