IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-2731-2021(O&M)
Date of Decision: 15.02.2021

Surjit Singh Kang --Petitioner

Versus

Bank of Maharashtra & another --Respondents

CORAM:- HON'BLE MR.JUSTICE AJAY TEWARI.
HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. K.S. Brar, Advocate for the petitioner.

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RAJESH BHARDWAJ.J

Instant petition has been filed under Articles 226/227 of the Constitution of India praying for quashing of the impugned notice dated 13.1.2021 (Annexure P-2) issued by respondent no.2-Bank vide which the petitioner is directed to hand over the physical possession of residential house of the petitioner i.e. property measuring 15 marlas (453.75 sq. yards) being 15/60 share of 8 kanals 0 marlas comprising Khasra No.114//12 (8-0) Khewat No.1854, Khatauni No.2334 situated near Khanna Hospital, Ward No.16, Amar Nagar Ferozepur Road, Zira.

It has been contended that the petitioner had availed a CC Limit of Rs.6 lacs from respondent no.2 Bank. Though, he was paying the installments regularly but later on he defaulted in making the repayment. Thereafter, petitioner availed another CC Limit of Rs.160 lacs from respondent no.1 Bank wherein the property in question which was already equitable mortgaged with respondent no.2 Bank was again equitable mortgaged with respondent no.1 bank. It has been contended that respondent no.2 illegally issued the notice dated 13.1.2021 for handing over the physical possession of the property in question to the bank. Learned

Counsel for the petitioner contends that without adverting to the statutory provisions of Section 13(2) and 13(4) of the SARFAESI Act the respondent no.2 has illegally resorted to take the physical possession of the property in question forcibly and thus the same deserves to be set aside.

We have heard learned counsel for the petitioner at length and appreciated the records available.

From a bare perusal of the petition, it is crystal clear that the issue involves disputed questions of facts. The petitioner without availing the remedy available under the SARFAESI Act has directly approached this Court for the redressal of his grievances under Articles 226/227 of the Constitution of India. The Hon'ble Apex Court in catena of judgements has laid down in no uncertain words that the SARFAESI Act is a complete code in itself and the High Courts should refrain from entertaining the writ petitions under Articles 226/227 of the Constitution of India. We are fortified by the law laid down by Hon'ble Apex Court in ***Civil Appeal No.1281 of 2018 Authorized Officer, State Bank of Travancore and another v. Mathew K.C.*** In para 11 the Hon'ble Apex Court has observed as follows:-

> *"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 :-*
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> *"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."

In view of the observations noticed herein above, we find no reason to entertain the present writ petition and hence the same is hereby dismissed being devoid of any merit.

Petition dismissed.

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

15.02.2021
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No