IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12386 of 2016 (O&M)

DATE OF DECISION : 16.11.2016

M/s Munjal Rice and General Mills

.... PETITIONER

Versus

Canara Bank and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Bhal Singh Malik, Advocate,
for the petitioner.

Mr. Rakesh Gupta, Advocate,
for respondent No.1-Bank.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. S.N. Pillania, Advocate,
for respondent No.3.

Mr. Arvind Seth, Advocate,
for respondent No.4.

Mr. Manjri Joshi, Advocate,
for respondent No.5.

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RAMENDRA JAIN , J.

1. Put pithily, according to the petitioner firm, it being engaged in the business of securing paddy from the market and processing it into rice, leased out its unit to M/s Kuber Overseas, Siwan, Tehsil and District Kaithal (respondent No.3 herein) from 01.09.2015 to 31.07.2016 for ₹ 5 lacs, vide lease deed dated 26.09.2015. Respondent No.3 – lessee tied up with Haryana Agro Industries Corporation Limited (respondent No.4

herein) for the purpose of milling of rice for the season 2015-16, vide time bound custom milling agreement dated 04.10.2015.

2. Shri Sahil Munjal son of the proprietor of the petitioner firm, namely Shri Subhash Munjal, also being engaged in the business of rice trading was working under the name and style of M/s Sahil Exports (respondent No.5 herein), who had availed financial assistance from respondent No.1 bank. As per the stand of the petitioner firm, it neither obtained any loan from respondent No.1 bank nor stood guarantor against the financial assistance taken by respondent No.5 firm. Hence, the petitioner firm was not responsible for any default in payments by respondent No.5 firm. Respondent No.5 firm committed certain defaults in repayment of its loan amount to respondent No.1 bank and its account was classified as Non Performing Asset (NPA). Consequently, respondent No.1 bank initiated recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as `the SARFAESI Act') and moved an application under Section 14 of the SARFAESI Act to secure possession of the mortgaged property of respondent No.5 firm. Pursuant thereto, the District Magistrate, Kaithal, vide order dated 10.02.2016 (Annexure P-2), while granting assistance to respondent No.1 bank, directed the Superintendent of Police, Kaithal, to take over possession of the property of respondent No.5 firm. Under the garb of the said order, instead of taking possession of the mortgaged property of respondent No.5 firm, respondent No.1 bank, without demarcating the premises, illegally and arbitrarily sealed the unit of the petitioner firm on 28.03.2016, though it was not a secured asset against the outstanding dues of respondent No.5 and was neither mortgaged with

respondent No.1 bank nor belonged to respondent No.5. The stock belonging to respondent No.4, lying in the sealed premises, was perishable in nature, but respondent No.1 bank did not adhere to any request of the petitioner firm. The stock lying in the sealed premises was purchased by the Government for public distribution system, and was ready for delivery to the Food Corporation of India.

3. Respondent No.3 had also filed a suit for declaration, injunction and damages (Annexure P-6), wherein vide order dated 07.04.2016 (Annexure P-7), the Civil Court had appointed a Local Commissioner to clarify as to whether the property got sealed by respondent No.1 bank belonged to respondent No.5 firm or to the petitioner firm. Accordingly, the Local Commissioner vide his report dated 12.04.2016 (Annexure P-8) clarified that the property, where goods of respondent No.3 were lying belonged to the petitioner firm and not to respondent No.5 firm.

4. Hence, by way of the present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner firm has sought issuance of a writ of mandamus directing respondent No.1 bank to immediately de-seal the factory land and building measuring 20 Kanals 10 Marlas, comprised in rectangle no. 130, Killa Nos. 6, 7 and 8, situated at village Siwan on Kaithal-Cheeka Road, Siwan, Tehsil and District Kaithal, and hand over its possession to the petitioner firm. Further issuance of a writ of mandamus has been sought to direct respondent No.1 bank to hand over the stocks of paddy rice etc. to respondent No.3, strictly in accordance with the inventory of respondent No.4.

5. Learned counsel for the petitioner submits that sealing of the premises of the petitioner firm by respondent No.1 bank by taking police

assistance under the orders of the District Magistrate, Kaithal, is illegal and violative of the principles of natural justice, because the petitioner firm neither stood guarantor for respondent No.5 nor mortgaged any of its property with respondent No.1 bank. Since mill of the petitioner firm was not a secured asset, therefore, its possession could not have been taken by respondent No.1 bank. More so, instead of sealing the mill/property of the petitioner firm, respondent No.1 bank should have taken possession of the secured assets of respondent No.5 under the provisions of the SARFAESI Act. In support of his arguments, learned counsel relied upon ***Satwant Singh Sahwni Vs. D. Ramarathnam,*** AIR 1967 SC 1836; ***State of M.P. Vs. Thakur Bharat Singh,*** AIR 1967 SC 1170 and ***KHDFC Bank Vs. Prestige Educational Trust,*** AIR 2015 Kerala 272.

