



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-18624-2022 (O&M)
Reserved on: 22.01.2026
Pronounced on: 01.04.2026
Uploaded on :01.04.2026

*Whether only operative part of the judgment is
pronounced or the full Judgment is pronounced:*

Full Judgment

ANIL DHAWAN

...PETITIONER

VS.

BANK OF INDIA, THROUGH ITS AUTHORIZED OFFICER

... RESPONDENT

**CORAM:- HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY**

Present:- Mr. Aalok Jagga, Advocate (Arguing Counsel) and
Mr. Harkirat S. Jagdev, Advocate, for the petitioner.

Mr. Rajiv Joshi, Advocate,
for the respondent/Bank.

SANJIV BERRY, J.

1. The petitioner herein has preferred the instant writ petition under Article 226/227 of the Constitution of India seeking direction to the respondent-Bank to deliver land and building including plant and machinery placed in Khasra No.20/1 and 22/1/2, which were shown by the officials of the Bank on the date of inspection of the property, i.e. on 26.05.2022 and which was approved in pursuant to the sale notice dated 19.04.2022 with date of auction as 30.05.2022 (Annexure P-1). Alternatively seeking refund of earnest money being 25% of the bid amount deposited by the petitioner with 15% interest per annum.



2. In *nut shell*, the contention of the petitioner has been that he has been successful bidder qua the property mentioned in Lot No.1 and Lot No.2 auctioned by the respondent Bank in the auction held on 30.05.2022 in pursuance to the auction notice dated 19.04.2022 (Annexure P-1). Prior to the auction, the petitioner inspected the properties on 26.05.2022 and the Bank had shown the area intended to be sold through the said auction to the petitioner which depicted the land and building, plant and machinery of rice sheller and flour mill, and that the entire complex was having a single boundary wall. Based on the same, the petitioner had participated in the said auction, bidding for properties mentioned in serial No.5 and 6 of the auction notice dated 19.04.2022 (Annexure P-1).

2.1 Being the successful bidder, the respondent Bank issued letter of acceptance of the bid dated 30.05.2022 (Annexure P-2). Petitioner had deposited 25% of the bid amount.

2.2 The petitioner was informed by the borrower-defaulter that some of the property which was not mortgaged to the Bank by him had also been shown by the Bank during inspection and in fact the plant and machinery of the rice sheller, installed in Khasra No. 20/1, had never been mortgaged to the Bank. It was further informed that the property had not been demarcated or partitioned.

2.3 The petitioner approached the revenue patwari and got the sketch map prepared, copy of which is Annexure P-3. It was revealed to the petitioner that hypothecated machinery of rice sheller is installed in Khasra No. 20/1 and 22/1/2 which is not part of land mortgaged with the Bank, however the Bank during inspection had shown it to be part and parcel of the mortgaged property. That the mortgaged and unmortgaged land is not demarcated by the



Bank and is having a common boundary wall. The Flour mill shown during inspection on 26.05.2022 as part of auction notice was not present in the mortgaged property. The petitioner had given bid pursuant to the auction notice on the premise that there existed a flour mill too.

2.4 On coming to know about the aforesaid irregularities in the auction, petitioner informed the Bank seeking extension of time under Rule 9(4) of the Security Interest (Enforcement rules) 2002, and the time to deposit was extended till 23.08.2022. In the meanwhile the petitioner on 11.08.2022 sought clarification regarding the property in question, vide letter dated 11.08.2022 (Annexure P-6). The petitioner had sufficient funds to deposit the bid amount as is evident from the statement of account (Annexure P-7). But on account of title of the properties intended to be sold by the Bank being not proper, petitioner requested the Bank to clarify the position.

2.5 As per the petitioner, it is the duty of the Bank- secured creditor to disclose the correct information to the prospective buyers about the property which it intends to sell as per Rule 8(7) of the Security Interest (Enforcement rules) 2002. The petitioner is ready to purchase the entire unit as shown during the inspection; however, on account of improper description and the absence of flour mill, plant and machinery in the mortgaged portion of land which is undivided and not partitioned from the property mortgaged under single boundary wall. In the alternative petitioner seeks refund of the earnest money deposited along with interest. Hence the present petition.

