111 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4158 of 2021
Date of Decision: 26.03.2021

M/S Kuldeep Plastic Industry .... Petitioner

Versus

Punjab National Bank and another ... Respondents

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

Present: Mr. Ankit Rana, Advocate
for the petitioner.

Mr. Ankit Kaushal, Advocate
for the respondent-Bank.

***

SANT PARKASH, J. (ORAL)

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

The instant petition has been filed under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing the respondent bank to restructure the loan account of the petitioner and for further directing the respondent bank not to auction the residential house of the proprietor of the petitioner as also directing the respondents not to take any coercive steps regarding physical possession of the mortgaged property i.e. the residential house of the proprietor of the petitioner.

Learned counsel for the petitioner states that the petitioner availed a loan of Rs.17,50,000/- from Punjab National Bank, Hoshiarpur-respondent in the year 2015 for setting up Plastic Industry. The residential house of the proprietor of the petitioner situated at Bassi Nagar, Near Railway Station, Hoshiarpur was mortgaged with the respondent bank. The petitioner was repaying the loan availed by him till 31.12.2018 but subsequently, he could not pay the outstanding amount as the business of the petitioner suffered huge financial losses. The respondent bank declared the account of the petitioner as Non Performing Asset (NPA) on 31.12.2016 and initiated the proceedings under SARFAESI Act against the petitioner. Now, the respondent bank is calling upon the petitioner to pay an amount of Rs. 17,40,000/- and has threatened the petitioner that they will take the possession of the mortgaged property of proprietor of the petitioner. The proprietor of the petitioner approached the respondent bank by way of moving a representation dated 25.01.2021 (Annexure P-3) submitting therein that he will pay the loan in the installments and also requested the officials of the respondent bank not to dispossess him from the mortgaged property i.e. his sole residential house. Learned counsel further contends that the respondent bank has behaved in an arbitrary, whimsical and nefarious manner by paying no heed to the request made by the petitioner to settle the loan account by getting his loan restructured and by paying the same in installments.

Learned counsel for the respondent bank, in compliance of the order dated 02.03.2021 passed by this Court, has submitted an affidavit dated 22.03.2021 detailing the factual matrix wherein it has been submitted that OD limit of Rs. 17.50 Lakh was sanctioned in favour of the petitioner and as per the OD Limit Agreement dated 04.08.2015, the petitioner was to repay the loan amount in 84 monthly installments with an EMI of Rs. 41,666/- approx. (Principal Amount of Rs. 20,840/- + Interest Amount of Rs. 20,806/- approx.). The petitioner operated the loan account upto 16.09.2016 but failed to adhere to further reduce the outstanding amount as per the terms of the agreement. As there was no repayment in the loan account for a continuous period of 90 days, the said account was classified as NPA on 31.12.2016. After classification of account into NPA category, no regular repayment was made into the account by way of which loan account could be restricted into standard category from NPA and therefore, the respondent bank was left with no option but to proceed as per law. As on date Rs. 17,92,727/- is outstanding as recoverable dues out of which Rs. 14,40,000/- is the overdue amount. Learned counsel has further contended that the petitioner has no locus standi to file the instant petition. The petitioner has not approached the Court with clean hands. The petitioner has no right or title over the secured assets/mortgaged property

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

Admittedly, the petitioner obtained loan from the respondent bank and agreed to pay the availed loan amount as per OD Limit Agreement dated 04.08.2015, but after operating the said account upto 16.09.2016, failed to adhere to the financial discipline and committed defaults and resultantly, his loan account was classified as NPA on 31.12.2016 by the respondent bank. If glanced through, it would be revealed from the reply itself that after declaring the loan account as NPA on 31.12.2016, not even a single penny has been paid towards the outstanding amount. Apart from that, no reasonable offer of making the payment of the outstanding amount has been made before this Court and as a result thereof, the relief sought by the petitioner on equitable grounds, can not be acceded to. One who seeks equity, must do equity.

Moreover, the petitioner 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."
>
> xx xx xx
>
> 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.

(JASWANT SINGH) **JUDGE**	**(SANT PARKASH)** **JUDGE**

26.03.2021
Maninder

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No