IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 5109 of 2017
Date of Decision: 14.3.2017

Anshul Kumar Tayal ..Petitioner

versus

Authorised Officer-cum-Chief Manager, Punjab ..Respondent

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

Present: Mr. Amit Aggarwal, Advocate, for the petitioner

RAMENDRA JAIN, J.

1. The petitioner had availed four different loans on different dates and under different category from the respondent-bank. On account of non-adherence to the financial discipline of the respondent-bank, all the loan accounts of the petitioner were declared as Non-performing Asset (for short "NPA"). Consequently, the respondent-bank issued notice dated 20.10.2016 (Annexure P-7) under Section 13(2) of the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") asking the petitioner to clear all the loan accounts within 60 days. Thereafter, another notice dated 06.01.2017 (Annexure P-8) under Section 13(4) of the SARFAESI Act was issued and symbolic possession of the mortgaged properties of the petitioner was taken. The petitioner challenged the said action of the respondent-bank initiated under section 13(4) of the SARFAESI Act before the Debts Recovery Tribunal-1, Chandigarh, (in short, "DRT"), by way of filing SA No.29 of

2017. However, the DRT, vide order dated 04.02.2017 (Annexure P-9) did not grant any interim relief to the petitioner. Immediately thereafter, the petitioner moved an application to the respondent-bank on 9.2.2017 (Annexure P-2) for considering his loan accounts under One Time Settlement (for short "OTS"). However, prior to it, the respondent-bank on 8.2.2017 put the residential house of the petitioner to auction, which is scheduled to be held on 16.3.2017.

2. Hence, by way of the present writ petition under Articles 226/227 of the Constitution of India , the petitioner has sought issuance of a direction in the nature of certiorari to the respondent-bank for quashing of e-notice dated 08.02.2017 (Annexure P-1), whereby the residential house of the petitioner, i.e., House No.863, Urban Estate, Sector 17, Faridabad measuring 500 sq. yard has been put to auction by the respondent-bank without considering the request of OTS made by him vide letter dated 09.02.2017 (Annexure P-2).

3. Learned counsel for the petitioner contended that the respondent-bank should withdraw the e-auction notice dated 08.02.2017 (Annexure P-1) till the representation dated 9.2.2017 (Annexure P-2) moved by the petitioner for OTS is considered. Without considering the offer of the petitioner for OTS, the auction of his house would cause him irreparable loss and injury. The petitioner is ready to make payment of all loan accounts under the OTS scheme. He has further contended that the respondent-bank has wrongly and illegally clubbed all four loan accounts of the petitioner.

4. We have given our thoughtful considerations to the submissions made by the learned counsel for the petitioner.

5. Undisputedly, as per the notice dated 20.10.2016 (Annexure P-7)

under Section 13(2) of the SARFAESI Act, a huge sum of ₹ 2,24,03,573/- was due against all four loan accounts of the petitioner as on 30.9.2016. The petitioner under Section 17 of the SARFAESI Act has alternative remedy by filing an appeal before the DRT, which he had already knocked at its door. Against the declining of interim order vide order dated 04.02.2017 (Annexure P/9) by the DRT, further remedy under section 18 of the SARFAESI Act can be invoked by the petitioner. Hence, this court refrains from entertaining the petition for deciding such types of commercial disputes while exercising the extra-ordinary writ jurisdiction conferred by Articles 226/227 of the Constitution of India.

6. For the reasons recorded here-in-above, no case is made out for interference by this court in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India and as such, finding no merit in the writ petition, the same is dismissed.

7. Registry is directed to bring this order to the notice of the respondent-bank so as to avoid any concealment of this order by the petitioner.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

14.3.2017
VK

1. Whether reasoned/speaking Yes/No

2 Whether reportable Yes/No