110 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11887 of 2021
Date of Decision: 14.07.2021

Achhru Ram **....** Petitioner

Versus

State Bank of India and others ... Respondents

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

Present: Mr. Rose Gupta, Advocate
for the petitioner.

Mr. Chandeep Singh, Advocate
for respondents No.1 and 2.

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JASWANT SINGH, J. (ORAL)

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

The petitioner has stood as guarantor for a proprietorship concern i.e. M/s New Bombay Emporium (respondent No.3). The proprietorship concern is the sole proprietorship of Sh. Sukhdarshan Kumar, who happens to be none other than the brother of the petitioner. The deed of guarantee was offered in the shape of residential-cum-commercial property owned by the petitioner as a collateral security for a CC Limit of Rs.20 Lakh availed on 14.05.2020 by respondent No.3 from State Bank of India/respondent No.1. Due to non servicing of the said loan account, it was declared NPA on 19.01.2021. A notice dated 30.01.2021 under Section 13(2) of the SARFAESI Act (Annexure P-7), seeking to recall the outstanding amount of Rs.21,85,006/- as on 30.01.2021, was issued. The symbolic possession of the properties owned by the guarantor, i.e. the petitioner, has been assumed vide notice dated 16.04.2021 (Annexure P-12).

The claim of the petitioner is that the respondent bank should first seek to recover the outstanding loan from the primary securities offered by the principal borrower-respondent No.3. He has further deposited a sum of Rs.20 Lakh on 12.05.2021 in a Savings Bank Account with the respondent bank with a request to first sell the hypothecated stocks.

Mr. Chandeep Singh, counsel for the respondent bank, who is on advance notice, submits that it is well settled that the liability of the guarantor is equal and coextensive with the borrower and it is the option of the bank to choose from which source the loan is to be recovered/liquidated. He states that notices to the borrower have also been issued and appropriate action in accordance with law would be taken. He further submits that it is the settled law that the Courts should not invoke discretionary and extraordinary jurisdiction under Article 226 of the Constitution at the mere asking of the defaulters, in order to maintain the financial discipline and economic health of the institutions.

Keeping in view the facts of this case, we find no scope of interference in the writ jurisdiction under Article 226 of the Constitution.

That apart, the petitioner would be free to seek his remedy, if available, under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal in accordance with law at an appropriate stage.

Dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

14.07.2021
Maninder

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