3. Upon notice of motion, learned counsel for the respondent appeared and contested the petition.

4. We have heard learned counsel for the parties and also perused the record.



5. It is *inter alia* contended by learned counsel for the petitioner that the petitioner had participated in the auction held on 30.05.2022 in pursuance to the auction notice dated 19.04.2022 (Annexure P-1) published by the respondent Bank qua the properties mentioned at serial No.5 and 6 therein. He contends that the properties intended to be auctioned included in Lot No.1 and Lot No.2 were the factory land and building measuring 10 Kanal 8 Marla 3 Sershai along with plant and machinery of Rice Sheller and Flour Mill. Pursuant to the auction notice, the Bank also got an inspection conducted showing the property to the petitioner on 26.05.2022 and accordingly, the petitioner participated in the auction and was declared successful bidder therein. The petitioner had deposited 25% of the bid amount but later on being informed by the borrower that the plant and machinery infact existed in Khasra No. 20/1 and 22/1/2 which were not part of the mortgaged property and there was no flour mill being part of the mortgaged property, the petitioner sought extension of time for depositing of the balance amount which was granted till 23.08.2022.

5.1 He submits that the petitioner on coming to know about the above facts and discrepancies, the petitioner approached the revenue authorities and it was disclosed that the part of mortgaged and un-mortgaged properties were still having a joint common boundary wall and no flour mill existed on the spot in the part of mortgaged property and further the plant and machinery of the Rice Sheller was also in fact situated in the unmortgaged property, therefore the petitioner moved a representation (Annexure P-6) dated 11.08.2022 to the respondent Bank but of no avail.

5.2 He submits that the petitioner had sufficient source of funds as to deposit the balance amount as is evident from the statement of account



(Annexure P-7) but on account of the details of the property to be auctioned being not proper and irregularities committed by respondent Bank, either the respondent Bank be asked to handover the properties including the plant and machinery and flour mill to the petitioner or in the alternative the amount already deposited by the Bank being successful bidder be ordered to be refunded to him along with interest as there has been violation of Rule 8(7) of the Rules of 2002 by the respondent Bank.

5.3 In support of his arguments, learned counsel for the petitioner has referred to the judgment passed by Hon'ble Supreme Court of India in *Haryana Financial Corporation & Anr. Vs. Rajesh Gupta, 2010 (1) SCC 655* and also judgment dated 19.07.2022 passed by Division Bench of this Court in *CWP-22743-2019 titled as Joginder Singh vs. Punjab National Bank and Another.*

6. *Per contra*, learned counsel for the respondent-Bank submits that the contentions raised by the petitioner is result of afterthought. There had been no misrepresentation or concealment of any fact qua the auction, as the auction notice clearly mentioned that the properties to be auctioned are 'as is where is' basis. He contends that even on 26.05.2022 the petitioner was allowed inspection of the property in the presence of the Bank officials and thereafter he participated in the auction, fully aware of the position of the property. He contends that the petitioner after depositing 25% of the bid amount had moved various applications to the Bank seeking extension of time to deposit remaining 75% of the balance amount, as is evident from (Annexure P-5) but raised the ground regarding non disclosure of Khasra numbers of the mortgaged property and also the factum of flour mill being not part of auction, for the first time only on 11.08.2022 while moving the



application (Annexure P-6) thereby seeking refund of the earnest money deposited by him.

6.1 Learned counsel further submits that the petitioner was very well aware of the property to be auctioned as he had pre-inspected the property on 26.05.2022 and only then he participated in the auction after being fully aware about the same and now he had back tracked for the reasons best known to him for which no case is made out for refund of earnest money deposited by him.

7. Considering the rival contentions and perusing the record it is observed that there is no dispute qua the factual position to the fact that in pursuance to the auction notice Annexure P-1 dated 19.04.2022 the petitioner had participated and was a successful bidder qua the properties mentioned at serial No.5 and 6 of the auction notice. In the auction conducted on 30.05.2022, it would be relevant to mention here that the petitioner had been declared successful bidder qua the properties mentioned at serial No.5 and 6 comprising 'Lot No.1 and Lot No.2' respectively. The description there of as per the auction notice is as under:-

<i>Sr. No.</i>	<i>Lot No.</i>
5	<i>LOT NO1: Freehold and leasehold rights of factory land & building measuring 10 Kanal 8 Marla 3 Shershai situated at Arif Ke Tehsil and District Ferozepur. Note Lot 1 and 2 will be auctioned individually of combined auction of Lot 1 will be considered successful only after the sale of lot 2.</i>
6	<i>LOT 2 Plant and Machinery of Rice Sheller and Flour Mill</i>

