

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

CWP-29143-2023

Date of Decision: December 21, 2023

BHAIYA SUMIT KUMAR & ANR.

..... Petitioners

Versus

PIRAMAL CAPITAL AND HOUSING FINANCE LTD Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Maninder Arora, Advocate for the petitioners.

LISA GILL, J.

1. Prayer in this writ petition is for quashing notice dated 24.01.2020 (Annexure P13) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’); order dated 23.05.2023 (annexure P12) passed by District Magistrate, Gurugram under Section 14 of SARFAESI Act and notice dated 19.10.2023 (Annexure P14) issued by Tehsildar-cum-Executive Magistrate, Gurugram.

2. Learned counsel for petitioners submits that petitioners are victim of fraud committed by respondent No. 3 in connivance with respondents No. 4 to 7. Flat in question had been purchased by petitioner from one Arun Nair and Ms. Raji Nair (mentioned as Ms. Rajani Nair in writ petition), who were allotted flat in question by respondent No. 3 – M/s Maxworth Infrastructure Limited. Allotment was made to predecessor-in-interest of petitioners in the year 2011, who were also given possession letter dated 31.07.2015. Present petitioners entered into agreement to sell dated 05.08.2015 with Arun Nair and Raji Nair. Letter dated 17.08.2015 was addressed to builder for transfer of ownership.

3. Present petitioners thereafter availed of loan facility from HDFC Bank. Tripartite agreement dated 17.08.2015 was entered between present petitioners, builder and HDFC bank. Permission for mortgage was duly issued by the builder. All dues towards HDFC bank were cleared by petitioners and No Due Certificate was issued by HDFC bank on 24.04.2017. No Due Certificate from builder was also issued on 03.02.2022. Petitioners, it is submitted, are enjoying their peaceful possession as owner since 2015. Apartment has been given on rent by them as of now.

4. It came to knowledge of petitioners in the year 2022 from Secretary of Society that their apartment has been mortgaged by some persons with respondent No. 1 – Finance Company. It thereafter came to light that builder i.e. respondent No. 3 in an absolutely fraudulent manner raised loan amount of ₹1,15,30,000/-. It is asserted that builder in order to raise financial facility forged documents of said flat belonging to petitioners and has availed loan while showing sale of flat in favour of respondents No. 5 and 6. Connivance of the builder, it is submitted, is apparent from tripartite agreement dated 31.05.2013 (Annexure P11). FIR No. 185 dated 26.07.2022 under Sections 406, 420, 120B IPC stands registered in this regard at Police Station Civil Lines, Gurugram. This factual aspect, it is submitted, has not been considered by learned DRT-II, Chandigarh while passing impugned order dated 16.11.2023 in SA-298-2023 filed by petitioners challenging said proceedings under SARFAESI Act.

5. Learned counsel for petitioners is, however, unable to deny that order dated 16.11.2023 is an appealable order and interference by this Court

in exercise of jurisdiction under Article 226 of Constitution of India is not called for, at this stage. Respondent No. 1, it is submitted, was proceeded exparte on 04.12.2023. Petitioners' SA has been directed to be listed before Registrar on 25.01.2024 for service report and further proceedings.

6. After arguing for some time and faced with the situation where admittedly remedy of appeal is available to petitioners, learned counsel for petitioners submits that some time should be given to petitioners to avail their remedy of appeal in accordance with law in terms of Section 18 of SARFAESI Act. It is prayed that till then, dispossession of petitioners from flat in question be stayed. Petitioners undertake to file appeal within next fifteen (15) days.

7. Keeping in view the facts and circumstances as above, this writ petition is disposed of with liberty to petitioners to avail remedy of appeal in terms of Section 18 of SARFAESI Act.

8. Dispossession of petitioners in peculiar circumstances of the case is stayed for a period of fifteen (15) days from today. Continuation thereof shall be within the realm of consideration by learned DRAT, in accordance with law.

9. It is clarified that there is no expression of opinion on merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 21, 2023
Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No