(2022) 01 UK CK 0024

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2915 Of 2021

Rakhi APPELLANT

Vs

Punjab National Bank & Others RESPONDENT

Date of Decision : 03-01-2022

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002, — Section 13(4)

Citation : (2022) 01 UK CK 0024

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Piyush Garg, Nikhil Singhal, V.K. Kohli, Kanti Ram Sharma

Final Decision : Disposed Of

Judgement

Manoj Kumar Tiwari, J

1. Respondent no. 3 executed a registered agreement to sell in favour of petitioner in respect of an immovable property on 08.09.2017, however

before that, respondent no. 3 had mortgaged the said property in favour of Punjab National Bank for obtaining a loan. Due to default by respondent

no. 3 in repayment of loan, the lending bank has invoked its power under SARFAESI Act, 2002 in respect of the said property by taking its symbolic

possession.

2. In this writ petition, petitioner has sought following reliefs:-

â??i. To issue a writ, order or direction in the nature of certiorari for quashing the sale notice dated 07.12.2021 issued by respondents so far as the

same relates to property bearing plot no. 220 (khasra no.880) Poorvi Nath Nagar, Jwalapur, District Haridwar (Annexure No. 9).

ii. To issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 and 2 to not to issue sale certificate and to not to

execute sale deed in respect of the property in question in favour of any person in furtherance of the aforesaid notice.

iii. To issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 and 2 to permit the petitioner to deposit the entire

loan outstanding amount in respect of the loan secured by mortgaging the aforesaid property as secured assets and to thereupon release the title deed

of the same in favour of the petitioner.â??

3. Learned Senior Advocate for respondent nos. 1 & 2 submits that the secured asset has been auctioned for a sum of Rs. 58.07 Lakhs.

4. Learned counsel for the petitioner submits that sale certificate has not been issued in favour of auction purchaser of the secured asset and the sale

has not been confirmed. He submits that petitioner had filed a suit for specific performance against respondent no. 3, which was decreed vide

judgment dated 09.12.2019 and now the decree has been put to execution and the lending bank has been impleaded as party to the execution

proceedings. Learned counsel for the petitioner further submits that petitioner is ready & willing to pay whatever amount is outstanding in the loan

account of respondent no. 3 and such deposit would give a valid discharge under Section 13 (4) of SARFAESI Act. Learned Senior Advocate for

respondent nos. 1 & 2, however, disputes this submission and contends that petitioner is not a borrower, therefore, provision contained in Section 13

(4) of SARFAESI Act do not apply to her case.

5. Having regard to the willingness expressed by petitioner to pay the entire loan amount outstanding against respondent no. 3, the writ petition is

disposed of with liberty to petitioner to approach the Competent Authority in Punjab National Bank by making a representation. If petitioner makes

such representation within ten days from today and also deposits the entire outstanding amount with her representation, Competent Authority in the

Bank shall consider the representation and take appropriate decision, in accordance with law, within four weeksâ?? from the date of receipt of

representation alongwith certified copy of this order.

6. For a period of five weeks or till decision is taken on petitionerâ??s representation, whichever is earlier, sale certificate shall not be issued in

favour of auction purchaser of the secured asset.