IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4664 of 2015

Date of decision:17.3.2015

M/s Hans Ji Exports Cheeka ….Petitioner

VERSUS

Punjab National Bank and others .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ajay Kumar Gupta, Advocate for the petitioner.

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HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to an action of the respondent-Bank whereby the property in question is being put to sale through e-auction on 18.03.2015.

The respondent-Bank granted loan to M/s Arjun Dass Rice Mills for construction of a factory after the property was mortgaged in its favour for due payment. Since, the borrower defaulted in making payment; the respondent-Bank took action under Section 13 of Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short 'the Act'). The Bank issued tenders for sale through publication of notice in newspapers in July, 2013 but in the absence of any purchaser in the auction process, opted to sell by way of a private treaty. The petitioner agreed to purchase the same on a total price of Rs.630.50 lakhs in a private treaty. An agreement dated 28.09.2013 was also executed followed by a supplementary agreement dated 08.01.2014 between the petitioner and the Bank.

The petitioner has averred that the respondents pressurized the petitioner very hard to make the entire payment but the principal borrower is not a consenting party, therefore, the action of the Bank under the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules') is illegal.

It appears that the Bank has issued a notice on 29.12.2014. The said notice has not been produced by the petitioner. It is, thereafter, the petitioner caused a notice to be served upon the counsel for the Bank on 12.01.2015 (Annexure P-6). The Bank has, therefore, responded to the notice vide a reply dated 13.02.2015 (Annexure P-7).

In the said reply, the Bank has averred that the petitioner is not possessing requisite balance sale price for which many notices and reminders were served and thus the petitioner is making request again and again to extend the date as he is not possessed with requisite amount of balance sale price and is making lame excuses of property being less. The property was sold clearly with the recital 'as is where is basis' and the same was shown to the petitioner at the spot also. It was also averred that if the petitioner is ready to make the payment of balance amount he should come in the office of the Bank and take steps for execution and registration of sale deed and that petitioner should perform his part of the agreement as per law.

The grievance of the petitioner is that the Bank led the petitioner to enter into agreement without complying with Rule 8(6) and Rule 9 of the Rules which contemplated that an authorized officer of the Bank has to serve a notice of 30 days before putting the property to sale. It is contended that in the absence of such notice, the action of the Bank in entering into an agreement to sell with the petitioner is an illegal action; against the statutory provisions and therefore, is of no legal effect.

We have heard learned counsel for the petitioner and find no merit in the present writ petition. The petitioner has entered into an agreement after the attempt of the Bank to sell the property by public auction remained unsuccessful. As per the stand of the Bank, the property was sold on 'as is where is basis'. The petitioner having entered into an agreement to purchase the property in the year 2013, at this stage, cannot rely upon the alleged violation of Rule 8(6) and Rule 9 of the Rules. Any violation of the Rules, even for the sake of arguments, was prior to execution of the agreement. The petitioner having executed an agreement to sell cannot raise a plea of violation of Rule post agreement when the Bank is categorical that the petitioner is not possessed of money and has sought numerous extensions to pay the balance amount but still could not make the payment. It, thus, appears that the plea of violation of Rule 8(6) and Rule 9 of the Rules is a plea in desperation to avoid contractual obligation.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

MARCH 17, 2015 **(LISA GILL)**
'D. Gulati' **JUDGE**