IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7040 of 2017
Date of decision: 03.04.2017

Rampal Sharma

....Petitioner

Versus

Allahabad Bank

....Respondent

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

Present: - Mr. Vishal Sodhi, Advocate, for the petitioner.

RAMENDRA JAIN, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of *certiorari* for quashing the notice dated 04.10.2010 (Annexure P-2) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act"), notice dated 24.05.2012 (Annexure P-3) under Section 13(4) of the SARFASI Act issued by the respondent-bank and order dated 23.03.2017 (Annexure P-9) passed by Debt Recovery Tribunal-III, Chandigarh, dismissing MA No.27 of 2017 for restoration of his SA, which was dismissed in default.

2. In nutshell, the petitioner obtained a housing loan of ₹ 8 lakh for construction of his residential house, repayable in 180 monthly instalments @ ₹ 8200/- per month, which had to be completed in the year 2020. Since the petitioner could not adhere to the financial discipline of the respondent-

bank, respondent-bank issued a notice under Section 13(2) of the SARFAESI Act in the year 2010 and thereafter issued notice under Section 13(4) of the SARFAESI Act to the petitioner. Consequently, the petitioner filed SA before the Debts Recovery Tribunal-II, Chandigarh, in which the further proceedings were stayed vide order dated 18.06.2012 (Annexure P-4) subject to deposit of ₹ 1 lakh by the petitioner with the respondent-bank within ten days. Simultaneously, respondent-bank also filed OA before the DRT. SA of the petitioner and the OA filed by the respondent-bank, involving similar issues, were clubbed together. The SA filed by the petitioner was dismissed in default on 22.01.2016. Thereafter, petitioner filed MA for restoration of his SA before the DRT-III, Chandigarh, which was dismissed on 23.03.2017 (Annexure P-9).

3. Learned counsel for the petitioner contended that unfortunately the petitioner suffered from dengue fever and due to long illness he could not repay the loan amount in time. DRT has wrongly dismissed the petitioner's application for restoration of his SA. DRT should not have condemned the petitioner unheard.

4. After giving our thoughtful consideration, we find no merit in the present writ petition.

5. Undisputedly, vide order dated 18.06.2012 (Annexure P-4) DRT had stayed the further proceedings under the SARFAESI Act to be taken by the respondent-bank against the petitioner subject to deposit of ₹ 1 lakh. Perusal of aforesaid order shows that an amount of approximately ₹ 10 lakh was outstanding against the petitioner on 18.06.2012. SA of the petitioner was dismissed for want of prosecution and his application for restoration of

SA was dismissed vide impugned order dated 23.03.2017 (Annexure P-9). Appropriate remedy for the petitioner was to approach the Debts Recovery Appellate Tribunal under Section 18 of the SARFAESI Act. Petitioner has miserably failed to show his bona fides before this Court. The lackness on part of the petitioner to show his bona fides disentitles him to grant of any relief by this Court in extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

6. Accordingly, the present petition being devoid of any merit is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

April 03, 2017
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No