

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6843 OF 2023
(ARISING FROM SLP (C) NO.16771/2018)

SURINDER PAL SINGH

APPELLANT(S)

VERSUS

VIJAYA BANK & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

2. The appellant has assailed the order dated 24.08.2017 passed by the High Court of Punjab and Haryana at Chandigarh, whereby the High Court dismissed the Writ Petition filed by the appellant praying for quashing of an order dated 10.04.2015 passed by the Debt Recovery Appellate Tribunal by which the Tribunal had allowed the appeal of the Borrower/Respondent Nos. 2 and 3 and permitted redemption of mortgage property. The appellant had also prayed for handing over of vacant possession of the plot in question.

3. The appellant was the auction purchaser in proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, 'the

SARFAESI Act') of the mortgaged property belonging to Borrowers/Respondent Nos. 2 and 3, which was secured with the Bank/Respondent No.1.

4. The appellant had deposited the entire auction money of Rs.70,05,000/- on 31.03.2010, whereafter the sale was confirmed on 02.04.2010 and the sale certificate was issued on 08.04.2010. However, in the meantime on 05.05.2010, the Borrowers/Respondent Nos.2 and 3 deposited the entire amount outstanding with the Bank/Respondent No.1 and thereafter applied for redemption.

5. The admitted fact further is that the sale certificate issued was not registered and possession of the auction property was not handed over to the appellant and the same remained with the Borrowers/Respondent Nos. 2 and 3.

6. The Bank has already issued a *No Objection Certificate* to the Borrowers/Respondent Nos. 2 and 3 against the loan account.

7. The auction money has remained with the Bank and, according to the learned counsel for the Bank, the same was invested in a fixed deposit and as on 02.07.2023, the said amount, with accrued interest, is now valued at Rs.1,25,99,674/-.

8. In the meantime, further interest has also accrued on the said amount.

9. The Bank/Respondent No.1 having received the entire outstanding loan amount from the borrowers would, therefore, not have any claim over the auction money deposited by the appellant along with the accrued interest.

10. Both, learned counsel for the appellant as also the respondent Nos. 2 and 3, have placed reliance upon a judgment of this Court dated 21.09.2023 passed in Civil Appeal Nos.5542-5543 of 2023, titled '*Celir LLP vs. Bafna Motors (Mumbai) Pvt. Ltd. & Ors*'. (Neutral Citation 2023INSC838).

11. Learned counsel for the appellant has placed reliance upon the conclusion that is recorded in paragraph 105(ii), whereas, learned counsel for the Borrowers/Respondent Nos.2 and 3 has placed reliance upon paragraph 105(iii), which read as follows :

"(ii) the confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invest the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI.

(iii) In accordance with the unamended Section 13(8) of the SARFAESI Act, the right

of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser."

12. The net result is that the right of the Borrower to redeem would be available till the sale certificate is registered and the possession is handed over after which the Borrower will not have a right for redemption under the unamended provision of Section 13 (8) of the SARFAESI Act.

13. Considering the above facts and circumstances of the case, we are not inclined to interfere with the impugned judgment and order passed by the High Court dismissing the Writ Petition. However, in the interest of justice and to do equity between the parties, we are of the

view that the borrowers must pay a reasonable amount to the appellant.

14. In view of the above, we dispose of this appeal with following directions:

- (1) The Bank/Respondent No.1 will pay the entire amount of the auction money, along with accrued interest upto date, within two weeks from today without making any deductions therefrom except TDS. No other deduction of any kind would be available to the Bank.
- (2) The Borrowers/Respondent Nos. 2 and 3 will pay an amount of Rs.7,00,500/- to the appellant within four weeks. In case of default, the amount payable would carry an interest of 18% per annum.

....., J.
(VIKRAM NATH)

....., J.
(RAJESH BINDAL)

NEW DELHI
OCTOBER 17, 2023

ITEM NO.40

COURT NO.12

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 16771/2018

(Arising out of impugned final judgment and order dated 24-08-2017 in CWP No. 5565/2017 passed by the High Court Of Punjab & Haryana At Chandigarh)

SURINDER PAL SINGH

Petitioner(s)

VERSUS

VIJAYA BANK

Respondent(s)

Date : 17-10-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH
HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s) Mr. Rajiv Kataria, Adv.
Ms. Debjani Das Purkayastha, Adv.
M/S. Delhi Law Chambers, AOR

For Respondent(s) Mr. Randhir Singh Badhran, Adv.
Mr. Somvir Singh Deswal, Adv.
Ms. Alisha Bardhan, Adv.
Mr. P. D. Sharma, AOR

Mr. I.P. Singh, Adv.
Mr. Dipinder Singh, Adv.
Mr. Sunklan Porwal, Adv.
Ms. Preeti Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed
order.

Pending application(s), if any, shall stand
disposed of.

(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS

(RANJANA SHAILEY)
COURT MASTER

(Signed order is placed on the file.)