IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13594-2020 (O&M)
Date of Decision:-18.11.2020

M/s Fragrance Exim Pvt. Ltd.

… Petitioner

Versus

The Punjab and Sind Bank and others

... Respondents

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CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. R.K. Kapoor, Advocate
for the petitioner.

Mr. Ravi Chadda, Advocate
for respondent No.1.

Mr. H.S. Grewal, Addl. A.G. Punjab.

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KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of COVID-19 Pandemic.

The petitioner, which is a private limited company, has filed this petition under Article 226/227 of the Constitution of India with the prayer to set aside the possession notice dated 19th March, 2020 (Annexure P-19), auction/sale notice dated 30th July, 2020 (Annexure P-21), E-auction notice

22.8.2020 (Annexure P-22) and letter dated 11th April, 2017 (Annexure P-7) sent by Additional District Magistrate, SAS Nagar, Mohali, all the said actions being illegal, null & void.

The case of the petitioner is that the petitioner-company was incorporated in 2002 and Preet Mohinder Kohli became its director in 2009. His brother Surinder Kohli was the authorized signatory of the company and he took home loan from HDFC Bank for renovation of House No.254, Sector-6, Panchkula. The petitioner-company in the meantime took loan of ₹2 crores (approximately) from respondent No.1-Punjab and Sind Bank. The petitioner regularly paid all the installments of the loan till 2013. Then due to unavoidable circumstances, it failed to pay some of the installments, on this respondent No.1 issued bank statement dated 11.3.2013 showing the total amount due along with interest till the month of February 2013, which was ₹42.23 lakhs. The petitioner deposited a sum of ₹43 lakhs in cash with the bank on 30th March, 2013 and another amount of ₹5 lakhs was separately deposited in the joint saving account of the director and other members of his family. However the bank officials misappropriated /mismanaged sum of ₹8 lakhs which was deposited against the proper receipt on 30th March, 2013. After March, 2013, the petitioner regularly started paying the monthly installments of loan. Later on the petitioner received a notice issued by the District Magistrate, Panchkula with regard to proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter be called as 'the Act'), in order to take the possession of the residential house of Surinder Kohli. The bank also illegally got transferred cheque of ₹5 lakhs which was deposited in the joint saving account of the director of the petitioner, with his other family members. No notice under Section 13 (2) of the Act was ever issued or was received by the petitioner or its directors. The bank officials forged the signatures of the addressee on the postal acknowledgments. The petitioner lodged criminal complaints with the police with regard to aforesaid fraud and forgery committed by the bank officials.

In the meantime, the bank moved another application under Section 14 of the Act and obtained ex-parte order dated 11.4.2017 (Annexure P7) against the petitioner, by misrepresenting the facts with regard to agricultural land situated in village Pabhat Tehsil Dera Bassi, which is owned by it's director. All the subsequent actions of the respondents are also illegal and deserve to be set aside. The said actions include possession notice dated 19th March, 2020 (Annexure P-19), auction notice dated 30th July, 202 (Annexure P-21) and E-auction dated 22nd August, 2020 (Annexure P-22).

Notice of motion was issued for 26.10.20, on which date, Ms. Anu Pal, DAG, Punjab has put in appearance on behalf of respondent No.2, and Mr. Ravi Chadda, Advocate appeared on behalf of respondent No.1.

We have heard the counsel for the parties and perused the record.

The counsel for the petitioner has submitted that in the present case, the bank officials committed fraud and forgery and as such the entire process initiated by respondent No.1 stands vitiated. The counsel for the petitioner further argued that the criminal complaints in this regard were lodged with Chandigarh as well as Panchkula police. Finally, the petitioner filed criminal complaint in which the bank officials were summoned under Section 420 read with Section 34 IPC by the Court of Judicial Magistrate Ist Class, Chandigarh vide order dated 16.2.2019 (Annexure P-12).

