

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CMPMO No. 564 of 2017
Decided on: 29.12.2017

Suresh Stone Crusher & Ors.	...Petitioners
Versus	
The Registrar, DRT-I, Chandigarh. & Anr.	...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? No.

For the petitioners: Mr. Rajiv Rai, Advocate.

For the respondents: Mr. Raman Prashar, Advocate, for respondent No. 2, with Mr. Ashwani K. Sharma, Manager, Punjab & Sind Bank.

Justice Tarlok Singh Chauhan, Judge (Oral)

This petition under Article 227 of the Constitution takes exception to the orders passed by the learned Debt Recovery Tribunal dated 31.08.2017 and 13.12.2017.

2. It is not in dispute that the petitioner has borrowed loan from respondent No. 2 and proceedings regarding recovery of such loan are pending before the Debt Recovery Tribunal-I, Chandigarh by way of O.A. No. 605 of 2017. It appears that respondent No. 2 after learning that an award of compensation had been passed in favour of the petitioner by the Collector Land Acquisition, NHAI (Special Land Acquisition Unit), Pandoh, District Mandi, moved an application for attachment of the award under Order 38 Rule 5 of CPC for attaching the acquisition proceeds.

3. Learned Tribunal vide its order dated 31.08.2017 allowed the application and directed the Collector Land Acquisition, NHAI (Special Land Acquisition Unit), Pandoh, District Mandi (H.P.) to remit the acquisition proceeds of the land directly to the bank account of respondent No.2.

4. It appears that thereafter the petitioner moved an application for recalling of said order but there was a delay of 13 days in filing the said application. Therefore, the Tribunal which is not vested with powers to condone the delay, rejected the application as barred by 13 days vide its order dated 13.12.2017.

5. It is in this background, the present petition has been filed on the ground that the learned Tribunal has failed to consider and appreciate that the property of the petitioner already stands mortgaged with bank, therefore, the bank should first proceed to recover the amount out of the proceeds of the mortgaged property.

6. I am afraid that such contention cannot be countenanced for the simple reason that the petitioners herein have not denied that they have taken a loan from respondent No. 2. The only dispute, if any, pertains to the actual amount which is due and payable to respondent No. 2.

7. In such circumstances, once the debt is not disputed rather acknowledged, it is not for the debtor to claim that the

creditor bank to proceed against certain other terms of secured assets initially and then to proceed to attach the award passed in favour of the petitioner. The law is well settled that the debtor cannot dictate to the creditor as to the manner in which the debt is to be recovered. It is for the secured creditor to choose the best and easily realizable mode of recovery of debt as permitted under law. (Refer: **The Bank of Bihar Ltd. vs. Dr. Damodar Prasad and Anr. AIR 1969 SC 297, State Bank of India vs. M/s Indexport Registered and others (1992) 3 SCC 159 and Industrial Investment Bank of India Ltd. vs. Biswanath Jhunjhunwala (2009) 9 SCC 478**).

8. The creditor bank which deals with public money owes a duty and responsibility to the public at large to see that its debts are sufficiently secured and the same are realized as expeditiously as possible. In case of violation of terms of the facilities, all legally permissible mode of recovery are available to the creditor. There is no equity to contend otherwise because the principle of equity is not a one sided formula.

9. It is not in dispute that the recovery suit so filed by respondent No. 2 is for recovery of Rs.32,52,441/- whereas the entire award amount is only less than Rs.16,00,000/- i.e. nearly half of the amount which according to respondent No. 2 is due

towards it. In such circumstances, I find no grounds to have been made out for quashing either of the orders assailed herein.

10. Accordingly, there is no merit in this petition and the same is dismissed.

**(Tarlok Singh Chauhan),
Judge.**

December 29, 2017

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