



CWP-20423-2023 (O&M)

1

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

(107+259)

CWP-20423-2023 (O&M)

Date of Decision : 01.04.2025

Phoenix ARC Private Ltd.

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Manish Jain, Advocate
for the non-applicant/petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Rajesh Lamba, Advocate for respondent No.3.

Mr. Amit Prashar, Advocate
for the applicant/respondent No.4-Bal Kishan/Guarantor.

KULDEEP TIWARI, J.(Oral)**CM-4866-CWP-2025**

1. This is an application under Order 1 Rule 10 read with Section 151 CPC, preferred by one Bal Kishan, for his impleadment, in the array of respondents, as respondent No.4, for ensuring a complete and effective resolution of the dispute involved.
2. The applicant claims himself to be one of the guarantor, against whom the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), has been effected.
3. Notice in the application.
4. On the asking of the Court, Mr. Munish Jain, Advocate, who is



present in the Court, waives service and accepts notice on behalf of the non-applicant/petitioner. He has also filed a short reply dated 24.03.2025, to the instant application, and the same is ordered to be taken on record.

5. The Registry is directed to attach the same at an appropriate place in the case file.

6. Learned counsel for the non-applicant/petitioner, has opposed the application, and made a submission that he is not a necessary party to the dispute, as the grievance of the petitioner is only against the respondent/State, who despite the successful completion of proceedings under the SARFAESI Act, is not registering the sale deed.

7. On the other hand, learned counsel for the applicant, submits that he is a necessary party to the dispute, as the land which was auctioned, and is sought to be registered by a sale deed, is in fact, belongs to him, therefore, he is entitled for audience, before adjudication of the instant matter.

8. This Court has considered the submissions made by the learned counsel for the applicant as well as non-applicant/petitioner.

9. Considering the fact that no prejudice will be caused to the non-applicant/petitioner, in case, the instant application is allowed, and since the applicant is a guarantor, whose land is to be transferred by way of sale deed, this Court deems it apt, that he is a necessary party to the instant *lis*, and therefore, the instant application is **allowed**. The applicant-Bal Kishan, is ordered to be impleaded in the array of respondents, as respondent No.4.

10. The accompanying amended memo of parties, is ordered to be taken on the record. The Registry is directed to attach the same at appropriate place in the case file.

11. Application stands **disposed of** accordingly.



CWP-20423-2023 (O&M)

3

CM-4867-CWP-2025

1. Application for placing on record reply on behalf of the respondent No.4, is allowed, as prayed for, and the same is taken on record, subject to just exceptions.

2. Application stands **disposed of** accordingly.

CWP-20423-2023

1. The petitioner, an Asset Reconstruction Company, has approached this Court, on account of lackadaisical and indolent approach of respondent No.2, who is neither registering the sale certificate with respect to Plot No.181, measuring 278.50 sq. yards, nor refusing by passing any speaking order.

2. Succinctly, one M/s Keralait Fashion Jewellers Pvt. Ltd. had availed certain credit facility from South Indian Bank (Assignor Bank) in November, 2011, however, it failed to honour its obligations regarding repayment of loan instalment. Consequently, the loan account was declared as NPA way back on dated 30.09.2012. Thereupon, the proceedings under the SARFAESI Act, were initiated as notice under Section 13(2) of the SARFAESI Act, was issued on dated 15.11.2012. Since no payment was forthcoming the assignor bank took the symbolic possession of the mortgaged property on dated 12.02.2013. Thereafter, the said loan was assigned to the present petitioner being the asset reconstruction company vide assignment deed dated 17.03.2017. The petitioner-Bank in accordance with the provision of the SARFAESI Act, issued public notice through online E-auction of the property in question on dated 30.12.2022, and the E-auction was scheduled for 18.01.2023 and respondent no.3 was declared as highest bidder with a bid of Rs.1,27,20,000/-. A letter dated 18.01.2023, was issued to respondent no.3,



thereby informing him that his bid was accepted and further requested him to deposit 25% of the sale price by 19.01.2023. Respondent no.3 was required to deposit balance 75% within 15 days. On dated 18.03.2023, the entire balance payment was made by respondent no.3, to the petitioner, and pursuant thereto, sale certificate dated 20.03.2023 was issued by the petitioner under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 in favour of respondent no.3. The sale, which took place on 18.01.2023 has become final and respondent no.3 has now become absolute owner of the said property.

3. In view of the consensus between the petitioner and respondent no.3 the date for registration was fixed on 28.03.2023, however, the Sub Registrar refused to accept the sale deed for registration and no valid reason was assigned for such refusal.

4. Learned counsel for the petitioner submits that in view of the provision of Section 71 of the Registration Act, the Sub Registrar is duty bound to either, register the document, or decline and refuse to register the documents by recording his reasons for such order in his Book No.2, and thereupon, supply a copy of the refusal order. Counsel also drawn the attention of this Court towards Section 35 (3) of the Registration Act, 1908 to submit that the Act specifically provides the reasons for which a refusal upon which Sub Registrar can deny registration of documents. For the relevant extract the provisions of Sections 71 and 35 are reproduced herein under:-

“35. Procedure on admission and denial of execution respectively.

(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or



(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in purpose his office.

(3)(a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

71. Reasons for refusal to register to be recorded.

(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words registration refused on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a



document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

5. On the other hand, learned counsel for respondent no.3 submits that despite making payment to the petitioner, he was unable to get his sale deed registered. He also submits that there is no legal impediment upon which the Sub Registrar to register the documents.

6. The above submissions were vociferously opposed by newly added respondent no.4. He submits that he has not availed any loan facility from the bank rather he stood only guarantor and the petitioner instead of taking action against the original borrower, have initiated recovery proceedings against him. Counsel further submits that the petitioner ought to have made all attempts to satisfy their loan amount by taking action against the original borrower instead of touching the property of guarantor. In addition to it the petitioner financial institution by changing the property ID is trying to get his sale deed registered. Therefore, the Sub Registrar has rightly refused to entertain the sale deed and for that he has also filed a private criminal complaint which is pending before the learned Illaqa Magistrate.

7. This Court has considered the submissions made by learned counsel for the parties concerned and have gone through the entire case file.

8. So far the objections of respondent no.4 are concerned, the same are highly misplaced. Respondent no.4, has already approached the learned D.R.T.-II, Chandigarh by filing SA/90/2023 in IA Case No/603/2023 titled as Shri Bhudutt Sharma son of Late Shri Khillu Ram Sharma Vs. Phoenix ARC Private Limited, to challenge the action of the petitioner-financial institution, where through the property belongs to him, has been put to auction, however, he remained unsuccessful as the same was dismissed vide order dated

**CWP-20423-2023 (O&M)****7**

02.05.2023, and it is not under dispute that the order (supra) has attained finality.

9. In view of the above specific facts, this Court does not find any plausible and reasonable objection on the part of respondent no.4, for restraining the petitioner to seek a Mandamus upon the Sub Registrar for taking final decision on the sale deed submitted before him. Therefore, at this stage, this Court deems it apt to pass a Mandamus upon the Sub Registrar concerned, that in case the petitioner submits its sale deed within a period of 15 days from today for its registration, the latter shall after taking into consideration all the facts and circumstances, will take apt decision in accordance with the Registration Act, 1908, and in case the Sub Registrar comes to the conclusion that the document cannot be registered, he shall pass a speaking order. The above exercise shall be carried out within three weeks from the date of submission of the documents by the petitioner.

10. Petition is **disposed of** accordingly.

(KULDEEP TIWARI)
JUDGE

April 01, 2025
lucky/Manpreet

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