8. The bare perusal of auction notice would reveal that the property intended to be auctioned by the respondent Bank in Lot No.1 include free hold



and lease hold factory land and building measuring 10 Kanal 8 marla 3 Shershai while Lot No.2 included plant and machinery of Rice Sheller and Flour Mill. The petitioner has placed on record site-map (Annexure P-3) prepared by the Revenue Authorities showing that the hypothecated machinery of the Rice Sheller was installed in Khasra No. 20/1 which was not mortgaged with the respondent Bank. Similarly Khasra No. 22/1/2 was not mortgaged with the Bank. It is not disputed that the entire property as described in site-plan (Annexure P-3) is having common boundary wall wherein part of the land is mortgaged and some portion thereof is not mortgaged with the respondent Bank. It is also the case of the petitioner that infact no Flour Mill existed at the spot, although depicted in the auction notice. This fact was even brought to the notice of the respondent Bank by the petitioner by moving specific representation (Annexure P-6) seeking clarification regarding the properties.

9. As against the above version of the petitioner, the respondent Bank claims that the petitioner was well aware about the entire facts and even pre-inspected the spot on 26.05.2025 before participating in the auction. It is contended by the respondent Bank that in the auction notice it was specifically stipulated that the property auctioned is 'as is where is' basis and that the petitioner was explained about the entire facts before auction and he had agreed that some part of the machinery be removed and reallocated, however it is not disputed that the Flour Mill did not exist at the spot and it is claimed by the respondent Bank that it has been inadvertently mentioned in the auction notice. It is also not disputed by the respondent Bank that the Khasra numbers were not mentioned in the auction notice but the same were conveyed to the



petitioner through whatsapp message on his mobile No. 9216992313 on 21.05.2022.

10. It would be relevant to mention here that the procedure for sale of immovable secured asset are specifically defined in Rule 8 (7) of the Security Interest (Enforcement rules) 2002 ,which reads as under:-

“ 8. Sale of immovable secured assets.-

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(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web-site of the secured creditor, which shall include;

- (a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;*
- (b) the secured debt for recovery of which the property is to be sold;*
- (c) reserve price of the immovable secured assets below which the property may not be sold;*
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;*
- (e) deposit of earnest money as may be stipulated by the secured creditor;*
- (f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]”*

11. A bare perusal of the aforesaid Rule dealing with auction, specifies that it is the duty of the secured creditor i.e the Bank to upload the detailed terms and conditions of the sale including the description of the immovable property to be sold with the details of encumbrances and all other terms and conditions which the authorized officer considers necessary for purchaser to know the nature and value of the property.



12. In the present case there was specific mention of 'Flour Mill' being part of Lot No.2 described at serial No.6 of the auction notice but admittedly no such 'Flour Mill' existed at the spot. It is also the categorical stand of the respondent in the written statement that the word 'Flour Mill' was inadvertently mentioned in the auction notice due to human error and this fact was apprised to the petitioner, however no such document or intimation has been provided on record by the respondent Bank.

12.1 Secondly, no Khasra numbers of the mortgaged property had been mentioned in the auction notice which was incumbent upon the respondent Bank being secured creditor to have mentioned in the auction notice so as to enable the prospective buyer to be aware of the exact property.

12.2 Thirdly, the plant and machinery of the Rice Sheller is situated in Khasra No. 20/1 as per site-plan (Annexure P-3) prepared by the Revenue Authority, which was never mortgaged with the respondent Bank. The stand taken by the respondent Bank regarding Khasra Numbers of the property being conveyed to the petitioner on whatsapp number 9216992313, however, this finds no corroboration from any cogent evidence on record, even no document has been placed on record to show that this number belongs to the petitioner.

12.3 Moreover, the part and parcel of the plant and machinery of the Sheller, including both mortgaged and unmortgaged property, are bounded by a single boundary wall and there has been no demarcation. Even it is admitted in the written statement that a part of the machinery was situated in the property not mortgaged with the Bank.

12.4 All these circumstances go to show that despite being the bounden duty of the secured creditor i.e. respondent Bank to have mentioned



description of the property to be sold, the respondent Bank had not fully described the property along with specific Khasra Number and also despite there being mention of 'Flour Mill' in the auction notice (Annexure P-1), admittedly no such 'Flour Mill' ever existed at the spot. The respondent Bank failed to discharge its duty and therefore, there had been violation of Rule 8(7) of the Rules of 2002 governing the sale of immovable Secured assets.

