IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2349 of 2019
Date of decision: 29.01.2019

Vikas Kumar and others

……Petitioners

Vs.

Punjab National Bank and others

…..Respondents

CORAM: HON’BLE MR. JUSTICE AJAY KUMAR MITTAL
HON’BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rahul Dev Singh, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the demand notices dated 23.04.2018, Annexure P.1, (Colly.) issued by respondent No. 2-Punjab National Bank vide which payment of ₹ 30 crores has been demanded from the petitioners being the alleged guarantors. Further, direction has been sought to respondent Nos. 1, 2 and 4 to hold a thorough inquiry in the misrepresentation and fraud committed by respondent Nos. 5 and 6 in connivance with respondent No. 3 for getting disbursed a cash credit limit of ₹ 48,27,00,000/- by making the petitioners, the guarantors of the said cash credit limit in personal capacity as well as fraudulently mortgaging their only residential house without their consent. The petitioners also pray for a direction to respondent No. 4 to initiate action against respondent Nos. 3, 5 and 6 in the facts and circumstances explained in the petition and to get the signatures allegedly fixed on the agreement of mortgage whereby they have been made guarantors of the cash credit limit availed by

respondent No. 5. Direction has also been sought to the respondents to accept the objections dated 31.12.2018 preferred under Section 13 (3A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “SARFAESI Act”) against the demand notices and release the residential house to the petitioners.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Petitioner Nos. 1, 2, 3 and 5 were served with the demand notice dated 23.04.2018 under Section 13(2) of the SARFAESI Act demanding an amount of ₹30,35,23,114/58 with future interest with effect from 26.02.2018 until payment in full wherein, they have been shown to be mortgagers of their residential house. It was mentioned in the notice that in case of failure to pay the above said amount within 60 days, the bank shall proceed in accordance with the remedies available to it under the SARFAESI Act. The petitioners through petitioner No. 5 approached respondent No. 3 and showed him the agreement of guarantee dated 22.02.2016, Annexure P.2. A perusal of the agreement showed that the signatures affixed on the said document were forged and did not belong to the executors of the document which fact was visible from the sale deed dated 21.12.2011. Petitioner No. 5 inquired from all the petitioners and Sh. Sikandar Singh, his real brother about the alleged agreement to mortgage dated 22.02.2016. All the petitioners including Sh. Sikandar Singh denied to have executed the same. However, Sh. Sikandar Singh informed that he had handed over the original sale deed of their residential house against the personal loan taken by him of an amount of ₹ 6,94,00,000/- for the purpose of business of their

firm namely D.S. Estates and Constructions Private Limited. This firm was a partnership firm created by Sh. Dharam Singh, father of petitioner Nos. 1 and 5. The other partner was Sh. Rajbir Singh. As the said firm was in need of money for the purpose of business, the petitioners requested respondent No. 5 to assist them financially on a personal note. He agreed to aid them but on the condition to make him a director in the above mentioned firm and that he be handed over the original sale deed of their house. Therefore, Sh. Dharam Singh and petitioner No. 5 removed themselves from the directorship of the firm and respondent No. 5 as well as Sh. Sikandar Singh were made the directors of the firm. Thereafter, amount of ₹ 6,79,10,000/- was transferred on various dates and in parts to the account of the said firm. Further, an amount of ₹ 15 lakhs was transferred in the personal account of Sh. Sikandar Singh, totalling an amount of ₹ 6,94,10,000/-. He was made the working partner of the firm. Out of the aforesaid amount, respondent No. 5 transferred an amount of ₹ 1.70 crores in his personal account from the account of the said firm without informing the other partner. In order to make a further payment of balance due to respondent No. 5, five flats each amounting to ₹ 22,61,000/- held by the parent firm of the petitioners were transferred to respondent No.5. Therefore, an amount of ₹ 1,13,05,000/- was given back to respondent No. 5. Thus, the balance due towards respondent No. 5 comes to ₹ 3,61,05,000/-. The petitioners are ready to deposit the said amount before this court. According to the petitioners, no other financial dealings existed between them and respondent No.5. They also did not stand guarantee to the cash credit limit taken by respondent No.5 in their personal capacity and had not mortgaged their only residential house. The petitioners approached respondent No.3 and apprised him of the situation but he refused to pay any heed. Thereafter, the petitioners filed a complaint dated 29.10.2018 against respondent Nos. 3, 5 & 6 before respondent No.4, which was sent to the Commissioner of Police, Gurugram for further necessary action. The Commissioner of Police called respondent No.3 for inquiry. Vide letter dated 24.09.2018, Annexure P.7, the bank made a proposal for release of the residential house of the petitioners after deposit of ₹ 10.30 crores. It was further proposed that the personal guarantee given by the petitioners against the cash credit limit shall not be released and would continue to cover the said limit. The petitioners assert that the letter dated 24.09.2018 showed the amount of connivance of bank official with respondent Nos. 5 and 6, due to the status of respondent No.6 who is an Ex. AGM of the bank. According to the petitioners, respondent No.5 was in the business of getting loans from different banks for various people and had committed numerous frauds and few FIRs are also pending against him. Due to illegal activities of respondent No.5, the above mentioned firm had to be shut down. A perusal of the notice dated 23.04.2018 showed that respondent No.5 already had eight properties out of the nine mentioned in the demand notice and yet he was not paying up the dues of the bank. The petitioners state that properties of respondent Nos.5 and 6 have now been put on auction on 03.01.2019. The petitioners assert that they are now being threatened by respondent No. 3 with further proceeding under the SARFAESI Act. They have never taken the cash credit limit nor have executed any document which is purported to be signed by them. Inspite of their efforts, no action is being taken against respondent No. 5. Having no other option, the petitioners approached this court through CWP No. 31302 of 2018. The said petition was dismissed vide order dated 11.12.2018 on the ground that the petitioners had not even filed any objections in terms of Section 13 (3A) of the SARFAESI Act. Thereafter, the petitioners filed the said objections. The bank has not yet replied to the said objections even after the statutory period. Aggrieved thereby, the petitioners have approached this court through the instant writ petition.

3. We have heard learned counsel for the petitioners.

4. Admittedly, petitioners No.1, 2, 3 and 5 were served with demand notice dated 23.4.2018 under Section 13(2) of the SARFAESI Act for an amount of ₹ 30,35,23,114/58 with future interest w.e.f 26.2.2018 till payment in full. On failure of the petitioners to pay the amount, the Bank has to proceed in accordance with the provisions of the SARFAESI Act. Having perused the facts narrated in the petition and hearing learned counsel for the petitioners, we find that there is serious dispute on facts which cannot be adjudicated in writ proceedings under Articles 226/227 of the Constitution of India.

5. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of fact are involved, a Division Bench of this Court in ***N.C.Mahendra vs. Haryana State Electricity Board and others,*** AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a

person where disputed questions of fact are raised. The relevant portion reads thus:-

> "12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by way of a civil suit." (emphasis supplied).

6. The Supreme Court in ***State Cadre Authority and another vs. K.S.Bajpal and others,*** (1990) (Suppl.) SCC 713, ***Bhagubhai Dhanabhai Khalasi and another vs. The State of Gujarat and others,*** (2007) 4 SCC 241 and ***Mukesh Kumar Agrawal vs. State of UP and others,*** (2009) 13 SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex court in ***Dwarka Prasad Agarwal (D) by Lrs and another vs. B.D.Agarwal and others,*** AIR 2003 SC 2686 wherein it was observed as under:-

> "We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed."

7. Further, dealing with alternative statutory remedy, the Apex Court in ***"United Bank of India Vs. Satyawati Tondon and others (2010) 8 SCC 110"***, held as under :

> "It is a matter of serious concern that despite repeated pronouncements of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues."

8. Moreover, in the absence of any specific order passed by the respondent-Bank rejecting the objections filed by the petitioner under Section 13(3A) of the SARFAESI Act or any notice having been issued under Section 13(4) of the SARFAESI Act by the respondent-Bank, no cause of action arises in favour of the petitioner at this stage.

9. In view of the above, we are not inclined to entertain the writ petition to grant relief to the petitioners by exercising the extra ordinary writ jurisdiction under Article 226 of the Constitution of India. Consequently, the writ petition is dismissed. However, the petitioners may take recourse to the appropriate remedy, in accordance with law.

(Ajay Kumar Mittal)
Judge

January 29, 2019
'gs'

(Harnaresh Singh Gill)
Judge

Whether speaking/reasoned **Yes**
Whether reportable **Yes**