
(2018) 11 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 27433 Of 2018

Rita Vashishta

APPELLANT

Vs

ICICI Bank & ors.

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security of Interest Act, 2002 — Section 13(2), 13(4)
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 11 P&H CK 0136

Hon'ble Judges : Ajay Kumar Mittal, J; Manjari Nehru Kaul, J

Bench : Division Bench

Advocate : Shailendra Sharma, Rohit Suri, Deepak Raghwa, Saurabh Bhardwa

Final Decision : Allowed

Judgement

Manjari Nehru Kaul, J.

1. This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the

order dated 18.09.2018 (Annexure P-15) whereby Debt Recovery Tribunal, Chandigarh (in short 'Tribunal') â?" respondent No.4 dismissed in default

SA No.72 of 2015 filed by the petitioner.

2. Brief facts of the case as narrated in the petition are that respondent No.2 was the owner of the House/Flat No.2932 Sector 42-C, Chandigarh,

who wanted to sell the said premises and the petitioner was interested to purchase the same. On enquiry, respondent No.2 informed the petitioner that

the premises was free from all encumbrances. It was only thereafter, the petitioner agreed to purchase the said flat for a sale consideration of

Rs.69,25,000/-. Till 14.12.2009, respondent No.2 received Rs.53,25,000/- from

the petitioner, which is evident from the receipt (Annexure P-1). For the remaining amount, the petitioner applied for a loan of Rs.20 lakhs from respondent No.3 -bank. Pursuant to the application of the petitioner, a loan of Rs.16 lakhs was sanctioned to the petitioner by respondent No.3-bank, as is clear from the cheque dated 22.12.2009 (Annexure P-2). Before the execution of the actual sale deed, Chandigarh Housing Board issued a No Objection Certificate. Thereafter on 23.12.2009, respondent No.2 executed a sale deed in favour of the petitioner and handed over the possession of the flat to the petitioner. However, on the asking of the respondent-bank, respondent No.2 could not produce the original documents of the said flat and therefore, the cheque amounting to Rs.16 lakhs was not handed over to respondent No.2. It would be pertinent to mention that the petitioner had paid a sum of Rs.17,37,022/- to the respondent-bank upto 30.08.2018, which is evident from the certificate dated 29.08.2018 (Annexure P-5) issued by the bank. In February 2010, respondent No.2 filed a suit against the petitioner for injunction in which notice was issued and the petitioner filed written statement. The trial Court vide order dated 04.06.2012 (Annexure P-6) dismissed the said suit in default. A notice dated 31.01.2011 (Annexure P-7) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security of Interest Act, 2002 (hereinafter referred as 'the Act') was issued by respondent No.1 addressed to respondent No.2 and his wife. Petitioner immediately through her counsel sent a letter dated 18.05.2011 (Annexure P-8) to respondent No.1. Thereafter, again respondent No.1 sent a letter dated 25.05.2011 (Annexure P-9) to the petitioner levelling allegations to which petitioner through her counsel replied to respondent No.1 vide letter dated 31.05.2011 (Annexure P-10). After dismissal of injunction suit, respondent No.2 again filed a suit against the petitioner in Civil Court, Chandigarh, which was dismissed vide judgment and decree dated 31.03.2015 (Annexure P-11). However, no action was taken by respondent No.1 on the notice issued under Section 13(2) of the Act. On 07.04.2015, respondent No.1 pasted a notice (Annexure P-12) under Section 13(4) of the Act outside the house of the petitioner issued for symbolic possession.

3. Aggrieved by the said notices, the petitioner filed SA No.72 of 2015 on 17.04.2015 (Annexure P-13) before the Tribunal. Upon notice, respondents

No.1 and 3 appeared and filed their respective replies, however, respondent No.2 was proceeded ex parte. The petitioner also filed replication. The counsel for the petitioner did not appear before the Tribunal on 26.07.2017 and the said SA was dismissed for non-appearance. Thereafter, petitioner moved an application dated 27.07.2017 (Annexure P-14) for restoration of the said case. The Tribunal vide order dated 18.09.2018 (Annexure P-15) dismissed the application for restoration of the SA. Hence the present writ petition.

4. Learned counsel for the petitioner submitted that the Tribunal has wrongly concluded that on the date of hearing, no reasons were assigned in the application for non-appearance whereas in the application it was stated that when the case was dismissed in default for non-appearance at the time of first call, a request was made immediately thereafter. However, the Tribunal directed the counsel to file an appropriate application, which was filed on the same day by giving reasons for non-appearance.

5. Heard learned counsel for the parties and perused the paper book with their assistance.

6. The petitioner claimed that an application for setting aside the order dated 26.07.2017 dismissing the SA for default was filed on 27.07.2017 on account of the fact that on 26.07.2017 though a request was made to the Tribunal for recalling the order dismissing the SA in default but it was not recalled as the order had been pronounced. The non-appearance of the petitioner when the case was called for hearing on 26.07.2017 cannot be termed to be intentional. Therefore, keeping in view the facts and circumstances of the case, the present petition is allowed and the impugned order dated 18.09.2018 (Annexure P-15) passed by the Tribunal is set aside. The parties are directed to appear before the Tribunal on 21.12.2018. The Tribunal shall decide the SA expeditiously after affording hearing to both the sides.