

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

C.W.P. No. 18201 of 2007

DATE OF DECISION : 31.03.2008

Balbir Singh

.... PETITIONER

Versus

Bank of Baroda, Tagore Nagar Branch, Ludhiana and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE RAKESH KUMAR GARG

Present: Mr. G.S. Jaswal, Advocate,
for the petitioner.

Mr. C.S. Pasricha, Advocate,
for respondent No.1.

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SATISH KUMAR MITTAL, J.

Written statement on behalf of respondent No.1 bank has been filed in Court today. The same is taken on record.

We have heard the counsel for the parties.

In the present case, respondents No.2 and 3 had taken a loan from the respondent No.1 bank. They mortgaged the property measuring 150 square yard, bearing No. B-I-677/10B comprised in Khata No. 228/245, Khasra No. 88, as per jamabandi for the year 1999-2000, situated in Upkar Nagar, Gali No.5, Ludhiana (hereinafter referred to as 'the property in question'), to secure the payment of the said loan. Subsequently,

respondents No.2 and 3 committed default in payment of the loan. Consequently, their loan account was classified as NPA. At that time, in order to clear the outstanding amount, on 11.5.2004, respondent No.2 entered into an agreement of sale with the petitioner to sell the property in question for a sum of Rs. 14 lacs. As per the agreement, an amount of Rs. 7,70,000/- was paid to respondent No.2 by the petitioner and an amount of Rs. 6,00,000/- was to be paid to the bank, whereas the remaining amount of Rs. 30,000/- was to be paid before the Sub Registrar. When the petitioner went to the office of Sub Registrar, respondent No.2 failed to turn up to execute the sale deed. Subsequently, the petitioner filed a suit for specific performance of the agreement. The said suit is still pending, wherein an interim order has been passed, restraining respondent No.2 from alienating the property in question till the disposal of the suit and the petitioner was permitted to pay the loan amount as per rules within one month, failing which the order would be deemed to be un-enforceable. Admittedly, the loan amount was not paid within the said stipulated time. Thereafter, respondent bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act') and issued notice under Section 13 (2), and subsequently under Section 13 (4) of the Act for possession and sale, showing the outstanding amount against respondent No.2 as Rs. 6.95,450/-. The said notices have been challenged in the present writ petition.

In the written statement, the respondent bank has taken various preliminary objections, including that the instant petition is not maintainable, as the petitioner has no locus standi to challenge the action taken by the respondent bank under the Act, because there is no contract between petitioner and the respondent bank. It has been further stated that when the petitioner had entered into the agreement of sale with respondent No.2, he was fully aware of the fact that the property in question was mortgaged with respondent bank. In spite of that, he had entered into an agreement. His suit for specific performance in respect of that agreement is already pending before the court. It has been stated that the petitioner has not complied with the condition imposed by the civil court as he did not pay the amount of the bank within one month. Due to default of the petitioner, the interim injunction had lapsed as was stipulated in the said order itself, and thereafter, the bank had proceeded further for sale of the property in question under the provisions of the Act.

After considering the contentions raised by the learned counsel for the parties, we are of the opinion that in the aforesaid facts and circumstances, the petitioner has no locus standi to challenge the action of the respondent bank for initiating proceedings under the Act. There was no contract between petitioner and the respondent bank. The petitioner has entered into an agreement of sale with respondent No.2 knowingly that the property in question was already mortgaged with the bank to secure the loan and the loan account of respondent No.2 has already been classified as

NPA. In spite of these facts, the petitioner entered into an agreement of sale, and for the said agreement, suit for specific performance filed by the petitioner is still pending. The interim direction given by the civil court, whereby respondent No.2 was restrained from alienating the property in question and the petitioner was directed to clear the loan amount within a period of one month, became in-enforceable, because the petitioner did not comply with the said order by making payment to the respondent bank within one month.

The contention of the petitioner is that before the conducting of auction, he had offered an amount of Rs. 7 lacs, but the respondent bank did not accept the same. The respondent bank was not bound to accept the said amount, when the outstanding amount was much more. Therefore, in our opinion, the respondent bank has committed no illegality while taking the steps under the Act. So far as the petitioner is concerned, his suit for specific performance is already pending and he has no locus standi to challenge the action of the respondent bank for initiating proceedings under the Act.

Dismissed.

**(SATISH KUMAR MITTAL)
JUDGE**

March 31, 2008
ndj

**(RAKESH KUMAR GARG)
JUDGE**