HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1841 of 2019

1. Rupesh Saraf, S/o. Shri Raj Kumar Saraf, Aged About 43 Years, R/o. H.No. 30, Aishwarya Residency, Telibanda, Raipur- Chhattisgarh 492001.
2. Smt. Preeti Saraf, W/o. Shri Rupesh Saraf, Aged About 40 Years, R/o. H.No. 30, Aishwarya Residency, Telibanda, Raipur, Chhattisgarh 492001.

---- Petitioners

Versus

PNB Housing Finance Ltd., Through Its Authorized Officer, Office No. 111 & 112 1st Floor, Plot No.1, Block No.9, DB Corporate Park, Dainik Bhaskar Buiding, Rajbandha Maidan, Raipur, Chhattisgarh 492001

---- Respondent

For Petitioners	:	Mr. Soumitra Kesharwani, Advocate
For Respondent	:	Mr. Prashant Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18.07.2019

1. The present petition is filed for the following reliefs :

   (i) The Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of petitioner for its kind perusal.

   (ii) The Hon'ble Court may kindly be pleased to quash/set aside the impugned order dated 28.03.2019 issued by Debt Recovery Tribunal (Annexure P-1), which relates to petitioner.

   (iii) That, the Hon'ble Court may kindly be pleased to grant any other relief, as if may deem fit and appropriate.

   (iv) Cost of the petition may also be given.

2. Perusal of the order dated 28.03.2019 (Annexure P-1), though actually the order has been passed on 09.04.2019, would show that the appeal was filed by the petitioner under Section 17 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 *(for short "SARFAESI Act").*

3. Learned counsel for the petitioner would submit that the petitioner had obtained a loan of Rs.2,41,48,000/- and to secure the same four properties were mortgaged. Subsequently, the petitioner made default in repayment, therefore, the notice under Section 13(2) of the SARFAESI Act was issued on 18.07.2017 to the petitioner. It is stated subsequently some settlement was arrived at between Bank & Borrower and certain amount was paid and further on 22.03.2018 the Bank agreed to release one of the mortgaged property thereby it was sold. It is contended that thereafter too the notice under Rule 8(6) of the SARFAESI Act was issued to the petitioner. It is contended that by the order dated 09.04.2019, the Debt Recovery Tribunal (for short *"DRT"*) has passed a vague order and has directed the petitioner to deposit an amount of Rs.25 Lacs on or before 30.04.2019 and further has directed to deposit Rs.25 Lacs on or before the last day of every month and ordered to clear the outstanding dues within a period of 6 months before 30.09.2019 and ordered in such case the Bank shall not proceed further with the auction of the properties. It is contended that the said order is so vague and would be have an affect as the petitioner has already paid Rs.1,54,99,941/- till date and if such repayment schedule is complied with, it would be over & above of loan with interest and would be much higher. It is further submitted that the interest has wrongly been levied on loan of the petitioner. He further refers to the case reported in *(2016) 8 Scale 697 & (2009) AIR (SCW) 5886* and submits that the settlement letter has been given to settle the account and if the properties have been declared non performing asset then as per the guidelines of the Bank it should have been settled. He further submits that the notice issued to the petitioner also suffers with the illegality under the SARFAESI Act.

4. Be that as it may, the order impugned which is under challenge passed by the DRT as per the SARFAESI Act. If the petitioner's contention is accepted that the order passed by the DRT is vague, the clarification has to be either

made by the DRT itself or if the petitioner may either ask for review as per law or if is aggrieved then the forum of appeal is open under Section 18 of the SARFAESI Act. The disputed question of fact as to the charging of interest whether correct or not cannot gone into in this petition, as it would necessarily need evidence, which can only be adjudicated before the DRT. Since the alternative remedy is available and the petitioner has already availed the same, therefore, if the order is said to be vague, then the Court which has passed the order can only clarify the same.

5. In view of the above, the petition has no merit and accordingly is dismissed.

Sd/-
Goutam Bhaduri
Judge

ashok