**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

123 **CWP-33125-2024.**
Date of Decision: 10.12.2024.

Nipun Jain ....Petitioner.

VERSUS

State Bank of India and others ....Respondents.

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**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate for the petitioner.

Mr. Chandeep Singh, Advocate for respondent-Bank.
(Through Video Conferencing)

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<u>ANUPINDER SINGH GREWAL, J. (Oral)</u>

The petitioner has challenged the communication/letter dated 03.12.2024 (Annexure P-13), whereby respondent No.3 has sought for police help in taking possession of the property. He has also sought quashing of the impugned sale notice dated 16.11.2024 (Annexure P-12).

2. Learned senior counsel for the petitioner submits that petitioner is the guarantor and had mortgaged one property for securing the loan. He submits that the property is now being put to auction and the reserve price has been fixed at Rs.1.20 Crores. The petitioner is willing to pay the reserve price and he has brought a demand draft for a sum of Rs.50 Lakhs and would get the demand draft for the outstanding amount by 16.12.2024. He, therefore, submits that the possession of the property, which is slated today, should not

be taken by the respondent-Bank as the petitioner is trying to pay the reserve price fixed for secured asset. The borrowers have obtained an interim stay of SARFAESI proceedings against the other secured assets from the NCLT due to the operation of interim moratorium under Section 96 of the Insolvency and Bankruptcy Code and, therefore, the petitioner cannot be fastened with the liability of payment of the entire amount especially when he is willing to pay the reserved price fixed for the property.

3. Heard.

4. The petitioner is one of the three guarantors while two other guarantors are the borrowers. Notice was issued by the respondent-Bank under Section 13(2) of the SARFAESI Act, for a sum of Rs.21,29,05,316/- on 25.05.2023. The petitioner had approached this Court earlier by preferring CWP-31087-2024, wherein the order passed by the DRT had been challenged. The said petition was dismissed as withdrawn on 19.11.2024 with liberty to the petitioner to raise the points taken therein before the DRAT in accordance with law. The petitioner was also granted 15 days time to file appeal before the DRAT. Thereafter, the petitioner had preferred the Review Application (RA-CW-505-2023) seeking review of the order passed in CWP-31087-2024. The review application was dismissed by this Court on 03.12.2024 as there was no manifest error in the order warranting review of the same.

5. It is apt to notice that the petitioner despite having sought liberty from this Court to approach the DRAT has not approached the DRAT and once again knocked the doors of this Court, which is wholly unwarranted. The petitioner might be the guarantor but it is trite that the liability of the borrower

and the guarantor is co-extensive. Reference may be made to the judgement of the Supreme Court in the case of **Laxmi Pat Surana vs. Union Bank of India and another, 2021(8) SCC 481**. The petitioner under the garb of this petition is trying to stall the auction which is being conducted by the respondent-Bank in pursuance to the order passed under the SARFAESI Act. The possession is slated to be taken today itself and the petitioner has also approached this Court at the eleventh hour. A guarantor cannot be allowed to use the portals of this Court to stall the possession and the action which is being lawfully taken under the SARFAESI Act.

6. Consequently, we do not find any merit in this petition and the same stands dismissed. However, it would be open for the petitioner to participate in the auction in accordance with law.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

10.12.2024
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No