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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 15590 of 2020 (O&M)
Date of Decision: 14.12.2020

M/s. Shiv Shakti Medical Society, Mansa

.... Petitioner

Versus

Punjab National Bank, Mansa

.... Respondent

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

Present: Mr. Ashwarya Bajaj, Advocate
for the petitioner.

Mr. N.C. Sahni, Advocate
for the respondent-Bank.

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

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JASWANT SINGH, J.

The petitioner-Society has filed the present writ petition seeking quashing of e-auction sale notice dated 27.08.2020 **(Annexure P-15)** on the ground that respondent-Punjab National Bank has accepted ₹ 50 Lacs for releasing the property of petitioner-Society still the same has not been released although it was not even mortgaged by it.

Despite having been granted two opportunities to place on record supporting documents on 28.09.2020 and 06.10.2020, no documents have been placed on record today as well. Consequently, we proceed to decide the writ on merits after hearing learned counsel for the petitioner.

Learned counsel for the petitioner-society has argued that management of petitioner-society had given a proposal of one time settlement to the respondent-bank and paid ₹ 50 Lacs with a request to the Bank for releasing their property which was never mortgaged. However, on receipt of the said amount, the Bank has backtracked and issued a notice dated 27.08.2020 **(P-15)** under Section 13(2) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (in short "the SARFAESI Act, 2002") for E-Auction of Society's land as well as building erected thereupon.

We have heard learned counsel for petitioner and have perused the paper book. However, we are of the view that present petition is liable to be dismissed.

Admittedly, the petitioner-society is a defaulter of respondent-Bank and at present an amount of ₹ 5,20,82,702.94 is outstanding towards it even after payment of ₹ 50 Lacs. It is further not in dispute that the respondent-bank had initiated proceedings under the SARFESI Act, 2002 by approaching the Debt Recovery Tribunal and the property in question has been put to auction by invoking Section 13(2) of the SARFAESI Act, 2002. Once that it so, we do not see how the present petition is maintainable as disputed questions of fact and law are being raised before us, especially when there is no such document on record which could show that respondent-Bank had agreed to release the land of petitioner, being not mortgaged with it. Thus, the petitioner-society has an alternative efficacious remedy to approach the Tribunal under the provisions of SARFESI Act, 2002 which has not been availed.

The Hon'ble Supreme Court had occasion to consider the issue of interference by High Courts in view of alternative remedy in ***Authorized Officer, State Bank of Travancore Versus Mathew K.C., 2018 (3) SCC 85***. The case arose out of the interim order passed by the Kerala High Court in a writ petition staying further proceedings at the stage of measures being taken under Section 13(4) of the SARFAESI Act. The Supreme Court observed that the SARFAESI Act is a complete code in itself and the High Court ought not to have entertained the writ petition in view of the alternative remedies available there under. On facts, the Supreme Court found that the writ petition was not instituted *bonafide* but only to stall further action for recovery. There was no pleading as to why the remedy under Section 17 of the SARFAESI Act was not efficacious and no compelling reasons were cited for bypassing the same. Referring to case law on the subject, the Supreme Court concluded that the writ petition ought not to have been entertained and that the interim order was granted for the mere asking without assigning special reasons and without even allowing a hearing to the bank.

Similar was the view taken by the Hon'ble Supreme Court a little earlier in November, 2017 in ***Agarwal Tracom Pvt. Ltd. Versus Punjab National Bank, 2018 (1) SCC 626***. This case also arose out of proceedings initiated under the SARFAESI Act which culminated in the sale of the secured asset. The appellant before the Hon'ble Supreme Court was the auction purchaser who failed to pay the bid amount in terms of the sale conditions. The Delhi High Court had refused to entertain the writ petition filed by the appellant assailing forfeiture of its deposit holding that the proper remedy was to file a securitization application under Section 17 of the SARFAESI Act before the jurisdictional Tribunal. In appeal, the Supreme Court observed that the expression any of the measures referred to in Section 13(4) taken by the secured creditor in Section 17(1) of the SARFAESI Act would include forfeiture of the deposit made by the auction purchaser. The Hon'ble Supreme Court accordingly concurred with the view taken by the Delhi High Court that the auction purchaser ought to have availed the statutory remedy. While holding so, the Hon'ble Supreme Court recalled that in ***United Bank of India Versus Satyawati Tondon, 2010 (8) SCC 110***, it had occasion to examine in detail the provisions of the SARFAESI Act and invocation of the extraordinary power of the High Court under Article 226 of the Constitution to challenge the actions taken there under. The observations made therein were to the effect that the High Court would ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that, in all such cases, the High Court must insist that a person aggrieved must exhaust the remedies available under the relevant statute before availing the remedy under Article 226 of the Constitution.

In the present case, counsel for petitioner has not been able to show as to why approaching the Debt Recovery Tribunal is not an efficacious remedy; or such travesty of Justice has been done to it which entails petitioner to approach this court directly by superseding the statutory process; or there is such an illegality in the procedure adopted by the respondent-Bank which would compel us to invoke the extra-ordinary writ jurisdiction.

In view of the above, finding no merit, present **petition** is hereby ordered to be **dismissed**.

(JASWANT SINGH)
JUDGE

December 14, 2020 **(SANT PARKASH)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*