IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 202

Civil Writ Petition No.7649 of 2020
Date of Decision: *June 19, 2020*

Sarv Hitkari Educational Society, Kapurthala

..... PETITIONER(S)

VERSUS

Punjab National Bank & another

..... RESPONDENT(S)

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CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
HON'BLE MR. JUSTICE SANT PARKASH

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PRESENT: - Mr. Sushant Kareer, Advocate, for the petitioner.

Mr. R.S. Bhatia, Advocate, for respondent No.1.

Mr. Aalok Jagga, Advocate, for respondent No.2.

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Sant Parkash, J

Heard through Video Conferencing.

CM No.5369 of 2020

Application for placing on record replication is allowed.

Replication is taken on record.

CWP No7649 of 2020

The instant writ petition has been filed under Article 226/227 of the Constitution of India, seeking issuance of a writ in the nature of Certiorari, quashing impugned auction Notice dated 10.01.2020 (Annexure P-11) and to set aside the sale certificate, if any, in favour of respondent No.2 – Sukhdev Singh, issued in violation of Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 (for short, 'Rules 2002'). Prayer has also been made for issuance of a writ of Mandamus to protect the possession of petitioner – Sarv Hitkari Educational Society (for short, 'Society'), over 56,665 square feet, over which the building of GD Goenka Public School is in existence, thereby granting a reasonable time to the petitioner – Society, to construct a building of its own in the land which is under its ownership and possession.

The petitioner – Society is a registered society which is running a school under the name of GD Goenka Public school in district Kapurthala. The Society was registered on 30.10.1999 (Annexure P-1). Its account was classified as Non-Performing Asset (NPA) on 31.03.2018. The petitioner was served upon a notice dated 07.05.2018 (Annexure P-2) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'). Thereafter, a subsequent notice dated 11.09.2018 (Annexure P-3) under Section 13(4) of the Act ibid, was also issued. Vide notice dated 10.09.2018 (Annexure P-4), the reserve price of the property, subject matter of present writ petition as fixed at ₹ 12,79,30,276/-.

The petitioner issued a letter dated 06.12.2018 (Annexure P-5) to the respondent – Bank, assuring that the amount so due to the bank, will be fructified within a reasonable time frame but vide communication dated 18.04.2019 (Annexure P-7), the petitioner was informed that the respondent Bank had considered the non-payment of 3rd instalment on 31.03.2019 as a failure to honour One time Settlement (OTS) terms despite there being an extension. Soon thereafter, the respondent Bank published an auction notice dated 22.04.2019 (Annexure P-8) wherein the reserve price of the property in question was fixed at ₹ 1148.56 lac and the auction was to be held on 13.05.2019.

The contention of learned counsel for the petitioner, as recorded at the time of issuance of notice of motion i.e. on 02.06.2020, was that the mortgaged property was repeatedly put to auction at various reserved prices i.e. for the auction which was to held on 11.09.2018, the reserved price was ₹ 12,79,30,276/-; for auction dated 22.04.2019, it was ₹ 1148.56 lac; for auction dated 23.05.2019, it was ₹ 976.27 lac; for auction dated 29.10.2019, it was ₹ 915.30 lac; and for auction dated 10.01.2020, it was ₹ 562.50 lac. Though, the sale was effected on 29.01.2020 but reduction of value of property from ₹ 9.15 crore as on 29.10.2019 to ₹ 562.50 lac on 10.01.2020 i.e. only after a period of about two months is not explained.

Pursuant to notice of motion, two separate replies have been filed on behalf of the respondents, whereupon replication has also been filed by the petitioner – Society.

Learned counsel for respondent No.1 - Bank has submitted that the writ petition is not maintainable. Under the provisions of SARFAESI Act, possession of the property was taken and sold to respondent No.2 on 29.01.2020. The sale has been confirmed and payment received on 01.05.2020 i.e. within 90 days of confirmation of sale. The respondent Bank has also issued sale certificate (Annexure R/1). The petitioner could avail remedy under Section 17 of the SARFAESI Act, before Debts Recovery Tribunal, Chandigarh (for short, 'DRT') within a period of 45 days of the sale, which it could not take.

It is contended that initially, the petitioner had been sanctioned OD limited of ₹ 50 lac in the year 2008, whereafter limit was increased to ₹ 100 lac in 2009; ₹ 150 lac in 2013; ₹ 210 lac in the year 2014; ₹ 350 lac on 07.09.2015; and ₹ 600 lac on 26.09.2016. To secure the said OD limit, petitioner mortgaged immovable properties. The account was classified as NPA on 31.03.2018 and notice dated 07.05.2018 under Section 13(2) of the SARFAESI Act was issued. The respondent – Bank also filed OA No.1562 of 2018 before the DRT, for recovery of ₹ 7,13,55,768/- alongwith pendente lite and future interest from 08.06.2018 till realization.

The petitioner approached the respondent Bank for One Time Settlement (Annexure P-5) and the compromise proposal dated 15.12.2018 (Annexure P-3) was approved by the Bank. As the petitioner failed to honour the commitment, OTS was cancelled vide letter dated 18.04.2019 (Annexure P-7). In order to recover the dues, the Bank issued as many as 8 notices to the petitioner [attached as Annexure R/4 (colly)]. As no bidder was coming forward to purchase the property, the reserve price was reduced from time to time as is provided under Rule 8(5) of Rules 2002. Finally, respondent No.2 made the bid and sale was confirmed in his favour on 03.02.2020.

In the similar tone, is the reply filed on behalf of respondent No.2. Besides, the fact that the petitioner has not approached the Court with clean hands. The petitioner had approached respondent No.2 in the first week of March, 2020 and stated that there were certain articles lying inside the premises (which even though have been sold to the answering respondent vide sale notice dated 10.01.2020) and that, he would be willing to hand over the physical possession alongwith other moveable articles on receipt of ₹ 10 lac from respondent No.2 who is proprietor of M/s GN Milk Chilling Centre. The answering respondent paid him ₹ 10 lac on 03.03.2020 (Annexure R-2/3), pursuant to which, it handed over the physical possession of moveable articles lying inside the premises in question.

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

Admittedly, the petitioner vide letter dated 06.12.2018 (Annexure P-5) assured the respondent – Bank to pay the amount so due within a reasonable time and it even failed to honour the One Time Settlement, approved by the Bank vide 15.12.2018 (Annexure P-3). Consequently, One Time Settlement was cancelled vide letter dated 18.04.2019 (Annexure -7). In this view of the matter, putting the mortgaged property on auction cannot be faulted.

So far as the grievance of the petitioner regarding repeated reduction of bid price is concerned, the reserve price is fixed under Rule 8(5) of the Rules, 2002. It is fixed taking into consideration the valuation of the property on failure of the previous auctions. In the case in hand, at the first instance, reserve price was fixed at ₹ 12,79,30,276/- for auction to be held on 11.09.2018. As no bidder was coming forward to purchase the property, the reserve price was reduced to ₹ 1148.56 lac for auction dated 22.04.2019; ₹ 976.27 lac for auction dated 23.05.2019; ₹ 915.30 lac for auction dated 29.10.2019; and finally ₹ 562.50 lac for auction dated 10.01.2020, on which price, it was purchased by respondent No.2. Thus, it is evident that reduction in bid price was as per the provisions of Rules.

Moreover, petitioner failed to avail an efficacious remedy available to him under Section 17 of the SARFAESI Act, to file an appeal before DRT within a period of 45 days of the sale and instead, he straightaway approached this Court under writ jurisdiction. The law in this regard is very clear 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."

In view of the aforementioned reasons, the instant writ petition is dismissed.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

June 19, 2020
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No