

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

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2023:PHHC:064650-DB

CM-6508-CWP-2023 in/and

CWP-29354-2018

Date of Decision: 05.05.2023

Muskan Bhasin and another

.....Petitioner(s)

Versus

State Bank of India and another

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Aalok Jagga, Advocate,
for the petitioner.

Mr. Rakshit Gupta, Advocate,
for Mr. Rakesh Gupta, Advocate,
for the applicant-respondent No.1.

G.S.SANDHAWALIA, J. (Oral)

1. By consent of counsel for the parties, the main case, the hearing of which is fixed for 21.08.2023, is taken up for hearing today itself.

2. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the securitization proceedings which have been initiated by issuing notice dated 29.10.2018 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') (Annexure P-15) whereby the Executive Magistrate is seeking to take possession of the mortgaged property.

3. A perusal of the paper book would go on to show that in pursuance of the notice dated 11.01.2016 issued under Section 13(2) of the Act (Annexure P-3), Lovish Crockerries was put to notice regarding the outstandings of Rs.3,45,43,742/-, which was due on 06.01.2016. The

securitization proceedings were challenged by filing SA No. 265 of 2016 by

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the petitioners, who are arrayed as applicant Nos.2 and 3, by taking the plea that the possession notice issued under Section 13(4) was dated 06.05.2016. Apparently, notice under Rule 8(6) of the Security Interest (Enforcement) Rules was issued for public e-auction of the two properties, one of which was the commercial shop and the other is residential property, which is described in Annexure P-7.

4. Counsel for the petitioners has submitted that the commercial shop has been sold for Rs.1,24,25,000/- only, which would be further clear from the sale certificate issued in favour of Smt. Uma Bhasin (Annexure P-8). The securitization application was stated to be renumbered as SA No.70 of 2017 and dismissed on 24.01.2018 (Annexure P-10) by noting that the bank has complied with all the requisite procedure and there was no illegality in the same. Thereafter, the petitioners approached this Court apparently regarding the action of the bank to take physical possession of the mortgaged properties keeping in view the order passed under Section 14 of the Act. The prayer was also made to release the title deed of the house on the receipt of Rs.45,00,000/- which was the last reserve price fixed by the bank on the ground that no buyer has come forward and 4 months' time was to be prayed for making the payment.

5. The indulgence granted by this Court on 20.11.2018 was due to a demand draft of Rs.5,00,000/- be given to the bank. The matter has been pending since then but no payment has been received from the petitioners in furtherance of the prayer which has been made before this Court. Today, CM-6508-CWP-2023 has also been filed by the bank bringing to our notice that

the outstandings are Rs.5 crores and even in the year 2018 as per the written

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statement, Rs.333.54 lakhs was payable. It is pointed out that not a penny has been deposited in the last four years after taking interim order from this Court.

6. Keeping in view the above, we are of the considered opinion that no case is made out for further indulgence by this Court in its extra ordinary writ jurisdiction which is only to be exercised in exceptional circumstances where petitioner shows some *bonafides*. Rather, the misuse of the writ jurisdiction has taken place on deposit of paltry amount of Rs.5,00,000/- and to get an interim stay for all this period without further making any efforts with the bank to deposit any amount to show the *bonafides* of the borrower.

7. In such circumstances, keeping in view the settled law and the fact that the petitioners have already been unsuccessful before the Tribunal in the securitization application their remedy lies elsewhere against the said order. Thus, we are of the considered opinion that the writ petition is liable to be dismissed.

8. Ordered accordingly. The prayer for refund of Rs.5,00,000/- is not justified in view of the fact that there are huge outstandings against the petitioners and that the petitioners have enjoyed the benefit of the stay order for the last 5 years. Resultantly, the prayer for adjustment of the amount of Rs.5,00,000/- in future proceedings is declined. CM-6508-CWP-2023 also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

05.05.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No