

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP No.80 of 2015(O&M)
Date of Decision: April 22, 2015

M/s Amba Poultry Farm & another

...Petitioners

Versus

Jagdish Punia, Authorized Officer,
Central Bank of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Ms. Jyoti Sareen, Advocate
for the petitioner.

Mr. C.S. Pasricha, Advocate
for the respondents.

--

HARINDER SINGH SIDHU, J.

This petition has been filed praying for initiating contempt proceedings against the respondents for alleged violation the order dated 27.03.2014 passed by the Presiding Officer, Debts Recovery Tribunal-I, Chandigarh (for short 'the Tribunal').

Briefly, the facts are that the Central Bank of India, Gharaunda Branch, District Karnal filed O.A. No.310 of 2009 before the Tribunal, which was allowed vide order dated 27.09.2010 and the petitioner was directed to pay the principal amount of

Rs.92,20,020/- along with *pendente lite* and future interest at the rate of 9% per annum simple from the date of filing of O.A. till its realization. The petitioners thereafter filed MA No.169 of 2012 for recall/ modification of the order dated 27.09.2012 passed by the Tribunal.

During the pendency of M.A., the Recovery Officer in execution proceedings (RC No.81/2012), issued proclamation of sale vide order dated 05.02.2014 in respect of property of the petitioner described as 'Amba Polutry Farm'. The petitioner moved an application before the Tribunal for stay of the said order. Vide order dated 27.03.2014, passed by the Tribunal, the auction of the property of the petitioner as mentioned in the order dated 05.02.2014 was stayed subject to deposit of Rs.25 lacs with the Central Bank of India on or before the date and time of the auction i.e. 31.03.2012 at 11.00 am. The petitioner was directed to file an affidavit-cum-undertaking by 28.3.2014 regarding compliance with the order dated 27.03.2014. The petitioner filed the required affidavit on 28.03.2014. He also deposited Rs.25 lacs on 29.03.2014 vide four separate demand drafts.

It is the case of the petitioner that despite his having

complied with all the conditions of the stay order dated 27.03.2014, respondent No.1 issued auction notice dated 20.12.2014, under SARFAESI Act, 2002 which was published in 'Amar Ujala' dated 21.12.2014 fixing auction of the property of the petitioner, which had been stayed vide order dated 27.03.2014. Alleging this to be an intentional and wilful violation of the stay order, the present contempt petition has been filed.

In the reply filed on behalf of the respondents, it has been stated that the petitioner is partnership firm and had availed loan facilities from the Central Bank of India and the Bank had initiated recovery proceedings under the SARFAESI Act, 2002 and the RDBFI Act, 1993 for recovery from the petitioner and the guarantor or the mortgagor. The Bank in order to recover its dues filed OA-310-2009 under the RDBFI Act and also thereafter initiated action under SARFAESI Act by issuing notice under Section 13(2) and initiating measures under the 13(4) of the SARFAESI Act. The petitioner had filed SARFAESI application bearing SA No.163 of 2010 against the action of the Bank, which was dismissed by the Tribunal vide order dated 13.12.2013 and no appeal has been preferred there against by the petitioner.

It has been stated that the order of the Tribunal dated 27.03.2014 has not been violated. In compliance with the stay order, the sale which had been fixed under RDBFI Act had been cancelled and recovery proceedings under that Act have been kept in abeyance.

Reference has been made to a decision of the Hon'ble Supreme Court in the case of **Transcore v. Union of India, (2008) 1 SCC 125** to contend that remedy under the SARFAESI Act is a remedy in addition to a remedy under the RDBFI Act and the proceedings under the two acts are independent of each other. It is contended that the Bank has to recover over a Rs.82 lacs as on 18.12.2014 after taking into account the payments made by the petitioner i.e. Rs.45 lacs and the Bank has proceeded to recover public money under the SARFAESI Act against the secured asset in accordance with the provisions thereof and in continuation of the notice under Section 13(2) of the SARFAESI Act issued earlier and after the dismissal of the SARFAESI application No.163 of 2010.

Heard learned counsel for the parties and perused the records

The Hon'ble Supreme Court ***Transcore's case (supra)***

has held that the remedy under the SARFESI Act is additional remedy to that under the RDBFI Act and the doctrine of election does not apply. The relevant observations are as under:

“64.In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell’s Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.”

As the two remedies are independent of each other, the

stay order passed under the provisions of RDBFI Act will not prevent the Bank from taking recourse to the remedies under the SARFESI Act.

In view of the above legal position, the order of the Tribunal dated 27.03.2014 cannot be held to have been violated by the respondents by issuing sale notice under the provisions of SARFESI Act, after the dismissal of the SA No. 163 of 2010 filed by the petitioner.

Accordingly this petition is dismissed.

April 22, 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE