IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5753-2021
Date of Decision:-22.4.2021

M/s Garg & Co. Partnership Firm and Another

… Petitioners

Versus

UCO Bank and others

... Respondents

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CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Manuj Nagrath, Advocate
for the petitioners.

Mr. Nonish Kumar, Advocate
for the respondent-Bank.

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KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of COVID-19 Pandemic.

Petitioners have filed this writ petition challenging the action of respondent No.1 declaring their bank account relating to cash credit limit as Non-Perfoming Assets (in short 'NPA') on 3.6.2020, which was communicated to the petitioners vide impugned notices dated 17.7.2020 (Annexure P-6 colly) under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') and notices dated 1.10.2020 (Annexure P-

10 colly) issued under Section 13(4) of the SARFAESI Act. The petitioners also seek a direction to the respondents to implement Reserve Bank of India's circulars dated 27.3.2020 (Annexure P-2), 17.4.2020 (Annexure P-3) and 23.5.2020 (Annexure P-4) and to restrain the respondents from taking the physical possession of the secured assets.

The case of the petitioners as pleaded in the writ petition is that petitioner No.1 is the firm and it availed cash credit limit of ₹14 crore from respondent No.1-Bank vide sanction letter dated 10.1.2019. The petitioners have been making repayments in time as per the schedule. The cash credit account of the firm was standard as on 29.2.2020. During the period of lock-down it was illegally declared NPA on 3.6.2020 by respondent No.1-Bank in violation of the circulars (Annexures P-2 to P-4), issued by Reserve Bank of India (in short 'RBI'). The petitioners came to know about the same, when they received impugned notices (Annexure P-6 colly.) issued under Section 13(2) of SARFAESI Act. The respondent No.1-Bank further issued notices under Section 13(4) of SARFAESI Act (Annexure P-10 colly.) against the provisions of law.

Mr. Nonish Kumar, Advocate who was having advance copy of the petition appeared on behalf of respondent No.1-Bank and he filed written statement in which, it was pleaded that after availing cash credit limit, the petitioners had not adhered to its terms & conditions and their loan account became irregular and turned bad on 29.2.2020. Stock audit was conducted between 29.2.2020 to 3.3.2020 and as per Stock audit report, it was found that goods worth ₹39.70 lac were lying in the premises against the stock of ₹28 crore as submitted by the petitioners at the time of availing of cash credit limit. Thereafter official audit was conducted and on the basis of the audit report, the account was declared NPA on 3.6.2020. Subsequently, action was initiated against the borrowers under SARFAESI Act.

Petitioners filed replication refuting the pleas taken by the contesting respondent in its written statement and reiterated the stand taken by them in the petition.

We have heard counsel for both the parties.

The counsel for the petitioners submitted that due to countrywide lock-down, the RBI granted a moratorium on payment of all installments falling due between 1st March, 2020 to 31st May, 2020. The period of moratorium was further extended from 1st June, 2020 to 31st August, 2020 and in this regard circulars Annexure P-2 to Annexure P-4 were issued. During the said period of moratorium, the banks were not permitted to declare pending loan accounts as NPA. The counsel for the petitioners further argued that in the case in hand the loan accounts of the petitioners were declared NPA during the aforesaid period of moratorium on 3.6.2020, in violation of the aforesaid circulars of RBI. No notice or opportunity of hearing was given to the borrowers by respondent No.1-Bank before taking aforesaid illegal action. So the action of respondent No.1-Bank whereby the loan accounts of the petitioners were declared NPA on 3.6.2020 is totally illegal and is liable to be set aside. It is further contended that the subsequent actions taken by respondent No.1 under SARFAESI Act are also illegal.

In support of his aforesaid contentions, the counsel for the petitioners has placed reliance on an interim order dated 13.4.2020 passed by Learned Single Judge of Delhi High Court in WP(C)2959-2020 Shakuntla Educational and Welfare Society vs. Punjab and Sind Bank wherein as an interim measure, respondent-bank was restrained from declaring the petitioner's account as NPA till the next date of hearing. He also relied upon judgment dated 6.4.2020 passed in WP(C)-Urgent5 of 2020 Anant Raj Ltd. vs. Yes Bank Ltd. wherein the Learned Single Judge of Delhi High Court held that the Court prima-facie is of the view that the classification of the account of the petitioner as NPA on 31.3.2020 could not have been done by the respondent. Accordingly, status quo ante was restored qua the classification of the said account and the account's classification as it stood on 1.3.2020 was restored. Reference is also made by the counsel for the petitioners to decision dated 11.4.2020 in Writ Petition LD-VC No.28 & 30 of 2020 Transcon Skycity Pvt. Ltd. & Ors. vs. ICICI Bank and Others wherein Learned Single Judge of Bombay High Court held as under:-

> "(a) Subject to the conditions set out below, the period of the moratorium during which there is a lockdown will not be reckoned by ICICI Bank for the purposes of computation of the 90-day NPA declaration period. As currently advised, therefore, the period of 1st March 202 until 31st May 2020 during which there is a lockdown will stand excluded from

the 90-day NPA-declaration computation until-and this is the condition-the lockdown is lifted. Thus, irrespective of the continuance of the moratorium until 31st May 2020, if the lockdown is lifted at an earlier date than 31st May 2020, then this protection available to the petitioners will cease on the date of lifting of the lockdown, and the computing and reckoning of the remainder of the 90-day period will start from that earlier lifting of the lockdown-ending date.

