

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.211

Case No. : CWP-14499-2019

Date of Decision : May 19, 2023

Pooja Petitioner
vs.
LIC Housing Finance Limited and another Respondents

CORAM : HON'BLE MR. JUSTICE G.S. SANDHAWALIA.

HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : None for the petitioner.

Mr. Sumit Batra, Advocate
for respondent no.1.

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GURBIR SINGH, J. :

1. Prayer in this petition is for quashing the notice dated 16.03.2019, issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as – the SARFAESI Act) (Annexure P-6), with a further prayer that a writ of Mandamus be issued for not disturbing the physical peaceful possession of the petitioner of House No.1656/19, Sri Nagar Colony, Rohtak, during the pendency of the writ petition.

2. As per the case of the petitioner, she is the legally wedded wife of respondent no.2 – Anil. She filed a complaint under Sections 12, 18, 19, 20, 21, 22 and 23 of the Domestic Violence Act, 2005 against her husband –

respondent no.2, Kavita wife of Satyawar, Satyawar and Sonia widow of Jogender. Learned Judicial Magistrate Ist Class, Rohtak issued notice to respondent no.2, who appeared in the Court and made statement dated 14.05.2018 (Annexure P-1). Learned Judicial Magistrate Ist Class, Rohtak, while passing the order dated 14.05.2018 (Annexure P-2) observed that respondent no.2 had made a statement that the petitioner was residing in the house which was in his name and he would not dispossess her without any legal process. The petitioner has allegedly been residing along with her children in the aforesaid house, whereas the respondent no.2 had availed the loan facility of Rs.14,00,000/- from respondent no.1 – LIC Housing Finance Limited for the aforesaid house. The case of the petitioner is that respondent no.2 is stated to be working as Head Constable in the Police Department, State of Haryana and is posted in district Rohtak and is getting handsome salary. He intentionally, willfully and knowingly stopped payment of loan installments of the aforesaid house as the petitioner had been residing in the said house and he wanted to dispossess her in this manner.

3. None has put in appearance on behalf of the petitioner as well as respondent no.2 to assist the Court today.

4. Learned counsel for respondent no.1 has already filed the reply wherein it is pleaded that the aforesaid loan facility was obtained by respondent no.2 being main applicant and the petitioner, being wife of respondent no.2, stood as co-applicant against the property measuring 92.5

sq. yds., situated at Khata No.14, Killa No.25/20, Ekta Colony, Near Sarita Vihar, Green Park, Rohtak. They (applicant/respondent no.2 and co-applicant/petitioner) also executed various agreements with respondent no.1 but failed to adhere the terms and conditions of the agreements. Consequently, legal notice dated 04.09.2018 (Annexure P-3) was issued, but despite service, they did not deposit the defaulted amount. Thereafter, demand notice dated 19.12.2018 was issued and further, possession notice dated 16.03.2019 was also issued by respondent no.1, meaning thereby that both, the petitioner and her husband – respondent no.2, were aware that the installments of loan were due. Apparently in connivance with each other, the petitioner approached the Court of learned Judicial Magistrate Ist Class, Rohtak, wherein respondent no.2 made statement in favour of the petitioner without disclosing the fact that they both had availed loan facility from respondent no.1 and amount of loan was secured by creating equitable mortgage of the house in question. The petitioner executed various loan documents knowing fully well the contents thereof. A sum of Rs.16,96,301.74 was outstanding as on 26.11.2019 against the loan account of respondent no.2 and the petitioner. The copy of the Closure Statement has been annexed as Annexure R-1/1.

5. We have heard learned counsel for respondent no.1 and perused the record.

6. This petition has been filed by twisting the facts. The petitioner and respondent no.2 are wife and husband and the loan facility was

advanced to them on 11.03.2016. The petitioner is co-applicant in this loan account. As per Annexure R-1/1, the first un-paid date of installment is 10.05.2018 whereas the petition under the Domestic Violence Act, 2005 was filed on 09.04.2018. Respondent no.2 made statement in the Court on 14.05.2018 that he would not dispossess his wife from his house without any order from Court or legal process. It is not the case of the petitioner that any other litigation is pending between the petitioner and respondent no.2. It seems when respondent no.2 failed to pay installments of loan, then, he along with the petitioner, colluded and got filed the petition under the Domestic Violence Act, 2005 from the petitioner against him and others. Respondent no.2 hurriedly made a statement. The sole motive was to defeat the rights of secured creditor – respondent no.1, who has advanced the loan of Rs.14,00,000/- to respondent no.2 and petitioner as main applicant and co-applicant respectively. When both failed to repay the installments, legal notice dated 04.09.2018 (Annexure P-3), demand notice dated 19.12.2018 and further, possession notice dated 16.03.2019 (Annexure P-6) were issued by respondent no.1.

7. The petition was admitted on 16.01.2020 and the petitioner had been granted interim protection. The order was assailed before the Apex Court and the matter was disposed of to decide the case at the earliest and that is why the office has listed the same.

8. Keeping in view the facts of the case, we are of the considered opinion that it is not a fit case to exercise our extra-ordinary writ jurisdiction

since possession notice has already been issued. There is also a remedy available to the petitioner under Section 17 before the Tribunal, in view of the law laid down by the Apex Court in M/s South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another reported as 2023(2) RCR (Civil) 771.

9. Resultantly, we relegate the petitioner to the remedy before the Tribunal. In case, the Securitization application is filed within a period of three weeks from the receipt of the certified copy, the Tribunal shall proceed to hear the case on merits. All interim orders stand vacated.

10. Disposed of with the aforesaid liberty.

(G.S. SANDHAWALIA)
JUDGE

May 19, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	No.