

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(115)

CM-8588-CWP-2023 in/and
CWP-10029-2022 (O&M)
Decided on :17.05.2023

Neelu Jain & others

.....Petitioner(s)

Versus

Cholamandalam Investment & Finance Company Ltd.Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MANISHA BATRA

Present: Mr.Gaurav Chopra, Sr.Advocate
with Mr.Manjeet Singh, Advocate for the applicant/petitioner (s).

Ms.Puja Chopra, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

CM-8588-CWP-2023

Application for preponing the date of hearing of the main case from 16.08.2023, is allowed. Main case is taken on Board today itself.

CM stands disposed of.

CWP-10029-2022 (O&M)

1. The writ petition was initially filed challenging the securitization proceedings and also for direction not to auction the property of the petitioners. A perusal of the possession notice dated 23.03.2022 (Annexure P-13) of the residential house No.1402, Block C, measuring 435 sq.meters in Palam Vihar, Gurugram, Haryana was subject matter of the said possession notice, the outstanding was Rs.2,29,51,809.01 as on 18.10.2021. Interim order dated 15.06.2022 had been passed that the petitioners should get a draft of Rs.20 lakhs to show their bona fides in the auction with the condition that auction would continue to take place for the said date subject to deposit of the amount.

2 On 05.07.2022, it was noticed that the said draft had not been produced and therefore, the bank was left free to deal with the auction property in accordance with law. Another opportunity was granted on 12.09.2022 to pay Rs.1,48,00,000/- to save the property but the same was not availed, as noticed on 10.10.2022.

3. The sale certificate dated 10.05.2023 now has been placed on record wherein the mortgated property has been sold for Rs.4.66 crores to M/s Adsplay International through its Proprietor who is not arrayed as respondent in the present set of litigation.

4. We are, thus, of the considered opinion that the petitioners have their remedy against the said sale if they so desire since challenge is to the procedure adopted under securitization proceedings.

5. Senior Counsel for the petitioner has vehemently argued that the said property had been put to auction earlier and a huge amount was received on account of 25% of the amount which was forfeited. The outstanding was less than what the property was sold and therefore, the petitioner would be entitled for a refund of the excess amount from the respondent-Bank.

6. Keeping in view the above, the respondent-Bank shall refund the excess amount received from the auction purchaser in whose favour the sale certificate has been issued against the outstandings of the petitioner as on the date of the auction, within a period of 2 weeks.

7. Regarding the other excess amount which the petitioner is claiming, we are of the considered opinion that the third party rights also might be involved of the person whose amounts were forfeited since it is pointed out that the said person has filed CWP-20390-2022. Therefore, the petitioner is at liberty to agitate for that claim separately. Mr.Manjeet Singh will give the necessary bank details of the petitioner to Ms.Puja Chopra for crediting of the excess amount which is to be refunded to the petitioner.

8. Writ petition stands disposed of, with the above-said liberty. All pending application(s) also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(MANISHA BATRA)
JUDGE

17.05.2023
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No