(b) In that scenario, should the lockdown be lifted before 31st May 2020, the petitioners will have 15 days after the ending of the lockdown in which to regularize the payment under the first installment due to 15th January 2020 and a further three weeks thereafter to regularize the payment under the second installment due to 15th February 2020.

(c) If the lockdown extends beyond 31st May 2020, then these days will be deferred accordingly, irrespective of whether the moratorium itself is extended beyond 31st May 2020.

(d) The whole of the moratorium period is, evidently, excluded for all amounts that fall due during that moratorium period."

On the other hand the counsel for respondent No.1-Bank contented that loan account of the petitioners turned bad on 29.2.2020, before the imposition of moratorium. The counsel further submitted that for declaring an account NPA, the interest has to reverse from the date on which the account is classified as NPA. He further argued that in the present case the interest was shown to have reversed from 29.2.2020, making it clear that the account was NPA on that date. So there was no illegality in the action taken by respondent No.1 to declare the loan account of the petitioner as NPA.

The counsel for respondent No.1-Bank further argued that notices under Section 13(2) of SARFAESI Act were duly served on the borrowers and subsequently possession notice under Section 13(4) of SARFAESI Act were also issued in accordance with law. The learned counsel further contended that the petitioners have got alternative efficacious remedy to challenge the said actions of respondent No.1-Bank by filing application before DRT. The present writ petition is not maintainable as the petitioners have not exhausted the aforesaid effective alternative remedy.

We have considered rival submissions addressed by both the parties.

Before going into the facts of the present case, we deem it fit to go through the settled law relating to jurisdiction of DRT with regard to actions taken by the banks under Sections 13 and 14 of SARFAESI Act.

The Hon'ble Supreme Court in **Authorized Officer, Indian Overseas Bank** vs. **Ashok Saw Mill (2009)8 SCC 366**, held that the jurisdiction of DRT under Section 17 of SARFAESI Act is not confined only to stage contemplated under Section 13(4) of SARFAESI Act but also extends to post-section 13(4) of SARFAESI Act situation/events.

In **United Bank of India** vs. **Satyawati Tandon and Others (2010) 8 SCC 110**, the Hon'ble Supreme Court of India deprecated the tendency of the High Courts in granting interim orders of stay of recovery proceedings and observed as follows:-

> "There is another reason why the impugned order should be set aside. If respondent No.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 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 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, 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."

The Hon'ble Apex Court in **Kaniyalal Lalchand Sachdev** vs. **State of Maharashtra, (2011) 2 SCC 782**, held that SARFAESI Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4), by providing appeal before the DRT. Thus High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.

In **G.M., Sri Siddeshwara Cooperative Bank** vs. **Sri Ikbal (2013) 10 SCC 83**, the Hon'ble Apex Court allowed the appeals filed by the Bank with the following observations:-

> "No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226 of the Constitution. On misplaced considerations, statutory procedures cannot be allowed to be circumvented."

The Hon'ble Apex Court in **Authorized Officer, State Bank of Travancore and Another** vs. **Mathew K.C. (2018)3 SCC 85**, has categorically held that when the petitioner has got alternative remedy before DRT, without exhausting the said efficacious alternative remedy, a writ petition should not be entertained. The Hon'ble Apex Court in **Authorized Officer, State Bank of Travancore and Another's** case (supra) while allowing the appeal of the bank, observed as follows:

> "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 the decisions as discussed above, the Hon'ble Supreme Court has held that writ petition under Article 226 of the Constitution should not be entertained when the alternate remedy is available under the SARFAESI Act, unless exceptional circumstances are made out. The remedy of writ jurisdiction cannot be permitted to be availed as a routine.

The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved person under Section 17 of the Act before DRT followed by right to appeal before Debt Recovery Appellate Tribunal (in short 'DRAT') under Section 18 of the Act.

As per the petitioners, their loan account was declared NPA on 3.6.2020, in violation of the circulars Annexures P-2 to P-4 issued by RBI for grant of a moratorium due to countrywide lockdown. Per contra, the plea of respondent No.1-Bank is that the said loan account had already shown reverse interest w.e.f. 29.2.2020 and thus is to be deemed as NPA w.e.f. that very date. So the instant case involves some disputed questions of fact.

The petitioners have also impugned notices issued under Section 13(2) and Section 13(4) of SARFAESI Act. An efficacious statutory remedy under Section 17 of the SARFAESI Act is available to the petitioners to challenge the actions taken by respondent No.1-Bank under the SARFAESI Act. However, they have directly approached this Court without availing the aforesaid effective efficacious remedy.

In the light of the settled position of law as discussed above, we are of the view that the case law cited by the petitioners is not of much help to establish their case.

In the wake of the above, we are not inclined to entertain this petition. Accordingly, this writ petition is hereby dismissed. However, the petitioners are at liberty to avail the appropriate remedy available to them under law.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

22.4.2021
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No