<u>IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH</u>

<u>Civil Writ Petition No.7426 of 2020</u>
<u>Date of Decision</u>: *September 18, 2020*

<u>Karnail Singh & others</u>
..... PETITIONER(S)

VERSUS

<u>District Magistrate cum Deputy Commissioner, Kaithal & others</u>
..... RESPONDENT(S)

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<u>CORAM</u>: **HON'BLE MR. JUSTICE JASWANT SINGH**
HON'BLE MR. JUSTICE SANT PARKASH

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<u>PRESENT</u>: - Mr. Aayush Gupta, Advocate, for the petitioners.

Mr. Raman Sharma, Additional Advocate General, Haryana.

Mr. Tarun Dhingra, Advocate, for respondent Nos.3 and 4.

Mr. R.S. Budhwar, Advocate, for respondent No.5.

Mr. Rajinder Goyal, Advocate, for respondent Nos.7 to 9.

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<u>Sant Parkash, J</u>

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

This petition has been preferred by petitioners under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari, quashing sale notice dated 17.02.2020 (Annexure P-4) and consequential proceedings of auction arising out of the same, as also, respondents Nos.3 and 4 be directed to settle the account with the petitioners.

Brief facts of the case are that the petitioners and respondent No.5 are real brothers. They constituted a joint Hindu family wherein respondent No.5 acted as Karta. All the brothers purchased different properties vide different sale deeds, and they entered into a settlement dated 01.09.2007 (Annexure P-1) whereby the properties and firms were divided between them. Accordingly, respondent No.5 became the owner of M/s Kisan Engineering and Steel Traders.

Respondent No.5 filed a suit for dissolution of partnership and rendition of accounts, which was dismissed vide judgment and decree dated 06.03.2014 (Annexure P-2). Appeal preferred against the said decision was also dismissed by the lower appellate court vide judgment dated 02.01.2019 (Annexure P-3).

In the interregnum, respondent No.5, in collusion with respondent Nos.3 and 4, took some credit facility from the bank. After the account was declared as Non-Performing Asset (NPA), a notice dated 20.09.2018 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') was issued, as per which, an amount of ₹ 22,54,901/- was outstanding against them as on 01.07.2017. Thereafter, respondent No.3 issued a sale notice dated 17.02.2020 (Annexure P-4) wherein the date of auction was fixed as 19.03.2020 and the reserve price of the property was kept as ₹ 55 lac.

Learned counsel for the petitioners has contended that when the petitioners came to know that respondent No.5, in collusion with respondent Nos.3 and 4, has taken some credit facility, they filed a suit against respondent No.5 and his sons, wherein counsel appearing on behalf of the Bank made a statement dated 19.03.2020 (Annexure P-6) that Bank will not initiate any proceedings qua the share of petitioners. But, the statement was not appreciated and respondent No.3 and 4 auctioned the property in question in favour of respondent No.6 for an amount of ₹ 56 lac. Respondent Nos.3 and 4, also did not allow anybody to participate in the auction proceedings. The said auction was in violation of statement dated 19.03.2020 made by counsel for the Bank.

The petitioners sent legal notices to the Bank that the auction in question was wrong and petitioners, on various occasions, asked respondent Nos.3 and 4 to settle the account. The petitioners also prepared a demand draft dated 12.05.2020 (Annexure P-11) of ₹ 10 lac in favour of the loanee, to show their bonafide. Respondent No.5 was owner of 1/4th share of the property only, whereas respondent Nos.3 and 4 sold the complete property including 3/4th share of petitioners, which is totally arbitrary and auction in question on the basis of sale notice is liable to be set aside.

Learned counsel for answering respondents (respondent Nos.3 and 4) has contended that on 23.01.2009, credit facility was granted in favour of M/s Kisan Engeering & Steel Traders. Respondent No.5 Surjeet Singh son of Gurdial Singh and his son Rajveer Singh stood guarantors. They alongwith Sukhbir Singh mortgaged their properties in favour of bank vide Mortgage Deed No.2150 dated 20.01.2009 as they got ownership rights vide registered sale deed No.1244, 1245 and 1030 dated 03.11.2000 and 04.09.2001. The loan account was declared as NPA on 30.06.2017 and notice under Section 13(2) of SARFAESI Act was issued, whereafter under Section 13(4) read with Rule 8 of the Security Interest (Enforcement) Rules, 2002, bank took the possession over the secured assets/mortgaged property. Vide auction notice dated 17.02.2020, bids for sale of secured assets were invited through e-auction and on 19.03.2020 the bank sold the property which has been duly confirmed and sale certificate has already been issued in favour of auction purchasers.

Learned counsel has further contended that the petitioners have no locus standi to file the instant petition. The petitioners have not approached the Court with clean hands. It is public money which is being recovered. The petitioners have no right or title over the secured assets/mortgaged property.

We have heard learned counsel for the parties and with their kind assistance, gone through the record..

It is a settled proposition of law that a financial institution, in case of defaults in repayment of dues by the loanee, is bound to obtain the best possible price of the mortgaged assets. Accordingly, the Bank has rightly issued sale notice dated 17.02.2020 (Annexure P-4) and its action in execution of sale cannot be faulted with.

Moreover, the petitioners have efficacious remedy available before the appropriate authority i.e. Debt Recovery Tribunal. The law in this regard is very settled that when appropriate forum is provided under the SARFAESI Act, this Court stands injuncted from interfering with any matter arising out of the proceedings under the SARFAESI Act. Therefore, no ground for interference is made out particularly, in view of the judgement of the Supreme Court in the case of **United Bank of India vs. Satyawati Tandon and others**, reported as **(2010) 8 SCC 110**, wherein the Apex Court held as under:-

"17. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pas interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

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27. It is a matter of serious concern that despite repeated pronouncement 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. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

The aforesaid finding rendered in **Satyawati Tandon (supra)** has further been reiterated by the Supreme Court in case **Authorised Officer, State Bank of Travancore and another vs. Mathew K.C.**, reported as **2018(2) R.C.R. (Civil) 1**.

In view of the above, we do not find any merit in the instant petition and the same is dismissed.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

September 18, 2020
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No