

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

**CWP No.6717 of 2020 (O&M)
Date of Decision: July 24, 2020**

M/s Guru Ram Dass Industries

...Petitioner

VERSUS

State Bank of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE S.N.SATYANARAYANA
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.K.S.Brar, Advocate
for the petitioner.

Mr.Vinish Singla, Advocate
for respondent No.1.

S.N.SATYANARAYANA, J.

This writ petition has been filed challenging the notices issued by respondent-Bank under Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act, 2002 [SARFAESI Act] dated 01.12.2017 and 15.03.2018, which are Annexures P-2 and P-3 and also the proceedings, which have commenced under Section 14 of the SARFAESI Act for recovery of the amount of ₹35,66,369.16. In the entire writ petition, there is no reference to the earlier proceedings, between the petitioner and the respondent-Bank with reference to the very same notice, one of which is at Annexure P-2 to this petition. It is under the aforesaid circumstance, when this matter had come for consideration before the Coordinate Bench of this Court on

13.03.2020, certain concessional order was passed, where further proceedings pursuant to Annexure P-2, P-3 and P-5 were stayed, subject to the deposit of ₹8 lakhs within a period three weeks from that day.

Thereafter, the respondent-Bank entered appearance and has filed two applications i.e. CM No.4764 and 4765-CWP of 2020, where it sought for exemption to furnish certified copies of Annexures A-1 to A-9 and also seeking vacation of the stay order passed by this Court on 13.03.2020. When these two applications are still pending for consideration, one more application i.e. CM No.6340-CWP of 2020 has been filed seeking exemption from filing certified copies of another five documents i.e. Annexures A-10 to A-14. Incidentally, the application in CM No.6340-CWP of 2020 and CM No.4764-CWP of 2020 filed earlier seeking exemption from production of documents Annexures A-1 to A-9 and Annexures A-10 to A-14 are allowed and the said documents are taken on record.

Now, what is required to be considered is only the application in CM No.4765-CWP of 2020 seeking vacation of interim order dated 13.03.2020.

This application as well as the main writ petition was taken up for consideration on 20.07.2020 and the matter was heard at length in the presence of learned counsel for the petitioner, who is challenging Annexures P-2, P-3 and P-5, which are notices under Section 13(2) of SARFAESI Act, possession notice under Rule 8 (1) of Security Interest (Enforcement) Rules, 2002 and proceedings under Section 14 of the same Act. As well as learned counsel for the applicant-respondent-Bank, who has

noticed that the petitioner has not come before this Court for the first time in this writ petition in CWP No.6717 of 2020. In fact, it is the third writ petition filed by him with reference to the same transaction between himself and the respondent-Bank, which is said to be under two different accounts for which, the very same property, which is now sought to be sold, is mortgaged. The record would indicate that the petitioner herein approached this Court for the first time challenging the very same notice which are now challenged i.e. Annexure P-2 and also notice under Section 13(4) of SARFAESI Act, by filing CWP No.25397 of 2018, which writ petition was dismissed as withdrawn vide order dated 03.10.2018, with liberty to the petitioner to take appropriate remedy as available under the law. It is seen that subsequent to disposal of CWP No.25397 of 2018 on 03.10.2018, an application in SA No.71 of 2019 was filed by the petitioner herein before Debts Recovery Tribunal-III, Chandigarh, where said application was filed with the delay of 399 days as could be seen from Annexure A-11. The said application was taken up for consideration as Item No.59 on 19.09.2019 and was dismissed mainly on the ground that the appeal is filed with inordinary delay. This order is not taken up in challenge before DRAT, New Delhi. Instead, the petitioner herein approached this Court by filing CWP No.28950 of 2019, which came up before this Court on 04.10.2019 and on the same day, it was dismissed with a short order, which reads as under:-

“The present petition is directed against the order dated 19.9.2019 passed by DRT-III, Chandigarh by which securitization application filed by the petitioner has been dismissed being time barred.

petitioner has a statutory remedy of appeal before the DRAT, New Delhi. The writ petition is thus dismissed on this ground alone.”

Thereafter, it is seen that the petitioner has again gone back to DRT-III, Chandigarh by filing application in SA No.150 of 2019. In the said application, he has not given particulars of earlier application filed by him in SA No.71 of 2019, which was dismissed vide order dated 19.09.2019 and as well as the writ petitions filed by him before this Court in CWP No.25397 of 2018 as well as CWP No.28950 of 2019, as could be seen from the copy of the application, which is at Annexure A-14. However, it is seen that during the pendency of the said application, there appears to be some settlement arrived at between the parties, with reference to settling the matter by paying ₹30 lakh to the bank. Pursuant to said settlement, two cheques dated 05.11.2019 and 05.12.2019 each for ₹7 lakh and ₹23 lakh respectively, were given to the respondent-Bank, out of which, it is said that the cheque dated 05.11.2019 for ₹7 lakh was bounced when presented for realization. It is seen that thereafter, the application in SA No.150 of 2019 also came to be dismissed on 18.02.2020 (Annexure A-2). In the said order passed by the Tribunal, it is seen that certain observations were made regarding demand notice issued under Section 13(2) and 13(4) being served on the petitioner, which he has denied throughout and also with reference to an undertaking given by him, which reads as under:-

“It is also relevant to mention here that applicant Shri Narender Singh had given an undertaking to the bank in written that if he fails to deposit 25% of the amount till 05.11.2019 then Bank will be free to take the possession of the

mortgaged property and he will raise no objection. The Counsel for applicant has not given any reply to this undertaking during arguments.”

Thereafter, the said application is dismissed vide order dated 18.02.2020. Pursuant to the order passed therein, it is seen that the bank has pursued the proceedings under Section 14 of the Act for recovery of the amount. It has also come on record that physical possession of the mortgaged immovable property is also taken by the Bank.

It is, at this stage, that the present writ petition is filed in trying to stall this. When the entire conduct of the petitioner is seen, it is nothing but a dishonest one in suppressing the matters, not only before the Tribunal but also before this Court and securing an interim order and trying to drag the matter. His conduct in not adhering to the undertaking given by him, is observed by the Tribunal in its order dated 18.02.2020 and also vide Annexure A-5 and A-6, which are produced before this Court.

In the circumstance, we are of the considered opinion that the petitioner is not entitled to any concessional order from this Court and accordingly, the order dated 13.03.2020 is required to be recalled. While doing so, we observe that the writ petition itself is not maintainable, inasmuch as the right of the petitioner is to pursue the same before DRAT, New Delhi, if he so desires. In any event, he has no right to pursue this writ petition under any circumstance. Accordingly, the present writ petition is dismissed.

However, while doing so, we would state that to deter any other person to commit such mistake before this Court, it is necessary that cost

should be imposed for playing hide and seek with the Court by suppressing the material while filing writ petition. Accordingly, we feel it is appropriate to impose costs of ₹25,000/- on the petitioner, which he shall deposit with Registry of this Court within six weeks.

(S.N.SATYANARAYANA)
JUDGE

(ARCHANA PURI)
JUDGE

July 24, 2020
himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No