13. Hon'ble Apex Court has dealt with identical circumstances in case titled as *Haryana Financial Corporation & Anr. vs. Rajesh Gupta, 2010 (1) SCC 655*, wherein Haryana Financial Corporation had conducted auction sale of the property by mentioning in auction notice 'as is where is' basis and the respondent had purchased the unit in auction by depositing the earnest money but later finding no independent passage to the unit being there he did not deposit the remaining amount leading to forfeiture of the earnest money. The Hon'ble Supreme Court decided the order of forfeiture of earnest money by holding that the Corporation was bound to disclose any material defect in the property and the non disclosure of the material fact qua non existence of the independent passage to the property amount to breach of Section 55(1)(a) and (b) of the State Financial Corporation Act, 1951. It was held there that the respondent had proceeded to participate in the auction on assumption that Financial Corporation being a statutory corporation and an instrumentality of the State shall act fairly.

14. As regards the contentions of learned counsel for the respondent that there was specific stipulation in the auction notice qua the property to be auctioned on 'as is where is' basis, in the light of the catena of pronouncement on the subject we find no merit in such contentions. In this regard, it is



worth mentioning that the Division Bench of Allahabad High Court in case ***Rakesh Kumar Kaushal vs. State of U.P and Others*** has observed as under:-

“33.....xxxxxxxxxx

34. *In this regard, we would like to mention that relevant provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules have already been quoted wherein sub rule (5) of Rule 8 of the Rules, 2002, provides for publication of the notice into leading newspapers which shall include details as set forth in sub-clause (a) to (f). Sub-clause 6 (f) of Rule 8 provides for publishing of "any other thing which the authorized officer considers it material for a purchaser to know in order to judge the nature and value of the property". In these circumstances, a duty is cast upon the Authorized Officer to publish all details with regard to the property, whether the property has any encumbrances or not, whether the property is a vacant property or is tenanted, whether there is any other charge on the said property, and all other details which is material for the purchaser to know in order to judge the nature and value of the property.*
35. *In the present case, the advertisement does not disclose any such detail about the property from which it can be easily inferred that the same is in possession of some third-party, or that there is a litigation pending or for some material reason, it would be difficult to obtain the vacant possession of the property. A joint reading of section 13 (4) of the SARFAESI Act and Rule 9 (clauses 9 and 10) would clearly show that the Authorized Officer, shall deliver the property to the purchaser, free from all encumbrances, on deposit of money as specified in sub rule 2. However, the aforesaid rule does not prevent the bank from bringing the property for auction, when there are encumbrances attached to the property. Merely, by including a clause "as is where is basis*



or as is what is' condition stated in the sale notice does not obviate the bank from disclosing the encumbrances attached to the property, brought for auction.

- 36. The bank cannot shrug off its responsibility in disclosing the encumbrances in the advertisement when it is known that transparency is the essence of good governance and fair play. Concept of transparency is becoming a core value in democratic and participative governance. The public demand for transparency is getting stronger in good governance. Transparency is built on the basis of free flow of information and the whole process of government, institutions and information needs to be accessible to the interested parties, as well as the information provided should be sufficient to be understood.*
- 37. The undisputed fact in the case at hand is that when notice under section 13(4) of the SARFAESI Act was issued by the Bank, the physical possession of the mortgaged property was not taken. There is a duty cast upon the Bank under clause (9) of rule 9 of the Rules, 2002 to deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub rule (7). In the writ petition it has rightly been asserted by the petitioner that he was shocked when he came to know that there were some defects in title of the aforesaid property and the same is defective, which was not disclosed by the Bank at any stage, rather it suppressed the material information.*
- 38. It may be noted that when a person participates in auction to purchase a property, he relies on the auction notice and the documents shown to him by the secured creditor, as he is under a bona fide belief that any material aspect of the property must have been disclosed by the secured creditor inasmuch as the secured creditor is under a mandate to disclose any aspect which the Authorized Officer considers it material for the purchaser to know in order to judge the*



nature and value of the property as mandated under rule 8(6). The respondent bank has failed to disclose any such circumstance or material fact from which it could be gathered that the physical possession of the property would be difficult or near impossible. In the aforesaid circumstances the respondent Bank cannot take umbrage of the clause "as is where is" "as it is where it is" in order to deny physical possession of the auction property to the petitioner and to non-suit him. In other words, the respondent cannot shirk away the statutory responsibility to deliver possession of the property free from all encumbrances, to the person who was paid full consideration for the said property.

