IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12085 of 2021
Date of Decision:08.07.2021

M/s Sami Attachi House through its Proprietor

...Petitioner

Versus

State Bank of India and another

...Respondents

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

Present: Mr. Mohd. Salim, Advocate,
for the petitioner.

None for the respondents-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 possession notice dated 29.06.2018 **(P-1)** issued under Section 13 (4) read with Rule 8 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "SARFAESI Act, 2002") seeking symbolic possession of residential House No.86, Gali No., Councilor Wali Gali, Rajnagar, Basti Bawa Khel, Jalandhar of the petitioner as also summons dated 04.05.2021 **(P-2)** issued by the learned Civil Judge (Jr. Division)-II, Jalandhar allegedly for taking actual possession of the said residential house.

Learned counsel for the petitioner contends that Dharam Pal is a proprietor of M/s Sami Attachi House and is the authorized person of the firm for all purposes including bank transactions. He further submits that the petitioner raised two separate loans, i.e. house loan of **₹15 lakhs** and business loan of **₹10** lacs against the aforesaid residential house. He further submits that the petitioner has been regularly paying the installments of house loan but could not pay installments of the business loan bearing Account No.67357614156 regularly. As a result thereof, the respondent-Bank declared the said Account No.67357614156 as Non-Performing Assets (NPA). He next submits that the respondent-Bank by taking undue benefits of the financial condition of the petitioner, issued notice dated 29.06.2018 **(P-1)** for symbolic possession of sole residential house of the petitioner. He further contends that the respondent-Bank approached the learned Civil Judge (Jr. Division)-II, Jalandhar for taking actual possession of the said house and the learned Civil Judge issued notice for 14.07.2021. He next submits that the petitioner is always ready and willing to pay the outstanding amount if some reasonable time is provided for this purpose. He finally prays for setting aside the possession notice dated 29.06.2018 **(P-1)**.

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

Admittedly, the petitioner is a defaulter of respondent-Bank. The petitioner was served with demand notice dated 16.07.2017 under

Section 13(2) of the SARFAESI Act, 2002 to repay the outstanding amount. Ultimately, possession notice dated 29.06.2018 **(P-1)** was issued to the petitioner under Section 13(4) of the SARFAESI Act, 2002, for taking symbolic possession of the mortgaged residential house of the petitioner, cautioning the general public not to deal with the said property subject to charge of respondents-Bank. Subsequently, the respondents-Bank approached the learned Civil Judge (Jr. Division)-II, Jalandhar for recovery of outstanding loan amount and the proceedings wherein are pending for 14.07.2021.

Glancing through the entire paper book, it appears that the case of the petitioner does not make any head and tail. On the one hand, the petitioner intends to challenge the possession notice dated 29.06.2018 **(P-1)** and on the other hand he has alleged that the learned Civil Judge has also passed an order for the attachment of the property for 14.07.2021. A perusal of the summons **(P-2)** issued by the learned Civil Judge would reveal that it has been issued on filing a civil suit for recovery by the respondents-Bank and there is no material on file to draw an inference that the learned Civil Judge has passed any order qua the attachment of the property in question.

De hors the aforesaid factual aspects, petitioner has efficacious remedy available before the appropriate authority i.e. Debt Recovery Tribunal. The law in this regard is very clear 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 judgment of the Supreme Court in the case of

United Bank of India ***<u>Versus</u>*** ***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 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 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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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*** **Versus** ***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 with liberty to avail the remedy available under the law.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

08.07.2021
mks

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