

RAJESH KUMAR AND OTHERS

..... Petitioners

Versus

CHOLAMANDALAM FINANCE AND INVESTMENT CO. LTD.

..... Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Ms. Mallika Dhillon, Advocate for
Ms. Supriya Garg, Advocate for the petitioners.

Mr. D.K. Singal, Advocate and
Mr. Rahul Garg, Advocate for the respondent.

LISA GILL, J.

1. Prayer in this petition is for setting aside sale notice dated 26.02.2018 (Annexure P4) of the mortgaged properties of the petitioners with the respondent as well as sale certificate dated 27.03.2019 (Annexure P5).

2. Learned counsel for the respondent – Non Banking Financial Company submits that apart from the fact of the present writ petition not being entertainable in view of the judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888**, this writ petition, in any case, is rendered infructuous. Challenge in this writ petition, it is stated, is to sale notice dated 26.02.2018 and for quashing sale certificate dated 27.03.2019.

Said sale notice as well as sale certificate were withdrawn and thereafter

during the pendency of this writ petition, petitioners submitted an undertaking with the respondent. This undertaking is signed by petitioner No. 1 qua himself and on behalf of the other petitioners. Relevant part thereof reads as under:-

“1) I undertake that I will handover all the litigations regarding the said loan against the company or any others.

2) I undertake that I will also handover the peaceful vacant possession of the property bearing no. Property no 1:- PROPERTY NO. 164-P, SECTOR 15, PART 1, GURGAON, HARYANA-122001, AD-MEASURING-220 SQ.MTS (2368.006 SQFT) WITH THE BUILT UP AREA OF 4852 SQ.FT. property no 2: PLOT NO 6, ENTIRE SECOND FLOOR, ADMEASURING 1600 SQ.FT WITH TERRACE RIGHT AND LAND ADMEASURING 250.56 SQ.M, ROAD NO-N-12, DLF CITY, PHASE II, GURGAON, BOUNDING NORTH ROAD. SOUTH PLOT NO. N-13/6, EAST PLOT NO. N12/7 AND WEST PLOT NO. N12/5, property no 3:- 13/32, DLF PHASE 1 SECOND FLOOR GURGAON HARYANA-122022 ADMEASURING 215 SQ.YARDS on or before dated 31.03.2021.

3) I undertake that I will be present at the time of Registration of the sale deed or whenever I will be required by Cholamandlam in relation to the transfer of the properties after auction.

4) I undertake that I will fully cooperate to the company to sale above mentioned properties and also give all authority to the company to sale the property and also remain present while sale deed will be registered.

5) I undertake that I will not claim any right in the mentioned properties in future after the settlement is arrived between us.

Therefore, I request you to please consider our proposal and I also undertake that if I have not fulfill the above mentioned conditions company are free to take legal actions against me as per law.

Rajesh Yadav

On behalf of all other borrowers”

3. Photocopy of undertaking dated 28.01.2021 filed in Court today is taken on record subject to just exceptions.

4. Learned counsel for the respondent further submits that two of the three mortgaged properties have already been sold. One of the properties i.e. 164-P, Sector 15, Part 1, Urban Estate, Gurgaon has been sold to a third party as per tripartite agreement to which petitioners were party. Another property i.e. plot No. 6, entire second floor, Road No. N-12, DLF City, Phase II, Gurgaon, was sold through private treaty. Chart in respect to the properties and their status furnished in Court today is taken on record subject to just exceptions.

5. Learned counsel for the petitioners submits that she does not have any instructions from the petitioners in this regard as despite efforts she has been unable to contact them and neither have they come forward to contact her. She prays for more time to contact the petitioners. However, in view of categoric statement made by learned counsel for the respondent, we do not find any justification for continuance of the present proceedings,

6. Writ petition is, accordingly, disposed of as infructuous with liberty to the petitioner to file appropriate application, in case, any incorrect fact has been placed before us.

7. Petitioners are also at liberty to avail statutory remedy as may be available to them in accordance with law in respect to any action by the

respondent under the Securitization and Reconstruction of Financial Assets
and Enforcement of Security Interest Act, 2002.

(LISA GILL)
JUDGE

October 03, 2023
rts

(RITU TAGORE)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No