

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.35015 of 2019 (O & M)

Date of Decision: July 10, 2020

Anand Guha Roy

..... PETITIONER(S)

VERSUS

Yes Bank Limited

..... RESPONDENT(S)

. . .

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

. . .

PRESENT: - Mr. Kunal Vinayak, Advocate, for the petitioner.

 Mr. Amit Rishi, Advocate, for the respondent.

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Sant Parkash, J

Heard through Video Conferencing.

This writ petition has been preferred under Article 226/227 of the Constitution of India, seeking issuance of a writ in the nature of certiorari, for quashing possession order dated 04.11.2019 (Annexure P-5) passed by the Deputy Commissioner, Gurugram regarding the property of petitioner i.e. Apartment No.A-152, Raheja Atlantis, Sector 31 & 32-A, Gurugram, Haryana.

The brief facts of the case are that petitioner availed a secured business loan of ₹ 1,90,00,000/- from respondent – Yes Bank Limited (for short, 'Bank') vide sanction letter dated 07.01.2017 (Annexure

P-1). In lieu of the aforesaid loan, the petitioner mortgaged Apartment No.A-152, Raheja Atlantis, Sector 31 & 32-A, Gurugram, Haryana. Due to financial constraints, some defaults in payment of instalments occurred on the part of the petitioner and the respondent – Bank issued a possession notice dated 04.07.2019 under Section 13(4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, ‘SARFAESI Act’) and published the same in newspaper ‘Business Standard’ on 04.07.2019 (Annexure P-2).

The petitioner approached the Debts Recovery Tribunal – II, Chandigarh, and preferred a Securitisation Application No.187 of 2019 against possession notice dated 04.07.2019 while invoking Section 13(4) of the SARFAESI Act, which is pending adjudication. In order to get his account regularized, the petitioner submitted a request/proposal application dated 03.11.2019 (Annexure P-4) to the respondent – Bank, which is also pending with the respondent – Bank.

Despite the aforesaid steps taken by the petitioner, respondent – Bank approached the District Magistrate, Gurugram by preferring an application under Section 14 of the SARFAESI Act, who vide order dated 04.11.2019 (Annexure P-5), ordered forceful physical possession of the aforesaid property of petitioner.

On 02.12.2019, this Court, while noticing the contentions of learned counsel for the petitioner, passed the following order:-

“Counsel for the petitioner submits that the petitioner has already filed an application under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 which is pending

before the DRT since 18.02.2014. In the meantime, the respondent has initiated proceedings under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act on the basis of which the District Magistrate, Gurugram has passed the impugned order dated 04.11.2019 for taking possession. It is submitted that if the possession is taken in terms of order dated 04.11.2019 then the S.A. would become infructuous.

Notice of motion for 16.12.2019.

Till then, the respondent shall not take any coercive steps against the petitioner.”

Further, on 30.01.2020, the following order was passed by this Court:-

“The ad-interim order dated 02.12.2019 shall now operate subject to deposit of a sum of ₹ 15 (fifteen) lacs by the petitioner with the respondent bank within a period of three days from today and another sum of ₹ 15 (fifteen) lacs within fifteen days.

List on 17.03.2020.”

Now, the petitioner has moved an application viz. **CM No.5382 of 2020** praying for grant of additional period of at least eight weeks for complying with order dated 30.01.2020.

Learned counsel for the respondent has opposed the main petition as well as the aforesaid application while submitting that as directed vide order dated 30.01.2020, the petitioner has not even complied with the schedule of payment of first instalment. The petitioner has misrepresented

and concealed material information from the Court, that account of petitioner was declared as Non Performing Asset (NPA) on 31.01.2019. The petitioner availed the secured business loan SBL – Term Loan of ₹ 1,90,00,000/- by mortgaging the property in question as collateral security. Lateron, the account became NPA by way of implication of prudential norms fixed by Reserve Bank of India. Accordingly, respondent – Bank, in order to effect recovery of outstanding dues, issued notice under Section 13(2) of the SARFAESI Act to the borrowers/mortgagers/guarantors on 29.03.2019 (Annexure R-1) wherein a demand was raised to liquidate the outstanding dues of ₹ 2,00,84,136.14/- as on 28.03.2019. It is further submitted that the instant writ petition is not maintainable as the petitioner had already filed a Securitization Application before the Debt Recovery Tribunal – II, Chandigarh which is pending adjudication for 18.02.2020 for filing service report.

We have heard learned counsel for the parties and with their kind assistance, gone through the record.

The facts clearly establish that instead of complying with order dated 30.01.2020, petitioner has moved an application seeking additional period of at least eight weeks for complying with the directions issued by this Court. His account was declared as NPA on 31.01.2019 and further, a demand was also raised by the respondent – Bank to liquidate the outstanding dues as on 28.03.2019 vide notice dated 29.03.2019 (Annexure R-1). Accordingly, the petitioner was put to caution that respondent – Bank will resort to the provisions of Section 13(4) of the SARFAESI Act, thereby taking possession of the property in question. Therefore, due to non-payment within 60 days, possession notice under Section 13(4) of the Act ibid was

issued on 01.07.2019 which was published on 04.07.2019 in two newspapers i.e. 'Business Standard' in English and Hindi Edition. As such, the District Magistrate, rightly ordered for taking physical possession of the mortgaged property vide order dated 04.11.2019 (Annexure P-5). Admittedly, it is also not the case of petitioner that respondent – Bank has violated any provision of the SARFAESI Act. Moreover, while obtaining ad-interim relief vide order dated 02.12.2019, petitioner concealed this fact that his account was declared Non Performing Asset on 31.01.2019. Therefore, this Court has no hesitation to observe that a person whose case is based on concealment of facts has no right to approach the Court. He can be summarily thrown out at any stage of litigation. The aforesaid view has been taken from the decision rendered by the Supreme Court in **S.P. Chengalvaraya Naidu (dead) by LRs vs. Jaggannath (dead) by LRs and others**, AIR 1994 Supreme Court 853.

Further, because of pendency of SA No.187 of 2019 filed by the petitioner, before the Debt Recovery Tribunal, the writ petition is not maintainable as has been held by the Supreme Court in **Authorized Officer, State Bank of Travancore and another vs. Mathew K.C.**, 2018(2) R.C.R. (Civil) 1, wherein the Apex Court while referring the decision rendered in **United Bank of India vs. Satyawati Tandon and others**, 2010(3) R.C.R. (Civil) 963, has held as under:-

"11. In Satyawati Tandon (supra), the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding :-

"43. 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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55. 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 the 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."

From the aforesaid discussion, it can safely be hold that the petitioner has filed the present writ petition in a bid to escape financial liability and to stall recovery proceedings initiated by the respondent – Bank. In this view of the matter, we do not find any merit in the **main writ petition** as well as in **CM No.5382 of 2020**.

Dismissed.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

July 10, 2020

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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No