The counsel for the petitioner further contended that respondent No.1 further acted illegally and procured order dated 19.3.2020 (Annexure P-19) from Additional District Magistrate, SAS Mohali under Section 13(4) of the Act with regard to agricultural land of the directors of the petitioner, situated in village Phabat Tehsil Dera Bassi, District Mohali. The counsel for the petitioner has also assailed sale notice dated 30.7.2020 (Annexure P-21) and E-auction dated 22.8.2020 (Annexure P-22) regarding the aforesaid agricultural land, being issued in contravention of the provisions of the Act and Security Interest (Enforcement) Rules, 2002. The counsel for the petitioner while referring to *Mardia Chemicals Ltd. vs. Union of India 2004(4) 4SCC 311* submitted that the case of the petitioner is amenable to writ jurisdiction as it involves fraud committed by the bank officials.

On the other hand, the counsel for respondent No.1 contended that the efficacious remedy was available with the petitioner under the Act and as such this writ petition is not maintainable. It is further contended that the proceedings in the criminal complaint have already been stayed by the Co-ordinate Bench of this Court in *CRM-M-54748-2019*, and copy of the order is Annexure P-16, which was passed on 18.2.2020. The counsel for respondent No.1 while concluding his arguments submitted that the writ petition is not maintainable and deserves to be dismissed on this sole ground.

We have considered the submissions made by the counsel for the parties.

As per respondent No.1-Bank, the loan account of the petitioner (borrower) was declared as NPA on 30.9.2012. The petitioner is aggrieved by the action initiated by respondent No.1-Bank under the various provisions of the Act.

As per petitioner, the bank officials committed fraud and forgery. The complaint filed by the petitioner with regard to the said allegations is pending in the Court of JMIC, Chandigarh as is evident from Annexure P-12. Even otherwise the question of alleged fraud and forgery involves complex factual aspects and thus cannot be decided in the present writ petition.

Annexure P-7 is order passed by Additional District Magistrate, SAS Nagar under Section 14 of the Act with regard to agricultural land situated in village Pahabat Tehsil Dera Bassi, belonging to the petitioner. Thereafter respondent No.1-Bank approached the High Court to direct the revenue officials to comply with the aforesaid order Annexure P-7. In the said writ petition necessary direction dated 6.2.2020 (Annexure P-15) was given to the Revenue Authorities to comply with order dated 11.4.2017 (Annexure P-7), within a period of 3 weeks. The petitioner moved an application for recalling the aforesaid order dated 6.2.2020 passed by the High Court. But the same was dismissed vide order dated 14.7.2020 (Annexure P-18). The petitioner filed SLP against the said order but the same was also dismissed by the Hon'ble Apex Court vide order Annexure P-20. While passing aforesaid order the Hon'ble Supreme Court also clarified as follows:-

> *"However, we clarify that the direction given in the impugned order(s) will not come in the way of the petitioner to pursue such remedy as may be permissible in law including in the proceedings pending before the Debts Recovery Tribunal, which be decided on its own merits"*

From the perusal of the aforesaid order, it is clear that proceedings are already pending between the parties before the Debts Recovery Tribunal (DRT). The petitioner has got efficacious alternative remedy against the impugned actions i.e. possession notice dated 19.3.2020 (Annexure P-19), auction notice dated 30.7.2020 (Annexure P-21), E-auction notice dated 22.8.2020 (Annexure P-22) and order dated 11.4.2017 (Annexure P-7) passed by ADM, SAS Nagar, Mohali, they being issued/passed by the concerned authorities under the Act. The writ jurisdiction is an extra ordinary jurisdiction, which ought not to be exercised in matters where adequate statutory remedy is available. It shall be open to the petitioner to take recourse to other efficacious legal remedies available to it.

Consequently, this writ petition is hereby dismissed being not maintainable, with liberty to the petitioner to take recourse to other alternative remedy, as may be permissible under law. The same is to be decided on its own merits in accordance with law, uninfluenced by the observations made in this order.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

18.11.2020
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No