

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

104+245

2023:PHHC:071685-DB
CM-6116-CWP-2022 in/and
CWP-30475-2019
Date of Decision: 17.05.2023

Tarlochan Singh and another

.....Petitioner(s)

Versus

UCO Bank and others

....Respondent(s)

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

Present: None for the petitioners.

Mr. V.K. Gupta, Advocate,
for the applicant-respondent Nos.1 and 2.

G.S.SANDHAWALIA, J. (Oral)

CM-6116-CWP-2022

Application for placing on record reply alongwith Annexures R-1 to R-10 on behalf of respondent Nos.1 and 2 is allowed, subject to all just exceptions.

The same are taken on record.

CM stands disposed of.

CWP-30475-2019

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the auction process initiated by the respondent-Bank on the ground that the property is worth more than Rs.55,00,000/- but it has been sold at Rs.28,80,000/- vide the auction which took place on 10.12.2018.

2. A perusal of the paper book would go on to show that in pursuance of the securitization proceedings, notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') was issued on 04.02.2015,

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wherein, the outstanding was of Rs.11,76,015/- and resultantly possession notice dated 19.06.2018 (Annexure R-4) was issued. The property thereafter was sold and sale certificate under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 was issued on 25.02.2018 to one Chirag Mittal who purchased the mortgaged property which measures 10 Biswas, duly described in the sale certificate. The said purchaser has paid a sum of Rs.28,80,000/-. The possession has also been handed over to the said purchaser on 25.02.2018 as per Annexure R-8 which would show that the keys of the property were given to the said person.

3. Keeping in view the above and that the matter pertains to transfer and possession of the mortgaged property under the Act, there is a remedy to challenge the said proceedings before the Tribunal in view of the law laid down by the Supreme Court in ***Civil Appeal Nos.3152-53 of 2023, G. Vikram Kumar vs. State Bank of Hyderabad and others*** decided on 02.05.2023. The relevant portion reads as under:-

“8. At the outset, it is required to be noted that what was challenged before the High Court by respondent no.1 in a writ petition under Article 226 of the Constitution of India was the e-auction notice which was pursuant to the action initiated by the Bank in exercise of powers under Section 13(4) of the SARFAESI Act. At this stage it is required to be noted that e-auction was held/conducted on 31.08.2016 in which the appellant participated and was declared as a successful bidder and he made a payment of 25% of the bid amount on the very day i.e., on 31.08.2016. However, thereafter the respondent no.1 filed the writ petition before the High Court challenging the e-auction

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notice dated 28.07.2016 on 14.09.2016 that is after conducting of the auction. It is required to be noted that against any steps taken by the Bank under Section 13(4) of the SARFAESI Act the aggrieved party has a remedy under the SARFAESI Act by way of appeal under Section 17 of the SARFAESI Act to approach the DRT. Therefore, in view of the availability of the alternative statutory remedy available by way of proceedings/appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India in which the e-auction notice was under challenge. Therefore, the High Court has committed a very serious error in entertaining the writ petition under Article 226 of the Constitution of India challenging the e-auction notice issued by the Bank in exercise of power under Section 13(4) of the SARFAESI Act.”

4. Resultantly, we are of the considered opinion that in the absence of the auction purchaser also, the present writ petition is not maintainable before this Court. Accordingly, we dismiss the writ petition with liberty to the petitioners to avail their alternative remedy in accordance with law before the Tribunal, if they so wish.

5. All pending miscellaneous applications also stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

17.05.2023
shivani

(MANISHA BATRA)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No