

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP NO.1402-2021

Date of Decision: 02.02.2021

JASBIR

....PETITIONER..

Versus

UNION BANK OF INDIA AND OTHERS

....RESPONDENTS

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

Present : None for the petitioner.

Mr. Sham Sunder, Law Officer
for respondent No.1-Bank.

SANT PARKASH, J.

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

The instant 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 notice dated 06.01.2021 (Annexure P-3) by respondent No.5, whereby the petitioner has been directed to vacate the property so that physical possession be given to respondent No.1 and further for issuance necessary directions to respondents to release/de-seal the properties of petitioner, which have been sealed illegally.

Succinctly, petitioner applied for loan with respondent-Bank and loan was sanctioned for 210 buffaloes, whereas petitioner was given Rs.1,14,00,000/- for 120 buffaloes @ Rs.95,000/- per buffalo. Rest of the amount for remaining 90 buffaloes was not given to the petitioner. Petitioner was paying his installments of loan timely but still he has received a notice from the learned

DRT-II, Chandigarh. Thereafter, petitioner came to know that respondent-bank has filed petition under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 for issuance of recovery certificate to proceed against the petitioner.. On 08.01.2021, respondents came to the petitioner and threatened him to deliver physical possession of the property before 15.01.2021, but he told them that matter is already pending and nobody is authorised to proceed in the matter. Again on 15.01.2021, respondent came to the petitioner and provided copy of impugned notice dated 06.01.2021 and copy of order dated 08.01.2021 passed by this Court in CWP No.31 of 2021 (Annexure P-4), whereby the petitioner was asked to deliver the physical possession of the property to them and respondents forcibly took over the physical possession of the property.

Pursuant to notice of motion, reply by way of affidavit of Mr. Srinivasarao Battu, Authorized Officer, Union Bank of India has been filed. The same is taken on record.

Perusal of affidavit reveals that the loan was duly sanctioned by the respondent bank on certain terms and conditions as well as upon the mortgage of different properties, but on account of non-payment of the dues of the respondent-bank in spite of the regular follow-up, the account of the petitioner slipped to the Non-performing Asset dated 31.03.2018 and the respondent-Bank initiated the recovery process under SARFAESI Act by issuing the notice (Annexure R-1), which was duly acknowledged by the petitioner and guarantor. Since, the petitioner did not prefer to file the objections, the respondent-Bank moved to District Magistrate, Jind for granting/delivering of the possession of the secured assets to the respondent-Bank. The District Magistrate vide order dated 05.11.2018 (Annexure R-2), appointed the Tehsildar as the Duty

Magistrate and forwarded the order to Superintendent of Police for providing sufficient police security and hand over the possession of secured assets. Now, the respondent-bank has received the possession of the secured assets of the petitioner.

In view of the averments made in the affidavit/reply, it has become crystal clear that the possession of the secured assets has already been taken over by the respondent-bank.

In the given circumstances, the appropriate and efficacious remedy available with the petitioner is to approach the Debt Recovery Tribunal. The law in this regard is already 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 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**.

Taking into consideration the settled law, the petitioner is relegated to the Debt Recovery Tribunal for the redressal of his grievances, under the SARFAESI Act.

In view of the above, instant petition is disposed of.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

02.02.2021

sonika

whether speaking/reasoned: Yes/No

whether reportable: Yes/No