IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.21412 of 2016
Date of Decision: 24.01.2017

Rajinder Kumar Jaidka ..Petitioner

versus

State of Punjab and others ..Respondents

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

Present: Mr. Anupam Bhanot, Advocate, for the petitioner.

Mr. Rajinder Goyal, Additional Advocate General, Punjab for respondent no.1.

Mr. Rakesh Gupta, Advocate, for respondent nos. 2 to 4.

RAMENDRA JAIN, J.

1. By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents not to initiate any proceeding against him under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act,") in furtherance of possession notice, dated 06.02.2016 (Annexure P-8/A) under Section 13(12) of the SARFAESI Act, in lieu of the loan amount of the petitioner and further for declaration of loan account of the petitioner as Non-Performing Asset (NPA), as illegal, unjust and arbitrary. Further prayer has also been made to allow the petitioner to operate his bank locker No.32 and to direct the respondent-bank not to take possession of his house till the decision of

the present petition.

2. In nutshell, Smt. Trikha Garg, Branch Manager, Sirhind Road Branch, the successor of the petitioner, made a complaint against the petitioner to the higher authorities levelling allegations that the petitioner, while working as a Manager in Sirhind Road Branch by misusing his official position, sanctioned different loans in favour of 49 persons on the basis of fake documents. Consequently, on the basis thereof, an enquiry was ordered to be conducted into the allegations levelled against the petitioner. Mr. Chaman Lal Garg, Manager, Canara Bank, SME Branch, Patiala, was appointed as an Inquiry Officer, who conducted the investigation and submitted his report, dated 18.8.2014 (Annexure P-1) against which the petitioner submitted representation dated 19.8.2014 (Annexure P-2). However, the respondent-bank seized the operation of the bank locker of the petitioner by putting an additional lock. Vide letter no.CHD/HRM/941:2014 dated 20.12.2014 (Annexure P-4), the respondent-bank lodged a report against the petitioner with the Senior Superintendent of Police, Patiala. The matter was investigated by the Economic Offences Wing, Patiala, then by the Superintendent of Police (Detective) and thereafter the services of the petitioner were suspended by the respondent-Bank. As per the petitioner, he was suspended wrongly and illegally on the basis of one sided enquiry got conducted by the respondent-bank. The petitioner obtained four housing loans, one DPN loan and was paying installments as per schedule submitted by the bank. A copy of the statement of account dated 16.02.2016 is annexed with the petition as Annexure P-6. Despite repeated requests to the respondent-bank, the petitioner could not succeed in getting the details of his salary. Even after the suspension of the

petitioner, the respondent-Bank has been deducting monthly installments of the above said loan amount from his salary account. As per averments, the last payment of installment of the loan amount was deducted in the month of April, 2016 but still, the respondent bank, after declaring consolidated outstanding amount of ₹ 30,54,572/-, issued notice, dated 3.11.2015 under section 13 (2) (Annexure P-8) and possession notice, dated 06.02.2016 under section 13(12) (Annexure P-8A) of the SARFAESI Act, which are illegal, unlawful, arbitrary and against the provisions of the Act. In addition to this, the petitioner was abstained from operating his locker bearing no.32, containing 4 kgs 800 grams of gold with the Sirhind road Branch, Patiala, as unauthorisedly, to which the respondent-bank has got no right.

3. Learned counsel for the petitioner submitted that after the termination of the services of the petitioner, he requested the respondent-bank to settle the outstanding loan amount by permitting him to sell his gold ornaments lying in his bank locker bearing No.32, but the respondent-bank did not adhere to his request. Instead, the respondent-bank is bent upon to initiate proceedings under the SARFAESI Act, against the petitioner, despite the fact that the petitioner had been paying monthly installments of the loan amount regularly to the respondent-bank. Respondent no.2-Bank was adamant to sell the house of the petitioner with mala fide intention while illegally declaring his home loans accounts as NPA. Learned counsel for the petitioner further urges that the petitioner may be allowed to operate his locker so as to enable him to repay the entire outstanding loan amount due towards him by selling his gold ornaments weighing 04kgs 800 grams lying in his locker.

4. On the other hand, learned counsel for the respondent-Canara

Bank refuted the above submission of learned counsel for the petitioner. He contended that since the petitioner had taken six loans including two car loans from the respondent-bank and approximately ₹ 40 lac was due towards the petitioner, therefore, he is not entitled to any relief from this court under extra-ordinary writ jurisdiction.

5. It is pertinent to mention that vide order dated 08.11.2016 passed by this Court, the petitioner, to show his bona fide, was directed to produce a demand draft of ₹ 20 lac in the court on the next date of hearing against the recovery of loan amount of ₹ 40,47,632.97 shown in the summons issued to the petitioner by the Debts Recovery Tribunal-II, Chandigarh (Annexure P-9), in pursuance to the original application filed by the respondent-bank, which he has not produced. Resultantly, in such circumstances, while exercising the extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India, no relief can be granted to the petitioner. However, the petitioner may avail the statutory remedy of appeal under section 18 of the SARFAESI Act, to redress his grievances.

6. For the reasons recorded hereinabove, the writ petition fails and is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

24.01.2017
VK

1. Whether speaking/reasoned Yes/No

2. Whether reportable Yes/No