IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.22397 of 2016
Date of decision: 26.10.2016

M/s Philco Industries

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. G.S. Kaura, Advocate, for the petitioner.

RAMENDRA JAIN, J.

Petitioner-firm obtained CC limit of ₹ 5 lakhs from respondent No.2-bank on 25.07.2007 and was regularly paying the instalments upto 12.09.2012. However, on 17.01.2012 petitioner received notice under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') from the respondent-bank, vide which the CC limit account of the petitioner has been declared as OD account under the Baroda Traders Loan. As per the petitioner, declaring the CC limit account of the petitioner as OD account by the respondent-bank was illegal, null and void due to the fact that petitioner was regularly paying the instalments from 22.03.2011 to 12.09.2012 and a total amount of ₹ 1,94,000/- has already been deposited by the petitioner. On 26.05.2013, official of the respondent-bank alongwith its musclemen visited the premises of the petitioner without consent of the petitioner and threatened to make payments. Consequently, petitioner filed a suit for permanent injunction against the respondent-bank, which was decreed in favour of the petitioner vide judgment and decree dated 04.08.2016 passed by learned Additional Civil Judge (Senior Division), Sirsa, restraining the respondent-bank from recovering any amount from the petitioner except in due course of law. However, it was made clear that respondent-bank was very much entitled to recover the due amount from the petitioner under the provisions of the SARFAESI Act. During the pendency of the civil suit filed by the petitioner, respondent-bank initiated recovery proceedings by filing a suit for recovery against the petitioner on 24.05.2016. As per the petitioner, it was and is very much ready and willing to pay the due amount to the respondent-bank.

2. Hence, by way of present writ petition filed under Articles 226 and 227 of the Constitution of India, petitioner has sought writ in the nature of *mandamus* directing the respondents not to illegally interfere in its business.

3. Learned counsel for the petitioner submitted that petitioner is ready and willing to pay the entire due amount to the respondent-bank. However, when the learned counsel for the petitioner was asked to bring a demand draft of ₹ 5 lakhs to show its bonafides, as according to the respondent-bank an amount of ₹ 7,32,930/- was due against the petitioner, he simply tried to hush up the matter by making unfruitful submissions.

4. More so, in case any decree was passed in favour of the petitioner, instead of coming to this Court, it should have approached the executing Court to redress his grievance, if any, in execution proceedings by way of execution petition. Though in our opinion, said decree is

inconsequential, because respondent-bank has not been restrained by the civil Court from taking any action against the petitioner under the SARFAESI Act. In such type of financial matter, which are governed by terms and conditions and entered into and signed inter se by the parties, this Court shall not interfere under the writ jurisdiction.

5. In view of the above, this petition being devoid of any merit is dismissed in limine.

6. Registry is directed to bring this judgment to the notice of the respondents, so as to avoid any concealment of this judgment by the other similar situated persons, if any, while filing any such petition before this Court in future.

(RAMENDRA JAIN)
JUDGE

October 26, 2016
R.S.

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No