6. On the other hand, learned counsel for respondent No.1 bank argued that by concealing the material and vital facts, the petitioner has presented a distorted picture by levelling false allegations and manipulated concocted versions. The petitioner has filed this petition just to delay the proceedings and create hurdle in the recovery proceedings initiated by respondent No.1 bank for recovery of its debts from respondent No.5, whose partners, namely Shri Sahil Munjal and Smt. Asha Munjal, are none else, but son and wife, respectively, of the proprietor of the petitioner firm. In fact, the proprietor of the petitioner firm and partners of respondent No.5 firm, in connivance with each other played a fraud with respondent No.1 bank, which could be unearthed after more than five years, when the mortgaged land was got demarcated. The said fraud was well within the knowledge of the petitioner and respondent No.5, since the inception of the loan facilities, because at the time of obtaining loan, the petitioner and

respondent No.5 had shown the land and building as one unit while procuring the valuation report of the property for mortgaging the same with respondent No.1 bank, and intimated that the said land and building are the same, which are available with respondent No.1 bank for mortgage to secure the loan and advances of respondent No.5. Accordingly, vide the Valuation Report dated 27.07.2010, the valuation of building and land both was done by the approved valuer, which was duly signed by respondent No.5. The exact location of the land/site was mentioned in the said report and photographs of the land as well as building were attached therewith. While acknowledging the said valuation report, respondent No.5 admitted that the land and building was the same property which was mortgaged with respondent No.1 bank. Therefore, the respondent Bank had taken the physical possession of the building, which was shown to it at the time of availing the loan facilities. The stock and machinery installed in the mortgaged building were also hypothecated with respondent No.1 bank. Hence, in order to take possession of the said hypothecated stock and machinery, which were in the name of respondent No.5 and also a primary security, and to recover the huge amount from respondent No.5 and the petitioner jointly and severally, respondent No.1 bank initiated the recovery proceedings under the SARFAESI Act. Since respondent No.5 and the petitioner are borrower and guarantor, therefore, both of them are liable to pay the loan amount jointly and severally. Sh. Subhash Munjal, proprietor of the petitioner firm, also stood guarantor to secure the loan and advances of respondent No.5 firm. He signed the guarantee agreement and letters in favour of respondent No.1 bank. The said guarantee was renewed/continued from time to time. Since loan account of respondent No.5 firm became irregular, therefore, after numerous requests, the same was classified as Non Performing Asset, and proceedings under the SARFAESI Act were initiated. Instead of filing the writ petition, the petitioner firm should have pursued its remedy before the Debts Recovery Tribunal.

7. After giving our thoughtful consideration to the rival contentions of learned counsel for the parties, we find that the instant writ petition is devoid of any merit for the reasons to follow :-

(i) On 30.08.2016, Shri Subhash Munjal, proprietor of the petitioner firm, filed an affidavit along with copies of relevant jamabandis for the year 1982-83 and 1987-88 (Annexures P-13 and P-14). According to the said affidavit, he was the sole proprietor of the petitioner firm since 01.04.2010 and earlier thereto, since its inception in the year 1981, he was its permanent partner. He also deposed in his affidavit that the land, plant or machinery of the petitioner firm was neither mortgaged with the respondent bank nor it was a secured asset of the bank. Therefore, property of the petitioner firm could neither be attached nor any action could have been taken by the District Magistrate under Section 14 of the SARFAESI Act against the properties of the petitioner firm. Thereafter, on 03.10.2016, learned counsel for the petitioner submitted that due to sealing of the premises of the petitioner Mill, the employees who were working had been rendered workless and their wages were to be paid by the petitioner Mill. This fact was seriously disputed by learned counsel for respondent No.1 bank, while submitting that the petitioner firm was closed since 2010. In order to resolve this controversy, learned counsel for the petitioner Mill was directed to produce the evidence in the form of wages register to substantiate that the petitioner Mill was still working. In response to the said direction, on 18.10.2016, learned counsel for the petitioner admitted that the petitioner Mill was not running. From the above conduct of the petitioner firm, it is evident on record that the petitioner has not left any stone unturned to play hide and seek with the court.

