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

<u>Civil Writ Petition No.12045 of 2020</u>
<u>Date of Decision</u>: *November 03, 2020*

<u>Mohinder Singh & others</u>

..... PETITIONER(S)

VERSUS

<u>Union of India & another</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. Gurjinder Singh Thind, Advocate, for the petitioner.

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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.

The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari, quashing notice dated 11.03.2020 (Annexure P-1) issued under Section 13(2) of the Securitization and Reconstruction of the Finance Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') and possession notice dated 22.07.2020 (Annexure P-2), as well as for issuance of a writ in the nature of mandamus, staying the proceedings of possession notice dated 22.07.2020.

Succinctly, petitioners raised business loan of ₹ 22,70,000/- in respect of loan account No.530870; and ₹ 22,30,000/- from respondent

No.2 – Karvy Financial Services Ltd., on 20.02.2015 and 28.02.2015 against property measuring 90.74 square yards situated at near Grain Market, House No.2, Block B-12, Rajpura Township, Rajpura, District Patiala. The aforesaid loan was tobe repaid in 180 monthly instalments.

In the year 2017, account Nos.530870 and 530886 were declared as Non Performing Assets (NPA) and a notice dated 11.03.2020 (Annexure P-1) under Section 13(2) of the SARFAESI Act was served upon the petitioners, to repay outstanding amount of ₹ 79,45,385/- as on 28.02.2020, within 60 days, failing which the respondent – Bank will take action under the SARFAESI Act. Subsequently, vide possession notice dated 22.07.2020 (Annexure P-2) was issued under Section 13(4) of the SARFAESI Act, in respect of mortgaged property i.e. House No.2, Block B-12, measuring 90.74 square yards, near Grain Market, Rajpura Township, Rajpura, District Patiala.

Learned counsel for the petitioners has vehemtnly contended that the impugned notices are wrong, illegal, arbitrary and not tenable in the eyes of law. It is clear from the receipts (Annexure P-3) for the period w.e.f. 13.11.2015 to 31.05.2017 in account Nos.530870 and 530886 that petitioners had repaid ₹ 5,90,000/- and still, they are ready to repay the outstanding amount if some reasonable time is provided for this purpose. The petitioners also requested respondent No.2 to settle the loan account under One Time Settlement (OTS) scheme but respondent No.2 did not bother, and without following the provisions of law and without appreciating he unavoidable circumstances of petitioner, has issued the impugned notices illegally.

We have heard learned counsel for the petitioner and perused the record.

Admittedly, petitioners obtained business loans from respondent No.2, however their loan accounts were classified as NPA in the months of June and July 2017. The petitioners were served with notice dated 11.03.2020 under Section 13(2) of the SARFAESI Act to repay the outstanding amount within 60 days, making them clear that in default of payment of outstanding amount, respondent No.2 will take action available under the Act. Ultimately, possession notice dated 22.07.2020 was issued to the petitioners under Section 13(4) of the SARFAESI Act, for taking possession of the mortgaged property of the petitioner, cautioning the general public not to deal with the said property subject to charge of respondent No.2.

De hors the aforesaid factual aspects, petitioners have efficacious remedy available before the appropriate authority i.e. Debt Recovery Tribunal. 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."

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) **(Sant Parkash)**
Judge **Judge**

November 03, 2020
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No