IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No.10592 of 2020
Date of Decision: 24.07.2020

M/s Mahaluxmi Rice Mills through its Partner Jangsher

Petitioner

Versus

The Punjab National Bank and others

Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kartik Gupta, Advocate
for the petitioner.

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AVNEESH JHINGAN, J.

The writ petition is filed seeking quashing of sale notice dated 07th July, 2020 whereby the properties of the petitioner have been put to sale.

The facts in brief are that the petitioner availed cash credit limit from the Punjab National Bank, Branch Office Tarori. In the year 2014, there was default in making the repayments. The account was declared as non-performing asset (for brevity 'NPA') and notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [hereinafter referred to as 'the Act'] was issued on 10th January, 2015. The outstanding dues as per the notice were ₹6,58,51,292/-. A notice under Section 13(4) was issued on 6th January, 2017. The bank filed an Original Application (O.A.) No.1264 of 2016 before the Debts Recovery Tribunal, Chandigarh [for brevity 'DRT'], the application is said to be pending. In the meantime, the possession of the properties were taken in 2017 by the respondent-bank, these were put to auctions in the year 2017 onwards with no success. Now vide notice dated 7th July, 2020, e-auction of the properties is fixed for 29th July, 2020.

The contention is that the bank by fixing the reserve price of the properties at ₹4,10,00,000/-, is putting the property to auction at throw-away price. Reliance is on the valuation report procured by petitioner on 18th July, 2020 whereby the valuation of the property is higher.

On a specific query during the hearing, the counsel for the petitioner submitted that no remedies have been availed by the petitioner against proceedings initiated under Section 13 of the Act, in spite of the fact that the notice issued under Section 13(4) of the Act was issued in January, 2017.

The account of the petitioner was declared NPA in the year 2014 and a notice under Section 13(2) was issued on 10th January, 2015. The respondent-bank has not been able to recover the said amount for more than five years. The petitioner instead of availing alternative remedies, has came before this Court, more so when the O.A. filed by the Bank is still pending before the DRT.

The Supreme Court in ***Union Bank of India v. Satyawati Tondon, 2010 (8) SCC 110*** held:-

"43. 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.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed *restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.*

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

Learned counsel for the petitioner prays to withdraw the writ petition with liberty to avail other remedies. However, he raises an apprehension that due to prevalent COVID-19 situation, even on approaching the DRT, the matter may be delayed.

The writ petition is dismissed as withdrawn with liberty to avail remedies in accordance with law.

Needless to say that in case of any inordinate delay in the proceedings, the petitioner would be at liberty to have re-course available as per law.

[AVNEESH JHINGAN]
JUDGE

[JASWANT SINGH]
JUDGE

July 24, 2020
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No