

(2012) 09 P&H CK 0380

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 16195 of 2011 (O and M)

Amrik Singh

APPELLANT

Vs

ICICI Home Loan and Finance
Limited and othersRESPONDENT

Date of Decision: Sept. 24, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Securities and Exchange Board of India (Amendment) Act, 2002 - Section 13(2)

Citation: (2012) 168 PLR 355**Hon'ble Judges:** Gurmeet Singh Sandhawalia, J; Ajay Kumar Mittal, J**Bench:** Division Bench**Advocate:** S.K. Daaria for Mr. R.V.S. Chugh, for the Appellant; R.M. Suri and Mr. Sandeep Suri for Respondent Nos. 1 to 3 and Mr. Nitin Grover for Respondent Nos. 4 and 5, for the Respondent

Judgement

Ajay Kumar Mittal, J.

Prayer in this petition filed under Articles 226/227 of the Constitution of India is for restraining the respondents from taking possession of the house of the petitioner on which home loan was taken by his deceased wife, by initiating proceedings under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act"). It has also been prayed to direct the respondents to settle the home loan account by getting overdue payment, if any due towards the wife of the petitioner without charging any penal interest. Briefly, the facts as narrated in the petition may be noticed. The wife of the petitioner Late Smt. Charanjit Kaur had taken home loan from respondent Nos. 1 to 3 on 14.2.2003 in respect of House No. 732, Dogra Basi, VPO Budhlada, Tehsil Budhlada, District Mansa. An agreement in this regard was entered into by her with respondent Nos. 1 to 3 for an amount of Rs. 8 lacs and order for cumulative disbursement of amount of Rs. 6,80,000/- was passed. The said house was

mortgaged with respondent Nos. 1 to 3. The respondents had also charged for home loan insurance cover from the wife of the petitioner and assured that in case of critical illness or any unforeseen event, her family will be protected from the burden of paying EMIs for the outstanding home loan. The outstanding amount of home loan was to be automatically paid for by the home insurance cover. The wife of the petitioner paid the installments regularly from 5.6.2003 till her death on 1.10.2006. After her death, the petitioner-husband also continued to pay the installments till 24.1.2008. Thereafter, the collection agent of respondent Nos. 1 to 3 told the petitioner that he was not required to pay the future installments of the outstanding balance amount as the same would be adjusted from home loan insurance cover. The petitioner thereafter neither deposited any installment nor any collection agent came to collect the amount. In the month of March 2009, when the petitioner visited the bank for release of the documents of the house, he was intimated that the loan amount was over due towards the loan account of his deceased wife. The petitioner again deposited some amount by way of cheque till 28.12.2010. The petitioner also sent cheques for the months of January 2011 to May 2011. In the month of July 2011, the petitioner was intimated by respondent No. 2 that the loan account of his wife had been sold by respondent Nos. 1 to 3 to respondent Nos. 4 and 5 i.e. Asset Reconstruction Company India limited. The petitioner visited the office of respondent No. 5 and on payment of Rs. 960/-, he was supplied the statement of loan account. He was shocked to see the charges and penalties worth thousands of rupees levied by respondent Nos. 1 to 3 by alleging the same to be overdue charges. Aggrieved thereby, the petitioner is before this Court through the present writ petition.

2. In the written statement filed by respondent Nos. 4 and 5, it has been stated that at the time of filing of the writ petition, no action was being taken for recovery of the amount from the petitioner. It was only on 26.11.2011 that a notice u/s 13(2) of the SARFAESI Act was issued, a copy of which has been appended by the petitioner as Annexure P. 10 vide applications being CM Nos. 126 and 127 of 2012. The petitioner has not filed any reply to the said notice.

3. We have heard learned counsel for the parties and perused the record. As has been stated by the counsel for the respondents, no action had been initiated at the time when the writ petition was filed though the petitioner had defaulted in making the repayment of the loan. Respondent No. 5 issued notice u/s 13(2) of the SARFAESI Act on 26.11.2011 (Annexure P.10). However, the petitioner has not filed any reply to the said notice. It shall be open to the petitioner to file reply to the notice Annexure P. 10 in accordance with law. With these observations, the writ petition is disposed of.