(ii) The sole dispute raised by the petitioner firm is that land bearing Rectangle No. 130, Killa Nos. 6, 7 and 8, on which its building is situated, was neither mortgaged with the respondent bank nor its proprietor Shri Subhash Munjal stood guarantor for the loan obtained by his son Sahil Munjal in the name of M/s Sahil Exports (respondent No.5). To find out the truth and resolve the real controversy, various loan documents executed on behalf of respondent No.5 are being looked into. A perusal of the Guarantee Covering Letter (Annexure R-1/2) shows that it is signed by Shri Subhash Munjal, proprietor of the petitioner firm, whereby he submitted an agreement of guarantee duly executed by him owing his responsibility upto a limit of ₹ 2.5 crores for any credit by way of loans, overdraft, discount of bills or otherwise extended to respondent No.5 firm. Further, the guarantee agreement was signed by Shri Subhash Munjal, proprietor of the petitioner firm as guarantor to secure loan and advances of respondent No.5 firm to the tune of ₹ 2.5 crores. It was also signed by the partners of respondent No.5 firm, namely Shri Sahil Munjal and Smt. Asha Munjal, as borrower, who are none else, but as discussed above son and wife, respectively, of Shri Subhash Munjal. According to the Project Report (Annexure R-1/4) submitted by respondent No.5

firm to the respondent No.1 bank, its partner Shri Sahil Munjal has shown his land at village Siwan along with construction of the building thereon, including sheds, to be used for the purpose of rice milling Unit and milling Area. This fact clinches the whole controversy, because Shri Subhash Munjal, proprietor of the petitioner firm, has miserably failed to bring on record that the building and sheds, if any, shown by his son Shri Sahil Munjal in his Project Report, were distinct from the mill of the petitioner firm. Apparently, the father and son, in connivance with Smt. Asha Munjal, their wife and mother, respectively, played fraud with the respondent bank by getting prepared a Project Report, showing the building of the petitioner firm to be owned and constructed by Shri Sahil Munjal, partner of respondent No.5 firm, without mentioning the Rectangle and Killa Numbers of the land, on which the alleged building and sheds were existing. Now, the petitioner firm not with honest intention has started claiming that the building mortgaged by respondent No.5 with the respondent bank is not the same, which is existing in Killa Nos. 6, 7 and 8. More so, perusal of mutation No. 10015 dated 08.06.1990 and jamabandi for the year 1982-83 (Annexure P-13) shows that the land comprised in Rectangle No. 130, Killa Nos. 6, 7 and 8 is owned by Smt. Ishwari Devi wife of Loku Ram (father of Shri Subhash Munjal). According to Shri Subhash Munjal, after the death of his mother Smt. Ishwari Devi, the petitioner firm fell to his share in a family settlement dated 01.12.2009. However, the alleged family settlement never saw the light of the day. Meaning thereby that the said family settlement was never got incorporated in the revenue record to set right the title of the petitioner firm.

(iii) Report of the Local Commissioner obtained in compliance with the civil court order cannot be considered under the extra ordinary writ jurisdiction of this court, because the same is to be proved by leading evidence, which can only be done during trial before the appropriate court. Moreover, after initiation of proceedings under Section 13 (2) of the SARFAESI Act, no body can deal with the mortgaged property, in view of the provision of Section 13 (13) of the SARFAESI Act. In the instant case, notice under Section 13 (2) of the SARFAESI Act was issued to respondent No.5 on 24.04.2015 and the possession notice under Section 13 (4) of the SARFAESI Act was issued on 21.07.2015. Therefore, the lease agreement entered between the petitioner and respondent No.3 on 26.09.2015 can not be acted upon.

(iv) Since the question as to whether the property of the petitioner was mortgaged or not is a disputed question, therefore, the petitioner, instead of approaching this court, had alternative remedies whereby it could have approached the Debts Recovery Tribunal or any other appropriate forum, in view of decision of the Apex Court in ***United Bank of India Vs. Satyawati Tondon and others,*** AIR 2010 Supreme Court 3413, decisions of this Court in ***Nippo Foods Vs. State of Punjab and others,*** AIR 2013 (Punjab) 89 and ***Mahesh Kumar Vs. Punjab and Sind Bank and others,*** (CWP No. 4704 of 2016, decided on 28.07.2016),wherein it has been held that the disputed questions of facts cannot be permitted to be raised before the writ court in the first instance.

(v) In view of the aforesaid facts and circumstances, the decisions of the Apex Court in ***Satwant Singh Sahwni's case*** (supra) ***Thakur Bharat Singh's case*** (supra) and the decision of the Kerala High Court in ***KHDFC Bank's case*** are not applicable to the instant case.

(vi) Hence, considering the case from any angle, Shri Subhash Munjal, proprietor of the petitioner firm, has not been able to establish that the building existing in Rectangle No. 130, Killa Nos. 6, 7 and 8 is distinct from the property secured by respondent No.5 through his son Shri Sahil Munjal, with the respondent bank.

8. For the reasons recorded above, the instant writ petition is devoid of any merit and is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

November 16, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes