IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.25844 of 2019 (O & M)
Date of Decision: *August 19, 2020*

M/s Juneja Sheets Private Limited
..... PETITIONER(S)

VERSUS

The Authorized Officer, Aditya Birla Finance Limited & 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. Alok Mittal and Mr. Vinod Khunger, Advocates, for the petitioner.

Mr. Sanjeev Singh and Mr. Harsh Chopra, Advocates, for respondent Nos.1 and 2.

Mr. Maninder Singh, Advocate.

Mr. Gursimran Singh, Advocate, for Auction Purchaser.

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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.

The present 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 Possession Notice dated 14.09.2018 (Annexure P-1), Auction/Sale Notice dated 09.08.2019 (Annexure P-5) and Public Auction dated 29.08.2019 under the Securitization and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'), as well as for issuing direction to respondent Nos.1 and 2 to settle the account of petitioner by accepting his proposal dated 20.08.2019 and 29.08.2019; for restraining the respondent – Bank from issuing any sale certificate or getting sale deed registered in the name of auction purchaser(s) in pursuance of Auction dated 29.08.2019.

Brief facts of the case are that the petitioner – company, through its Directors, availed a term loan and loan on credit facility for an amount of ₹ 2 crore and ₹ 2.5 crore, respectively against equitable mortgage of properties vide Sanction letter dated 03.02.2016 and Loan Agreement dated 09.02.2016 executed between petitioner and respondent – bank. In order to avail the aforesaid facility, petitioner mortgaged/hypothecated MCL No.B-15564/11-A measuring 11- Square Yards Overlock Road, Miller Ganj Road, Ludhiana; B-15-564/11-A measuring 242 Square Yards Overlock Road, Miller Ganj Road, Ludhiana; and 564/12A measuring 176 Square Yards Overlock Road, Miller Ganj Road, Ludhiana. As per the terms and conditions of aforesaid agreement, respondent bank disbursed the loan amount and it was settled that petitioner – company will pay monthly instalment of ₹ 2,86,942/- each for 120 months w.e.f. 01.04.2016.

After some time, due to losses in business and market conditions due to demonetization, petitioner defaulted in a few instalments and it received a demand notice dated 13.10.2017 under Section 13(2) of the SARFAESI Act claiming an amount of ₹ 4,50,75,152.27/- by way of outstanding principal, arrears (including accrued late charges), to which, petitioner submitted its reply dated 09.12.2017. On 14.09.2018, respondent

Nos.1 and 2 took the physical possession of the mortgaged properties of petitioner, under Section 13(4) of the SARFAESI Act.

Learned counsel for the petitioner has submitted that the petitioner gave a proposal dated 08.05.2019 to respondent No.1 to regularize its loan account as it was ready to settle the account for a lumpsum amount of ₹ 3 crore but respondent – bank, vide reply dated 13.05.2019, rejected the said proposal. Again, petitioner – company sent a proposal dated 20.07.2019 to the respondent – bank, offering to settle the account for a lumpsum amount of ₹ 3.3 crore by 31.12.2019 but the respondent – bank, vide reply dated 29.07.2019 again rejected the proposal of petitioner. Despite the efforts made by the petitioner to settle its account, the respondent – bank issued Auction notice dated 09.08.2019 whereby the petitioner – company was called upon to pay the total outstanding amount, failing which, it was specified in the notice that mortgaged property will be sold out on 29.08.2019. Pursuant to notice dated 09.08.2019, the petitioner – company through its Director sent a request letter dated 20.08.2019 to settle the loan account and in order to show bonafide, petitioner agreed to hand over a draft of ₹ 30 lac alongwith the request letter. Reminder dated 29.08.2019 was sent to the respondent – bank for considering the proposal dated 20.08.2019. Vide letter dated 31.08.2019, petitioner was informed that mortgaged properties had already been sold through public auction on 29.08.2019 for an amount of ₹ 3,56,38,500/-.

Learned counsel for the petitioner further contended that action of the respondent bank of taking physical possession and auctioning the mortgaging properties through public auction dated 29.10.2019 is patently wrong and illegal, despite the fact that petitioner had been continuously approaching the respondent bank that its account has been wrongly classified as NPA and the petitioner was ready to settle the account by sending proposal alongwith draft of ₹ 30 lac.

Learned counsel for the respondent – bank has submitted that petitioner has an alternate statutory remedy under Section 17 of the SARFAESI Act to approach the Debt Recovery Tribunal and without exhausting this remedy, petitioner has no locus to approach this Court. Accordingly, the petition is not maintainable and is liable to be dismissed.

We have heard learned counsel for the parties but do not find any force in the submissions made by learned counsel for the petitioner.

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. In view of repeated defaults on the part of the petitioner – company, the respondent – Bank has rightly issued sale notice dated 09.08.2019 and its action in execution of sale cannot be faulted with.

In the case in hand, the petitioner – company was duly served with sale notice dated 09.08.2019, in regard of which, there is no denial from the side of the petitioner. Thus, there is no reason to put a stay with regard to possession of the properties in question when sale has already been executed vide public auction dated 29.08.2019. The sale certificate has already been issued and possession of the auctioned property has already been taken over by respondent Nos.4 and 5 on 01.06.2020.

Lastly, the petitioner – company has efficacious remedy available before the appropriate authority i.e. Debt Recovery Tribunal. The law in this regard is very settled 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.

Since the main writ petition itself stands decided, **CM Nos.5357, 5358 and 3448 of 2020** have been rendered infructuous.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

August 19, 2020
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No