

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10620-2021

Date of Decision:07.07.2021

M/s Satpal Enterprises, Pali Ballabhgarh, Faridabad and others

...Petitioners

Versus

Punjab National Bank and another

...Respondents

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

Present: Mr. S. K.Panwar, Advocate,
for the petitioners.

Mr. Gaurav Goel, Advocate, for the respondent-Bank.

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

SANT PARKASH, J.

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 for setting aside the impugned order dated 01.04.2021 (P-5) passed by the District Magistrate, Faridabad, whereby receiver was appointed to take physical possession of secured assets/mortgaged property in the name of petitioner No.2.

Succinctly, the petitioner-firm had taken a term loan of ₹30 lakhs and also availed a cash credit limit of ₹10 lakhs from the respondent-Bank in the month of April, 2017 against immovable property owned and possessed by petitioner No.2 bearing Khata No.50/47, Mustkel

No.175, Killa No.23(8-0), 24 (8-0), Mustkel No.187, Killa No.3/2(5-0), 4/1 (7-7), 4/2(0-13) situated at Palli Ballabgarh Road, Faridabad. The petitioner-firm was regularly paying the installments of the loan amount up to 30.06.2019. Thereafter, due to default of the petitioners in payment of installments of the above-said loan amount, respondent-Bank declared the loan accounts of the petitioner-firm as Non-Performing Asset (NPA). The respondent-Bank issued notice dated 06.07.2019 under Section 13(2) of the SARFAESI Act, 2002. Subsequently, the respondent-Bank in the light of notice dated 06.07.2019 filed an application dated 26.02.2020 **(P-3)** before the District Magistrate, Faridabad, seeking possession of the secured asset of the petitioner-firm in terms of Section 14 of the SARFAESI Act, 2002. Vide impugned order dated 01.04.2021 **(P-5)**, the District Magistrate, Faridabad appointed a receiver to take possession of the secured assets of the petitioner-firm.

Learned counsel for the petitioner-firm submits that the petitioner-firm had taken loan of **₹40 lakhs** only out of which the petitioner-firm had already repaid **₹36,23,609/-** but the respondent-Bank is adamant to take the possession of the secured assets of the petitioner No.2, who is guarantor of the said loan amount. He further submits that the petitioner-firm is ready to repay the outstanding amount along with simple interest, if some reasonable time is provided for this purpose. He finally submits that the impugned order dated 01.04.2021 **(P-5)** has been passed without following the provisions of law and without appreciating the unavoidable circumstances of the petitioner-firm and, thus, the same is liable to be quashed.

Learned counsel for the respondent-Bank submits that the present writ petition is not maintainable as disputed questions of fact are involved therein. Loan account involved in the present writ petition belongs to M/s Satpal Enterprises and petitioner No.2 is director/mortgagor/guarantor in the loan account, which was declared as NPA on 30.06.2019 as per guidelines issued by Reserve Bank of India. Accordingly, notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 06.07.2019 to repay the outstanding amount within 60 days. He next submits that an amount of ₹52,08,517.70 is outstanding towards the petitioner-Firm as on 30.06.2021. He also submits that moreover, the petitioner-firm has an alternate statutory remedy under Section 17 of the SARFAESI Act to approach the Debt Recovery Tribunal and without exhausting this remedy, petitioner has no locus to approach this Court.

We have heard learned counsel for the parties and perused the case file. However, we are of the view that the present writ petition is liable to be dismissed.

Admittedly, the petitioner-firm is a defaulter of respondent-Bank. It is further not in dispute that the respondent-bank initiated proceedings under the SARFAESI Act, 2002 by approaching the Debt Recovery Tribunal and the property in question has been put to auction by invoking Section 13(2) of the SARFAESI Act, 2002. Once that it so, we do not see how the present petition is maintainable as disputed questions of fact and law are being raised before us, especially when there is no such document on record which could show that respondent-Bank had agreed to release the land of petitioners, being not mortgaged with it. Thus, the

petitioner-firm has an alternative efficacious remedy to approach the Tribunal under the provisions of SARFAESI Act, 2002 which has not been availed.

The Hon'ble Supreme Court had occasion to consider the issue of interference by High Courts in view of alternative remedy in ***Authorized Officer, State Bank of Travancore Versus Mathew K.C., 2018 (3) SCC 85***. The case arose out of the interim order passed by the Kerala High Court in a writ petition staying further proceedings at the stage of measures being taken under Section 13(4) of the SARFAESI Act, 2002. The Supreme Court observed that the SARFAESI Act is a complete code in itself and the High Court ought not to have entertained the writ petition in view of the alternative remedies available there under. On facts, the Supreme Court found that the writ petition was not instituted bonafide but only to stall further action for recovery. There was no pleading as to why the remedy under Section 17 of the SARFAESI Act was not efficacious and no compelling reasons were cited for bypassing the same. Referring to case law on the subject, the Supreme Court concluded that the writ petition ought not to have been entertained and that the interim order was granted for the mere asking without assigning special reasons and without even allowing a hearing to the bank.

Similar was the view taken by the Hon'ble Supreme Court a little earlier in November, 2017 in ***Agarwal Tracom Pvt. Ltd. Versus Punjab National Bank, 2018 (1) SCC 626***. This case also arose out of proceedings initiated under the SARFAESI Act which culminated in the sale of the secured asset. The appellant before the Hon'ble Supreme Court

was the auction purchaser who failed to pay the bid amount in terms of the sale conditions. The Delhi High Court had refused to entertain the writ petition filed by the appellant assailing forfeiture of its deposit holding that the proper remedy was to file a securitization application under Section 17 of the SARFAESI Act, 2002 before the jurisdictional Tribunal. In appeal, the Supreme Court observed that the expression any of the measures referred to in Section 13(4) taken by the secured creditor in Section 17(1) of the SARFAESI Act, 2002 would include forfeiture of the deposit made by the auction purchaser. The Hon'ble Supreme Court accordingly concurred with the view taken by the Delhi High Court that the auction purchaser ought to have availed the statutory remedy. While holding so, the Hon'ble Supreme Court recalled that in *United Bank of India Versus Satyawati Tondon, 2010 (8) SCC 110*, it had occasion to examine in detail the provisions of the SARFAESI Act, 2002 and invocation of the extraordinary power of the High Court under Article 226 of the Constitution to challenge the actions taken there under. The observations made therein were to the effect that the High Court would ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that, in all such cases, the High Court must insist that a person aggrieved must exhaust the remedies available under the relevant statute before availing the remedy under Article 226 of the Constitution.

In the present case, counsel for petitioners has failed to point out any illegality in the procedure adopted by the respondent-Bank and also why the petitioner-firm not approached the Debt Recovery Tribunal for efficacious remedy. The law in this regard is very clear that when

appropriate forum is provided under the SARFAESI Act, 2002, this Court stands injuncted from interfering with any matter arising out of the proceedings under the SARFAESI Act.

In view of the above, finding no merit, present **petition** is hereby ordered to be **dismissed**.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

07.07.2021

mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO