

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CWP-18397-2018
Date of decision: 17.05.2023

RAJNI ARORA

.....Petitioner

VERSUS

BRANCH MANAGER, STATE BANK OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. S.S.Behl , Advocate and
Dr. Ajaymeet Singh, Advocate
for the petitioner.

Mr. Akshay Jain, Advocate
for respondents No.1 to 3.

Mr. Satinder Pal Singh, Advocate for
Mr. C.S. Pasricha, Advocate
for respondent No.4.

VINOD S. BHARDWAJ, J. (Oral)

The petitioner, who is bona fide purchaser of property measuring 232 Sq. Yds. comprising Khata No. 506/535, Khasra No.27/16 situated at property No. 1856, Street No.1, Bhagat Singh Colony, Sherpur Kalan near Moti Nagar, Ludhiana, in public auction dated 30.08.2011 conducted by the Debt Recovery Tribunal, Chandigarh in RC No. 416/2006 (O.A. No. 166/2000 titled as *“State Bank of Patiala versus M/s Cozy*

CWP-18397-2018

-2-

Woolways Pvt. Ltd.” for a consideration of Rs. 21,85,000/-, seeks refund of the consideration money alongwith incidental expenses and the interest thereupon as the property in question had already been sold by the Bank to respondent No.4 prior to the auction in favour of the petitioner.

2. It is noticed that after the confirmation of the sale and issuance of sale certificate, conveyance deed No. 16515 dated 15.11.2011 was also executed in favour of the petitioner through Local Commissioner appointed by the Debt Recovery Tribunal, Chandigarh and possession of the property was also delivered to her on the same date i.e. 08.11.2011. Entry was also made in the Municipal record in the name of the petitioner vide receipt dated 16.02.2012 qua water and sewerage charges. The petitioner claims to have also incurred an additional expense of more than Rs.8 lacs in raising a super structure and for renovation of the property purchased by her for making it habitable.

3. It is also undisputed that the respondent No.4 i.e. Raman Kapoor son of Sukhdev Raj filed Appeal No. 05 of 2012 in Regular Case No. 416 of 2006 under Section 30 (1) read with Section 19 (25) of the Recovery of Debts due to Bank and Financial Institution Act, 1993 for setting aside the proclamation of sale deed and certificate of sale deed dated 08.11.2011 issued by the Recovery Officer(3) in the above said RC No.416 of 2006 (OA No. 166 of 2000) titled as “**State Bank of Patiala versus Ms. Cozy Woolways Pvt. Ltd.**”. The claim of the respondent No.4 was that the property in question had been purchased by him earlier in a public auction held in the execution of Regular Case No. 352 of 2008 (O.A No. 80 of 2006) in case titled as “**State Bank of India versus Aman Spinners and**

CWP-18397-2018

-3-

others". The said sale deed had been confirmed vide order dated 10.03.2010 and Certificate of Sale had also been issued to him on 10.03.2010. He had, however, not taken possession of the said property.

4. The appeal was thus filed before the Appellate Authority for setting aside the proclamation of sale as well as the Certificate of the sale deed issued in favour of the petitioner. I.A. No. 213 of 2012 had also been preferred by respondent No.4 in appeal No. 05 of 2012 for directing maintenance of status quo regarding the said property which was so ordered by the competent Court on 10.04.2012.

5. The petitioner had approached this Court initially for the relief of seeking issuance of directions to the respondents to clear the title of the petitioner from any charge on sale deed, title and legal rights qua the aforesaid property, however, during the pendency of the present proceedings, learned counsel confined that the petitioner would be ready and willing to seek refund of the sale consideration alongwith other incidental expenses incurred by her for execution and registration of the sale deed in her favour and would not press for clearance of her title. The respondent Bank was directed to respond after completing instructions.

6. A short affidavit had been filed on behalf of State Bank of India wherein the factual matrix was not disputed including the fact that the property in question had been put up for sale and Sale Certificate deed dated 10.03.2010 was issued in favour of Raman Kapoor i.e. respondent No.4 for an amount of Rs. 13,10,000/- in regular case No. 352 of 2008 in O.A. No. 80 of 2006, "**State Bank of India versus M/s Aman Spinners**".

The above said property was put up again for sale on 08.11.2011 and

CWP-18397-2018

-4-

conveyance deed was also executed in favour of the petitioner on 15.11.2011. The aforesaid factual aspects having not been disputed, it remains unrebutted that the respondent-Bank had in fact put the property for sale twice over and that on the date when the second auction was held in which the petitioner was the successful bidder, the Sale Certificate had already been issued in favour of Raman Kapoor qua the abovesaid property. The Bank thus did not have any subsisting title in the property in question.

7. Learned counsel appearing on behalf of the respondent-Bank however contends that the Bank itself is a victim of fraud as the borrower had mortgage the said property twice. He, however, could not dispute that the liability and consequences of such a fraud, if any, practiced with the Bank, cannot be fastened on the auction purchasers who would remain a bona fide purchaser for consideration and resting on an assurance that the property being put to auction by the Bank would be free from any encumbrance not informed to them earlier.

8. No satisfactory explanation has been put-forth by the Bank as to how and under what circumstances can it be permitted to retain the money deposited by the petitioner when it is not in a position to transfer a valid and encumbrance free title.

9. Accordingly, the present petition is allowed. The respondent Bank is directed to refund the entire amount of sale consideration alongwith the incidental expenses i.e. the statutory expenses borne by the petitioner qua registration of the property including the stamp duty alongwith interest @ 7.5% per annum from the date of its deposit till its actual disbursement.

In addition, a compensatory cost of Rs. 50,000/- is being imposed on the

CWP-18397-2018

-5-

Bank to be disbursed to the petitioner for the harassment and agony caused to her. The above said amount to be released in favour of the petitioner within a period of 06 weeks of the receipt of a certified copy of this order.

Petition is allowed in terms as above.

(VINOD S. BHARDWAJ)
JUDGE

MAY 17, 2023.
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No