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

119 **CWP-2478-2025.**
Date of Decision: 29.01.2025.

Krishan Kumar @ Krishan Yadav ....Petitioner.

VERSUS

State of Haryana and others ....Respondents.

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**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Abhimanyu Singh, Advocate for the petitioner.

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ANUPINDER SINGH GREWAL, J. (Oral)

The petitioner has sought quashing of the order dated 02.01.2025 (Annexure P-6) passed by the Chief Judicial Magistrate, Rewari, under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act').

2. Learned counsel for the petitioner submits that the petitioner had entered into an agreement to sell on 22.12.2017 with the private respondents with respect to the property which is the subject matter of the proceedings under SARFAESI Act. The petitioner had preferred a civil suit in the year 2021 and an interim order staying the alienation of the property had been passed on 26.02.2021 (Annexure P-5). He, therefore, submits that as the petitioner is the *bonafide* purchaser, he ought to have been protected from the proceedings under the SARFAESI Act.

3. Heard.

4. The petitioner is stated to have entered into an agreement to sell with the private respondents in the year 2017. In response to the query of this Court, as to when the private respondents had mortgaged the property, learned counsel pleads ignorance and states that he is not aware of this fact. Be that as it may, respondent No.3-Bank is stated to have filed an application under Section 14 of the SARFAESI Act, which was allowed by the Chief Judicial Magistrate, on 23.12.2021. The possession had not been delivered for want of police assistance and respondent No.3-Bank had approached this Court by preferring CWP No.24832 of 2024 and this Court, vide order dated 12.12.2024 (Annexure P-1) had directed respondent No.1 therein to provide adequate police help enabling the Bank to take possession of the property in terms of the order dated 23.12.2021. The petitioner is stated to have entered into an agreement to sell in the year 2017 which has not seen the light of the day by way of execution of the sale deed and it was only in the year 2021 that the petitioner had filed a Civil Suit and also obtained an interim order in his favour on 26.02.2021 (Annexure P-5). Reliance can be placed on the judgement of the Supreme Court in the case of **Indian Overseas Bank vs. M.A.S. Subramanian & Ors., Civil Appeal Diary No.38616 of 2018 decided on 07.01.2025,** wherein it has been held that mere agreement to sale does not transfer title in favour of purchaser of agreement. Relevant extract of the said judgement is reproduced hereunder:-

> *"6. It is well settled that an agreement for sale in respect of an immovable property does not transfer title in favour of the purchaser under the agreement. In view of Section 54 of the Transfer of Property Act, 1882, an agreement for sale does not*

create any interest in the property. The only mode by which an immovable property worth more than Rs.100/- (Rupees one hundred) can be sold is by a sale deed duly registered in accordance with the Indian Registration Act, 1908."

5. The petitioner is stated to have filed a suit for specific performance in the year 2021, but respondent No.3-Bank had not been impleaded as a party in the said civil suit. It is trite that an order passed by a Civil Court, where the Bank has not been impleaded as a party, would not defeat the rights of the Bank to recover the dues under the SARFAESI Act.

6. Reference can be made to the judgment of the Supreme Court in the case of **Jagdish Singh versus Heeralal, 2014(1) SCC 479**. The relevant extract has been reproduced hereunder:-

"21. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the Court or tribunal but in accordance with the provisions of the Securitisation Act.

22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, subsection (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in subsection (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil Court shall have jurisdiction to entertain any suit or proceeding "in respect of any *matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under subsection (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub- section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.*

23. We are of the view that the Civil Court jurisdiction is completely barred, so far as the "measure" taken by a secured creditor under subsection (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the "measures" taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystalised, before creating security interest in respect of the secured assets. In such circumstances, we are of the view that the High Court was in error in holding that only civil Court has jurisdiction to examine as to whether the "measures" taken by the secured creditor under subsection (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High Court is set aside. There shall be no order as to costs."

7. The judgment in **Jagdish Singh**'s case (supra) has been followed by this Court in Allahabad Bank versus District Magistrate, Ludhiana and others(supra) wherein it was reiterated that the Civil Court would not have jurisdiction to negate the rights of a secured creditor or the enforcement of any right under the Securitization Act, 2002, qua the secured asset, in a civil suit instituted by the borrower or the guarantor or any third party. The relevant extract of the same is reproduced hereinbelow:-

> *"(15) Keeping in view the aforesaid principles, it is evident that the Civil Court would not have jurisdiction to negate of a secured creditor or its enforcement under the Act, 2002, qua the secured asset, in a civil suit or proceedings instituted by the borrower / guarantor / any third party. This is for the reason that such disputes would specifically fall within the ambit of jurisdiction of DRT under Section 17 of the Act, 2002. Moreover, it shall also be contrary to the very object and scheme of the Act, 2002 which provides a single forum for faster and efficient adjudication of such disputes. Only for a limited category of disputes as highlighted in para 51 of the judgment in Mardia Chemicals (supra), the jurisdiction of Civil Court involving challenge to an action of the secured creditor to enforce the security under the Act, 2002 would be maintainable. Consequently, if any person is aggrieved of such measure initiated by the secured creditor pursuant to an action taken under Section 13(4) of the Act, 2002, the appropriate remedy would be to invoke the jurisdiction of the Tribunal under Section 17 of the Act, 2002. We thus answer the first issue in Negative and hold that the Civil Court would not have jurisdiction to negate any right of the secured creditor under the Securitisation Act, 2002, qua the secured asset in a civil suit instituted by the borrower / guarantor / any third party qua the secured asset."*

8. Consequently, we do not find any manifest illegality in the impugned order warranting interference in writ jurisdiction. The petition stands dismissed. However, the petitioner would be at liberty to seek recourse to the alternative remedy in accordance with law.

9. It is clarified that we are not expressing any opinion on the merits of the matter. This order shall have no bearing on adjudication by the Tribunal under the Securitisation Act.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

29.01.2025
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No