

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.15127 of 2020 (O & M)

Date of Decision: *December 04, 2020*

M/s Rosy Hosiery Mills & another

..... PETITIONER(S)

VERSUS

HDFC Bank Ltd. & others

..... 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. Sumeet Mahajan, Senior Advocate, with
 Mr. Saksham Mahajan, Advocate, for the petitioners.

Mr.. Manish Jain, Advocate, for the respondents.

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Sant Parkash, J

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

CM No.13043 of 2020

Application seeking permission to place on record replication to the written statement and exemption from filing certified copies of Annexures P-26 and P-27 is allowed.

Documents are taken on record.

CWP No.15127 of 2020

This petition has been filed under Article 226/227 of the Constitution of India, quashing letter/order dated 06.07.2020 (Annexure

P-22), vide which the respondent – Bank rejected the representation of the petitioners against notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, ‘SARFAESI’); notice dated 04.09.2020 (Annexure P-24), vide which the respondent – Bank has asked the petitioners to hand over the possession of secured assets; notice dated 27.03.2017 (Annexure P-11) under Section 13(2) of SAFAESI, vide which, respondents have claimed that petitioners are liable to pay sum of ₹ 63,09,883.17 as on 27.03.2017; demand notice dated 07.08.2020 (Annexure P-23) demanding an amount of ₹ 1,08,92,920/- from the petitioners as on 07.08.2020.

Prayer has also been made for issuance of a writ in the nature of mandamus, directing the respondents to charge interest on the loan amount of ₹ 1,22,00,000/- on floating reference rate (FRR) (-) 1.00% i.e. 10.50% per annum as agreed in the Loan Agreement dated 08.11.2006 (Annexure P-2); to issue No Dues Certificate; return the original title deeds of mortgaged property; and to withdraw the declaration declaring the petitioners’ account as Non Performing Assets and strike out their names from the Credit Information Bureau of India (CIBIL) as defaulters.

Learned counsel for the petitioner has contended that the petitioner – Firm applied for a loan of ₹ 1,22,00,000/- for business purpose with HDFC Bank Limited. Sanction letter dated 04.11.2006 (Annexure P-1) was issued by the Bank in favour of petitioner – Firm. Loan Agreement dated 08.11.2006 (Annexure P-2) was signed between the petitioners and Bank whereby interest rate on the loan was agreed as Floating Reference Rate (FRR) (-) 1.00% i.e. 10.50% per annum. The loan was liable to repaid to the Bank in 120 equated monthly instalments of ₹ 1,64,621/-.

Petitioners made a representation dated 21.11.2016 (Annexure P-3) to the respondent Bank pointing out that all equated instalments have already been paid and demanded No Dues Certificate and return of title deeds of mortgaged property i.e. House No.B-XIX-143, measuring 525 sq. yards comprised in Khasra No.1507/1037/883/456, 457, Khata No.528/586 as per Jamabandi for the year 1993-94 situated at village Taraf Gehlewal, H.B. No.166 abadi known as Dewan Nihal Chand Road, Civil Lines, Tehsil and District Ludhiana. The said representation was rejected by Ludhiana Branch of the respondent – Bank. Thereafter, representations dated 19.01.2017 (Annexure P-4) and 09.02.2017 (Annexure P-5) were also sent to respondent – Bank. E-mail dated 20.02.2017 (Annexure P-6) acknowledging the receipt of aforesaid representations was received by the petitioner and an assurance was given by the respondent – Bank that it will look into the concerns flagged by the petitioner within four working days.

After exchange of various letters/communications between the parties, petitioners received notice dated 27.03.2017 (Annexure P-11) under Section 13(2) of the SARFAESI informing that an amount of ₹ 63,09,883/- was due from the petitioners as on 22.03.2017. It was further informed that account of the petitioners has been classified by the Bank as Non Performing Asset (NPA) as defined under Section 2(O) of the SARFAESI. Petitioners made a representation dated 12.05.2017 (Annexure P-15) submitting that as per loan agreement dated 08.11.2006, interest was to be calculated @ 10.50% per annum on FRR basis whereas the Bank has calculated the dues by calculating the rate of interest on Bank's Prime

Lending Rate (BPLR) basis and that, no intimation of increase in FRR was ever communicated to the petitioners.

Learned counsel further contended that the objections of petitioners were rejected by the respondent – Bank vide letter/order dated 30.05.2017 (Annexure P-17) without dealing with the issue raised by them that calculation of interest should have been calculated as per loan agreement but the action of the respondent – Bank, contrary to the aforesaid agreement i.e. calculation of interest on the basis of BPLR, was illegal and contrary to the terms of loan agreement.

In this backdrop of facts, petitioners filed CWP No.13698 of 2017 wherein vide judgment dated 05.03.2020, this Court held that objections raised by the petitioners in reply dated 10.05.2017 to the show cause notice issued by Bank dated 27.03.2017, have not been dealt with by it. However, respondent – Bank was given liberty to take a fresh decision after considering reply dated 10.05.2017 within a period of four weeks. The Bank never applied for certified copy of the aforesaid order and thus, this period of four weeks envisaged in order dated 05.03.2020 was elapsed on 04.04.2020. Eventually, vide letter/order dated 06.07.2020 (Annexure P-22 Colly.), representation dated 10.05.2017 filed by the petitioners was rejected by the respondent – Bank and petitioners were asked to deposit the payment in terms of notice dated 27.03.2017 under the provisions of Section 13(2) of SARFAESI, within 10 days from the receipt of order dated 06.07.2020, which, as per learned counsel for the petitioners, is void *ab initio*. Learned counsel further contends that now respondent – Bank has issued notice dated 04.09.2020 (Annexure P-24) asking the petitioners to hand over the possession of secured assets by 25.09.2020, as such, the demand for

possession of the mortgaged property is totally illegal as petitioners had paid all the EMIs and no amount was outstanding.

Learned counsel for the respondents has opposed the prayer made in the petition by submitting that action of the respondent – Bank is absolutely in consonance with the settled proposition of law and no fault can be found in the demand raised by the Bank. Learned counsel has further submitted 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 and thus, respondent – Bank has rightly issued the impugned notices. Lastly, the petitioners have efficacious remedy available before the Debt Recovery Tribunal

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

The issue raised in the present petition is regarding shifting of rate of interest from Floating Reference Rate (FRR) to Bank's Prime Lending Rate (BPLR).

It is the contention that the Bank was not legally entitled to change the rate of interest from FRR to BPLR without affording an opportunity and against the terms of loan agreement. We are of the considered view that it is a technical issue and a question of fact which, according to us, would be better if adjudicated upon by the Debts Recovery Tribunal which is an expert in these matters. Thus, without going into the veracity of the rival submissions made by learned counsel for the parties and *de hors* the aforesaid factual aspects, we hold that 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 pass 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, the instant petition is disposed of while giving liberty to the petitioners to take recourse to alternative remedy available under law, if so advised. However, it is directed that the respondents shall not take any coercive action against the petitioners for a period of one month from today to enable the petitioners to approach the DRT.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

December 04, 2020
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No