

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

116

CWP-9981-2023
Date of Decision: 19.05.2023

SURAJ SHARMA AND ORS

..... Petitioners

Versus

THE AUTHORIZED OFFICER AND ORS.

..... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Sahil Khunger, Advocate for the petitioners.

G.S. SANDHAWALIA, J (ORAL)

1. The challenge in this present petition is to the sale notice under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), of the mortgaged property stated to have been put up for auction at Rs. 1,15,50,000/- against the outstanding amount of Rs.1,55,28,335/- as on 28.06.2021. The property is stated to be a residential house.

2. Apparently, notice dated 28.06.2021 (Annexure P-4) issued under Section 13(2) of the Act was served upon the petitioners demanding the above said outstandings, which was replied by offering of OTS of Rs.100 lacs on 20.04.2022.

3. In the meantime, the bank sold the mortgaged property, which is the residential house of the petitioners, to one Sumit Chauhan (Respondent

No.3) at reserve price of Rs.1.15 Cr. through auction, which took place on 27.02.2023 and publication of which was made on 10.02.2023.

4. Keeping in view the fact that respondents are also a non banking financial company, we are of the considered opinion that the present writ petition will not be maintainable keeping in view the law laid down by the Apex Court in ***Phoenix ARC Pvt. Ltd. vs. Vishwa Bharati Vidya Mandir and others, (2022) 5 SCC 345***. The petitioners have an alternate remedy to approach the tribunal if they so wish to get set aside sale of the residential house by showing the statutory lacunae in the procedure, which has been followed by the respondent-company.

5. Keeping in view the above, the present writ petition is dismissed since, it has been laid down that the powers of the tribunal under Section 17 are very wide including the powers to set aside the securitization proceedings and also to restore possession and to grant compensation, if there is a violation of the Act or Rules. In such circumstances, the petitioners are relegated to avail the said remedy before the Tribunal.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
JUDGE

19.05.2023
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Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO