

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C. W.P. No.6418 of 2019

Date of Decision:- 28.05.2019

Surinder Kumar Verma and others

....Petitioners

vs.

Union of India and others

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. B.S. Malik, Advocate,
for the petitioners.

SUDHIR MITTAL, J.

The petitioners have approached this Court under Article 226/227 of the Constitution of India for the following reliefs:

“Issue a writ of Mandamus:-

- i) declaring that the power of *ex parte* classification of the account of borrower as NPA confers arbitrary powers on the bank in violation of fundamental rights guaranteed under Article 14 and imposes an unreasonable restrictions not in public interest under Article 19(1)(g) of the Constitution and not saved by sub-Clause (6) of the Article;
- ii) declaring that SARFAESI Act is not applicable to potentially viable sick MSME; and the respondent No.3 is bound to comply with the procedure prescribed for units declared as NPA or sick but potentially viable to rehabilitate them and not suddenly jump to

resort to recovery process under SARFAESI Act, 2002;

- iii) declaring that the banks are bound to follow mandatory RBI guidelines and constitute a Viability Study Team, find out the causes of incipient sickness and formulate a package for its rehabilitation;
- iv) directing the bank-Respondent No.3 to provide the Petitioner adequate term loan and need based adequate timely working capital in public interest as per the mandatory parameters, norms prescribed by RBI for financing MSME vide Circular dated July 24, 2017 conveying the Master Directions regarding lending to Micro, Small and Medium Enterprises (MSME) Sector;
- v) issue a writ of certiorari Quashing the ex party classification of account of the petitioner as NPA on 31/01/2018, quashing the notice dated 27/04/2018 (Annexure P-4) issued under Section 13(2) of the SARFAESI Act, 2002, quashing the application filed by the respondent under section 14 of the SARFAESI Act, 2002 to the district magistrate for providing police assistance to take possession of the sole house of the petitioner, setting aside the recovery proceedings initiated by the respondent bank and setting aside the entire process initiated and prosecuted by the respondent bank under the provisions of SARFAESI Act, 2002;
- vi) the wave of the interest levied over and above the RBI guidelines compounding a penal interest and others cost charges fees levies etc. by any other name which are unauthorized and legally not payable and exempt the petitioners from such illegal charges;
- vii) issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of

the present case;

- viii) exempt the petitioners from filing certified/true typed copies of Annexures P/1 to P/12;
- ix) allow the petitioners to file dim/single space copies of certain annexures, in order to maintain the originality and veracity of such documents;
- x) exempt the petitioners from serving advance notices to the respondents;
- xi) costs of the writ petition may also be granted in favour of the petitioners; and
- xii) stay the dispossession of the petitioners from the house, during the pendency of the present petition;

2. Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case, may kindly be passed in favour of the petitioners, during the pendency of the present writ petition, in the interest of justice, equity and fair play.”

3. The petitioners are allegedly engaged in the hospitality business as they own a marriage palace in Ambala. They obtained a loan of ₹ 100 lacs from respondent No.3-Capital First Limited vide loan agreement dated 30.6.2012 and a loan of ₹ 75 lacs vide loan agreement dated 29.3.2013. Allegedly, their sole residential house i.e. Plot no.38, Kabir Nagar, Ambala Cantt, measuring 182 square yards, was mortgaged to secure the said loans. It is further alleged that from the very beginning, respondent No.3 has been charging arbitrary and excessive rate of interest, overdue charges and surcharge. It is stated that the provisions of RBI directive pertaining to interest rate on advances vide Master Circular No. RBI/2009-10/66 dated 1.7.2009, which is mandatory in nature, have not been adhered to. Both the loan accounts

have been illegally classified as Non Performing Assets on 31.01.2018 as the said classification is in violation of the prudential norms of RBI directives pertaining to income recognition and asset classification. Thereafter, an illegal notice dated 27.4.2018 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') has been issued. Further, the enterprise of the petitioners falls within the definition of Micro, Small and Medium enterprises and RBI circulars dated 7.10.1985, 1.11.2012, 17.3.2016 and 1.12.2016 are applicable to it where-under it was the duty of respondent No.3 to analyze the warning of signals of sickness and take immediate remedial steps. Instead, it resorted to the provisions of the SARFAESI Act. Although the requirement was of providing further capital to the petitioners' enterprise so that it could recover from its financial sickness, respondent No.3 filed an application dated 14.9.2018 under Section 14 of the SARFAESI Act. Arbitration proceedings have also been initiated and awards have been passed therein to pay the awarded amount along with interest @ 18%. Reliance has been placed upon various judgments of this Court passed in CWP No.19692 of 2017 *M/s Vishvas Tractors Limited and another vs. Central Bank of India* dated 31.8.2017, CWP No.21519 of 2017 *M/s. CCC Infrasy Pvt. Ltd. vs. Punjab National Bank* dated 22.09.2017, CWP No.18726 of 2017 *M/s Amrit Enterprises and another vs. Corporation Bank and another* dated 12.12.2017, CWP No.145 of 2018 *Shaktiman Cements Ltd. vs. State Bank of India and another* dated 16.01.2018, CWP No.10617 of 2018 *M/s Shree Balaji Copy Industries and another vs. Punjab National Bank and another* dated 30.04.2018 and a judgment of the Supreme Court passed in *Arunbhai Kalyanbhai Sutariya vs. Nutan Nagrik Sahakari Bank Limited*, 2015 (6) RCR

(Civil) 332.

4. A perusal of the pleadings of the petitioners shows that their grievance is that respondent No.3 did not adhere to the RBI guidelines regarding charging of interest and rehabilitation of micro, small and medium industries. The loan accounts of the petitioners have been illegally classified as non-performing assets without giving any notice to the petitioners and, thus, proceedings initiated under the SARFAESI Act, 2002, are null and void.

5. The first hurdle to be crossed by the writ petitioners is regarding the maintainability of the writ petition. Admittedly, respondent No.3 is a non-banking financial company as has been stated in para 2 of the writ petition. The business of such a company is regulated by the Reserve Bank of India and other statutory authorities. Itself, it is not a statutory authority and no funds have been infused in it by either the Central Government or the State Government. Its activities are purely commercial and no public duty is being performed by it. Thus, it is neither 'State' under Article 12 of the Constitution of India nor is it an 'Authority' within the meaning of Article 226 thereof. Respondent No.3 is only a financial institution as defined in Section 2(m) of the SARFAESI Act, 2002 and nothing more. Thus, the present writ petition is not maintainable. In this regard, we refer to with advantage to a Single Bench judgment dated 8.5.2017 passed by the Delhi High Court in WP(C) 8031 of 2016 *M/s Rajpur Hydro Power Ltd. and others vs. M/s PTC India Financial Services Ltd.* After an exhaustive consideration of the law on the subject, it has been held that **M/s PTC India Financial Services Ltd.** (supra) is a public limited company and a non-banking financial company notified under the SARFAESI Act and not amenable to writ jurisdiction.

6. On merits also, the contentions of learned counsel for the petitioners deserve to be rejected. On an account being declared a non-performing asset, the creditor issues a statutory notice under Section 13(2) of

the SARFAESI Act and on receipt thereof, the borrower is entitled to raise objections under sub-section (3-A) which the creditor is duty bound to decide within 15 days of receipt thereof. Thus, if the petitioners were aggrieved by the declaration of their loan accounts as non-performing assets, they could have raised objections under sub-section (3-A) of the SARFAESI Act. Having failed to do so, they are not entitled to claim that they have been condemned unheard. In any case, an account is declared as a non-performing asset on the basis of norms laid down by the Reserve Bank of India and there is no averment in the writ petition that the said norms have been violated. Further, at this stage, no rights of a borrower are being adversely affected and, thus, an opportunity of hearing is not necessary.

7. Regarding the contention of learned counsel for the petitioners that various guidelines/circulars issued by the Reserve Bank of India from time to time have not been adhered to, suffice to say that the petitioners have never raised objections regarding any such violations. They have not even applied for rehabilitation under the guidelines laid down in this regard in respect of micro, small and medium industries and they cannot expect a financial institution to act on its own. The judgments in the cases *M/s Vishvas Tractors Limited* (supra), *M/s. CCC Infrasy Pvt. Ltd.* (supra), *M/s Amrit Enterprises* (supra), *Shaktiman Cements Ltd.* (supra) and *M/s Shree Balaji Copy Industries* (supra) are not applicable as in all those cases, the bank had failed to act upon an application for revival made under the applicable guidelines and, therefore, a direction was given to the public sector bank concerned to consider the proposal given by the debtor in the first instance. The judgment in the case of *Arunbhai Kalyanbhai Sutariya* (supra) does not lay down any law. The question regarding applicability of SARFAESI Act has been kept open and the Debts Recovery Tribunal at Ahmadabad has been directed to decide the

pending appeals within three months.

8. There is no merit in this writ petition and the same is dismissed on the grounds of maintainability as well as on merits.

9. If the petitioners are aggrieved by the actions of respondent No.3, they are at liberty to approach the concerned Debts Recovery Tribunal in accordance with law.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

May 28, 2019

poonam

Whether speaking/reasoned

Yes

Whether reportable

Yes