- 39. Accepting the contention of the Bank would be absolutely inequitable, wholly arbitrary and may on the contrary permit withholding of necessary information by the secured creditor in relation to its valuation in order to seek a higher price of the property. If such an advantage is permitted, it would directly affect the credibility of the entire process and the object of the SARFAESI Act, which is sought to be achieved.*
- 40. The third-party, who comes forward to purchase the secured asset must have the confidence that he would get the property at the earliest and in case, considerable long time is consumed in transferring the property not only it would defeat the purpose of the Act but would also cause colossal loss and injury to a auction-purchaser, like the petitioner.*
- 41. In light of the above, we are of the considered opinion that by merely inserting a clause "as is where is" and "as is what is" the responsibility of the Bank does not get diluted nor it can in any manner assist the bank in denying physical possession to the auction purchaser."*



14.1. The aforesaid decision was affirmed by Hon'ble Supreme Court in SLP No. 3493 of 2019 decided on 11.02.2019.

15. Relying upon the aforesaid decision of **Rakesh Kumar Kaushal's** case (supra) a Coordinate Division Bench of this Court in CWP 22743-2019 titled **Joginder Singh Vs. Punjab National Bank and Another** decided on 19.07.2022, reiterated that the Bank cannot hide behind the condition 'as is where is basis' mentioned in the sale notice to harass the innocent auction purchaser by failing to disclose regarding encumbrances attached to the secured asset. It also relied on the Division Bench of Telengana and Andhra Pradesh High Court decision in **Mandava Krishna Chaitanya Vs. UCO Bank, 2018(2) ALT 640;** wherein it was held that the concept of 'as is where is' basis has lost its significance in the current commercial *milieu* and the principle *caveat venditor* is more on the rise as compared to the outdated principle of *caveat emptor*; that the Transfer of Property Act, 1882, requires the seller to own up to certain duties and it is not open to a responsible bank to take an innocent auction purchaser for a ride by selling to him a tainted property and thereafter claim protection under the principles of 'buyer beware'.

15.1 It held that the innocent Auction Purchaser cannot be victimized by the Bank by the carelessness of exercising minimum care to ascertain the encumbrances attached to the secured asset, and if it proceed to sell the property without informing the bidders of the same, such a sale would be vitiated.

15.2. The aforesaid decision in **Mandava Krishna's** case was also upheld by Hon'ble Apex Court in SLP No. 8022 of 2018 decided on 09.04.2018.



16. Thus, in the light of the above we are of the considered opinion that the respondent Bank had failed to discharge its duties by not disclosing the correct description of immovable property to be sold vide auction notice (Annexure P-1), as was required vide Rule 8(7) of the Rules, 2002 as it has not mentioned about the Khasra numbers of mortgage properties to be sold, wrongly mentioned the 'Flour Mill' to be part of the mortgaged property which admittedly was not there and further part of plant and machinery were affixed on the property which was not mortgaged with the respondent Bank. Therefore, as the respondent Bank has not correctly disclosed the description of the secured assets in the auction notice qua the serial No.5 and 6 in Annexure P-1 the auction conducted on the basis thereof is held to be not sustainable in the eyes of law being violative of the Rule 8 (7) of the Rules, 2002, as a consequent the petitioner cannot be asked to deposit the balance 75% of the bid amount.

17. Considering the above facts and circumstances, it transpires that the property auctioned by the respondent Bank vide auction notice dated 30.05.2022 (Annexure P-1), infact contained parcels of land which stood mortgaged with the respondent Bank and also some parcels which were never mortgaged with the respondent Bank. It is also on record that some plant and machinery intended to be auctioned, infact stand on the property which was never mortgaged with the respondent Bank and further a 'Flour Mill' was mentioned to be existing at the spot in the property to be auctioned but admittedly no such 'Flour Mill', as mentioned, existed at the spot. The aforesaid parcels of land both mortgaged and un-mortgaged with the respondent Bank are bounded by a single boundary wall and there is no demarcation, as such, thereof.



17.1 In view of the above facts, the main relief sought for by the petitioner in the present writ petition qua delivery of possession of entire property, cannot be granted, however the petitioner is held entitled to alternative relief qua refund of 25% of the bid amount deposited by him with the respondent Bank along with interest.

18. Consequently, in the light of the above discussion, the instant petition is allowed to the extent of issuing a writ of mandamus directing the respondent Bank to refund 25% of the bid amount deposited by the petitioner as earnest money with interest @ 9% per annum from the date of respective deposit within 2 months from today. The respondent Bank is also directed to pay cost of ₹25,000/- to the petitioner.

19. Writ Petition is disposed of in above terms.

(SANJIV BERRY)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

Dated: 01.04.2026

Gyan

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No