

Civil Writ Petition No. 23906 of 2016

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. 23906 of 2016

Date of Decision: 21.11.2016

M/s Real Estates

.....Petitioner

Vs.

The Financial Commissioner, Cooperation, Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Dharam Vir Sharma, Sr. Advocate with
Ms. Akshita Chauhan, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 28.10.2016 (Annexure P-10) passed by the Financial Commissioner, Cooperation, Punjab-respondent No.1, whereby order dated 19.10.2016 (Annexure P-9) passed by the Additional Registrar (Administration) Cooperative Societies-respondent No.2, staying the proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short), was set aside, allowing the revision petition filed by respondent No.3.

Heard learned senior counsel for the petitioner.

Placing reliance on two Division Bench judgments of this Court in **Harinder Singh and others Vs. Deputy Registrar, Cooperative Societies, Ludhiana and others, 1996 PLJ 267** and **Harpal Singh Vs.**

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Additional Secretary-cum-Additional Registrar, Cooperation, Punjab and others, 2000 (2) PLJ 16, learned senior counsel for the petitioner contends that respondent No.1 exceeded his jurisdiction, while passing the impugned order (Annexure P-10). He prays for allowing the present writ petition, by setting aside the impugned orders.

Having heard learned senior counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that contention raised by learned senior counsel for the petitioner is wholly misplaced and the writ petition is liable to be dismissed, for the following more than one reasons.

It is a matter of record that respondent No.3-Society filed its reference petition under Section 55-56 of the Punjab Cooperative Societies Act, 1961 read with Rules 51 and 55 and Appendix-F of the Punjab Cooperative Societies Rules, 1963 before the Additional Registrar (Admin) Cooperative Societies-respondent No.2. Present petitioner was respondent in the abovesaid reference petition, before respondent No.2. Petitioner, despite being respondent in the abovesaid reference petition, moved an application for stay and that too, during the course of hearing on 19.10.2016. Although respondent No.2 was neither having any jurisdiction to deal with and decide the stay application, nor the stay application was maintainable, yet it was not only entertained in most illegal manner, but further proceedings under the SARFAESI Act were stayed, without issuing any notice of the said stay application to the non applicant-respondent No.3, (petitioner before respondent No.2 in the reference petition).

Respondent No.3 was not granted any opportunity to file its

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reply to the said stay application and the proceedings under the SARFAESI Act were stayed by respondent No.2, by passing a patently illegal order dated 19.10.2016 (Annexure P-9), which was rightly set aside by respondent No.1, accepting revision filed by respondent No.3 and the same deserves to be upheld.

The relevant operative part of the order dated 19.10.2016 (Annexure P-9) passed by respondent No.2, reads as under:-

“Sh. D. V. Sharma also filed a written application in this Court a copy of which was given to Sh. Ashwani Prashar. In the application it has been mentioned that the respondents firm has filed CWP No. 11431 of 2015 Ms/ Real Estate Versus State of Punjab and others and the Hon’ble High Court had stayed the proceedings vide order dated 28.5.2015 under the SARFAESI Act. Thereafter, the Bank had filed the Arbitration case in the year 2016. After that the respondent firm had withdrawn aforesaid CWP No. 11431 of 2015 on 29.8.2016 and now the Bank has again started the proceedings under the SARFAESI Act and Sh. D.V. Sharma has made a prayer for stay of the proceedings under the SARFAESI Act. Keeping in view the above, the proceedings were adjourned to 9.11.2016 for supply of the rate of interest charged by the Bank from 19.8.2005 till today in view of the order dated 30.9.2016 and supply of copies of the revision of rates of interest by the Board of Directors from time to time and in case need be to cross examine the witness of the petitioner and for cross examination of the evidence of the Respondent dated 8.10.2016.

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Till the next date of hearing i.e. 9.11.2016 the proceedings under the SARFAESI Act are stayed.”

Respondent No.3, who was petitioner before respondent No.2, challenged the abovesaid order dated 19.10.2016 (Annexure P-9), before respondent No. 1 by way of revision petition, wherein respondent No.1 passed the impugned order dated 28.10.2016 (Annexure P-10) and the same reads as under:-

“This revision petition has been presented against order dated 19.10.2016 passed by respondent No.1, wherein he has restrained the petitioner Bank from proceeding under the SARFAESI Act. He has argued that the application was filed before respondent No.1 on 19.10.2016 and stay has been granted on the same day without affording opportunity to file reply to the application and also insisted that respondent No.1 has no jurisdiction to deal with the notice issued under the SARFAESI Act.

Heard. After considering the arguments and documents placed on record, order dated 19.10.2016 is set aside to the extent that it restrains the Bank from proceeding under the SARFAESI Act. Bank may file reply before respondent No.1 by taking up all the pleas including the plea of jurisdiction and respondent No.1 will decide the application thereafter in accordance with law. Petitioner is disposed off.”

A bare combined reading of both the impugned orders would make it crystal clear that respondent No.1 committed no error of law, while passing the impugned order (Annexure P-10). By passing the impugned order (Annexure P-10), status quo ante would be restored between the parties, as it was existing before passing of the order dated 19.10.2016 (Annexure P-9). It is so said, because order dated 19.10.2016 passed by respondent No.2 was not only an order without jurisdiction but it was also suffering from patently illegality and perversity, which has rightly been set aside by respondent No.1.

Coming to the judgments relied upon by learned senior counsel for the petitioner, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

A bare reading of the operative part of the impugned order (Annexure P-10), would show that respondent No.2 has been directed to decide the stay application of the petitioner afresh, by passing an appropriate order, in accordance with law. Respondent No.3 was also rightly granted the opportunity to file its reply before respondent No.2, contesting the stay application of the petitioner. Once respondent No.2 shall grant an

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opportunity of being heard to both the parties, before passing an appropriate fresh order on the stay application already moved by the petitioner, no prejudice, as such, is going to be caused to the petitioner by passing the impugned order dated 28.10.2016 (Annexure P-10).

During the course of hearing, when confronted with the material fact that how the stay application was maintainable before respondent No.2 in the reference petition filed by respondent No.3, learned senior counsel for the petitioner had no answer and rightly so, it being a matter of record. Once the petitioner had approached this Court by way of CWP No. 11431 of 2015 against the proceedings under the SARFAESI Act, it should have pursued the said writ petition.

It is so said, because this Court, while issuing notice of motion in the said writ petition vide order dated 28.5.2015, had stayed the proceedings under the SARFAESI Act. However, petitioner withdrew the said writ petition vide order dated 29.8.2016 (Annexure P-6). Having said that, this Court feels no hesitation to conclude that technicalities apart, respondent No.1 was well within his jurisdiction to pass the impugned order dated 28.10.2016 (Annexure P-10) and the same deserves to be upheld, for this reason also. Patent illegality cannot be permitted to continue. Only that is what has been done by respondent No.1 by passing the impugned order.

Learned senior counsel for the petitioner could not point out any patent illegality or perversity in the impugned order (Annexure P-10) passed by respondent No.1. Further, no prejudice of any kind, whatsoever, has been pointed out, which might have been caused to the petitioner by passing the impugned order dated 28.10.2016 (Annexure P-10), warranting interference at the hands of this Court, while exercising its writ jurisdiction under

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Articles 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

21.11.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No