(2011) 08 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2821 of 2011 (O and M)

Raj Pal APPELLANT

Vs

PNB Housing Finance Limited and Others RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2011) 164 PLR 392

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition is to quash the auction of the residential house, which was scheduled to take place on 07.02.2011, brought at the instance of the 1st respondent-Bank under the provisions of the SARFAESI Act. He had also sought for permission for locating of better buyer for selling the house. This prayer was made after two rounds of earlier litigation. At a previous time in the year 2010, when the notice had been issued under the SARFAESI Act, warning him of action of possession and sale, the petitioner had preferred a SA No. 26 of 2010 before the Debts Recovery Tribunal (DRT), Chandigarh. The DRT negotiated for the benefit of both parties a schedule of repayment, providing to the petitioner three installments to clear the dues commencing from 31.05.2010 to 31.07.2010. The petitioner did not pay any amount although he had agreed for such a course.

2. The petitioner wanted to resile from the undertaking given before the DRT on the basis of which, the order was passed on 30.04.2010 by contending that he had not given any such authority to his counsel to make the payment within the specified time. He simultaneously approached this Court in CWP No. 11089 of 2010 seeking for quashing of the proceedings taken under the SARFAESI Act. This Court took notice of the application said to have been filed for recalling of

the order passed by the DRT and directed the DRT to dispose of the application moved by the petitioner for the modification of the order dated 30.04.2010.

3. The DRT maintained its earlier order and when the money had not been paid, the Bank issued a possession-cum-sale notice setting the date of possession and the sale took place on 07.02.2011, the up-set price was fixed at Rs. 8.50 lakhs. He had moved this Court in the above said writ petition on 15.02.2011. It appears that the property was sold for Rs. 10.65 lakhs against the up-set price fixed at Rs. 8.50 lakhs and confirmed on 09.02.2011. 20% of the amount had been deposited and the counsel for the Bank reports that the balance amount had also been paid within the stipulated time. The petitioner filed the writ petition on 15.02.2011 representing that the property was worth Rs. 30 lakhs and that he would bring a better buyer at the next hearing. The Court had directed notice to be issued for 06.07.2011. At the next hearing on 06.07.2011, the petitioner brought no willing buyer before the Court but the counsel represented that he had entered into an agreement with the third party on 10.09.2010 for an offer of about Rs. 13 lakhs for the property.

4. The petitioner had arrayed the Bank of Maharashtra and Allahabad Bank as respondents, since they also held claims relating to the property. But they were later given up by the petitioner on the ground that their claims had been settled. The petitioner argues through his counsel that the property is worth Rs. 13 lakhs and it could not have been sold at Rs. 10.65 lakhs. He relies on a judgment of a Division Bench in Bhupinder Singh v. State Bank of Patiala, The Mall, Patiala,1 2008 (3) LH (P&H) 2556, that a sale under the SARFAESI Act will be vitiated if the property had been grossly undervalued. The Bench held that, where the secured assets are sold at throwaway prices, the same would be vitiated. The Court also found that the conduct of the Bank revealed the intention to defraud and act illegally. I do not know how this judgment applies to this case where no proof is offered before the that the property was worth more than Rs. 10.65 lakhs, the price at which the property was sold. A mere oral contention that there was an agreement with the third party for Rs. 13 lakhs and above can hardly be taken as any objective proof that the property was grossly undervalued. Again, undervaluation of the property itself could never be a ground for setting aside a sale. Prejudice must be surely shown as to how the valuation was made without following due procedure. There is no explanation given as to why the petitioner was not able to file an objection before the Recovery Officer that the property was worth more. In any event, if the property is sold on 10.02.2011, the petitioner cannot have the sale set aside unless he establishes fraud in the conduct of sale or a deliberate misstatement in the value by not following the prescribed procedure for the assessment of value. The counsel relies on the valuation as the Bank itself had taken from their consultants which showed that it was worth Rs. 12.22 lakhs. It must be noticed in the same report which the petitioner relies on, the Valuer had stated that the realizable value of the property through the distress or a forced sale could be only Rs. 8.50 lakhs. This is obvious, since a Court sale cannot be expected to fetch the same price as what

two parties can willingly negotiate and strike out a mutually beneficial bargain. It has been held in several decisions that, it is a notorious fact that the Court''s sale do not fetch the best bargain and that alone shall not be the basis for setting aside such sales.

5. The writ petition before this Court itself after the sale had taken place is a frivolous attempt to further delay the process. There is a provision for an appeal u/s 17 of the SARFAESI Act against even the conduct of sale as held by the Hon''ble Supreme Court in Authorized Officer, Indian Overseas Bank and Another Vs. Ashok Saw Mill, . If a sale had been already confirmed, no relief could be granted by a Writ Court that the sale shall be set aside, unless fraud is established in the conduct of sale.

6. The writ petition is frivolous and vexatious and is dismissed.

