IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-14061-2021
Date of Decision:29.07.2021

Jatinder Singh **...Petitioner**

Versus

Cholamandalam Investment & Finance Company Limited and others

...Respondents

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

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

Ms. Puja Chopra, Advocate
for respondent No.1.

SANT PARKASH, J.

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

By way of filing the present writ petition, petitioner prays for setting aside the order dated 23.03.2021 (P-13) passed by Additional District Magistrate, SAS Nagar-respondent No.2, whereby it was directed that possession of House No.29, Golden City, Sector-4, Village Mundi Kharar, District SAS Nagar be given to respondent No.1-Financial Institution on account of non-payment of outstanding loan amount.

Brief facts of the case are that the petitioner is having two sons namely Amaninder Singh and Raminder Singh. The above-said residential house was in the name of the petitioner. He made a family settlement, whereby complete first floor, i.e. 40% share of the residential house in question was given to his elder son, namely, Amaninder Singh, whereas ground floor i.e. 60% share had been given to his younger son Raminder Singh. However, Raminder Singh got fraudulently transferred the share of

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Amaninder Singh, i.e. 40% of the property in his favour and raised a loan of Rs.52 Lakhs on 30.11.2015 from respondent No.1 repayable in 144 installments by mortgaging the property in dispute without the knowledge of the present petitioner. Raminder Singh died on 24.10.2016 due to sudden ailment, leaving behind widow and two minor sons. When the legal heirs of Raminder Singh failed to repay the outstanding dues, an Arbitrator was nominated as per the Clause 26 of the loan agreement. Vide award dated 06.07.2017 (P-7), the Arbitrator held that respondent No.1 was entitled to recover a sum of Rs.54,24,929.82 with interest @ 18% per annum thereon from 04.05.2017 till the date of its realisation jointly and severally from the petitioner and his younger son, namely Raminder Singh. Respondent No.1-financial institution also filed an application for execution of the said award. Thereafter, against the said award dated 06.07.2017 (P-7), the petitioner filed Objection Petition under Section 34 of the Arbitration and Reconciliation Act, 1996 (for short "the 1996 Act"), which is stated to be pending before the learned Additional District Judge, SAS Nagar (Mohali). Thereafter, respondent No.1 initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "SARFAESI Act, 2002") against the petitioner and respondent No.4 (wife of Raminder Singh) by issuing notice dated 13.03.2020 under Section 13(2) and notice dated 30.09.2020 under Section 13(4) of the SARFAESI Act, 2002.

Learned counsel for the petitioner submits that once the arbitration proceedings are pending before the court below, there was no occasion for respondent No.1 to initiate any proceedings under the SARFAESI Act, 2002. He, thus, prays for setting aside the impugned order dated 23.03.2021 (P-3) as the same is outcome of misuse of process of law

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on the part of respondent No.1.

After having heard learned counsel for the petitioner, we do not find any substance in the argument raised by learned counsel for the petitioner in view of the specific observations of the Hon'ble Supreme Court in **M.D. Frozen Foods Exports Private Limited and others** versus **Hero Fincorp Limited, (2017) 16 SCC 741.** It has been held that the proceedings under the 1996 Act and the SARFAESI Act, 2002 can go hand in hand. Further, the provisions of the SARFAESI Act, 2002 are a remedy in addition to the provisions of the Arbitration Act. The two Acts are cumulative remedies to the secured creditors. The relevant observations made by the Hon'ble Supreme Court read as under:-

> *"26. A claim by a bank or a financial institution, before the specified laws came into force, would ordinarily have been filed in the Civil Court having the pecuniary jurisdiction. The setting up of the Debt Recovery Tribunal under the RDDB Act resulted in this specialised Tribunal entertaining such claims by the banks and financial institutions. In fact, suits from the civil jurisdiction were transferred to the Debt Recovery Tribunal. The Tribunal was, thus, an alternative to a Civil Court recovery proceedings.*
>
> *27. On the SARFAESI Act being brought into force seeking to recover debts against security interest, a question was raised whether parallel proceedings could go on under the RDDB Act and the SARFAESI Act. This issue was clearly answered in favour of such simultaneous proceedings in* ***Transcore v. Union of India.*** *A later judgment in* ***Mathew Varghese v. M. Amritha Kumar*** *also discussed this issue in the following terms:*
>
> ***"45.*** *A close reading of Section 37 shows that the provisions of the SARFAESI Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act.*

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Section 35 of the SARFAESI Act states that the provisions of the SARFAESI Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of the RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely, the SARFAESI Act and the RDDB Act, would be complementary to each other. In this context, reliance can be placed upon the decision in ***Transcore v. Union of India.*** *In para 64 it is stated as under after referring to section 37 of the SARFAESI Act: (SCC p. 162)*

> *"'64...According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnance nor inconsistency between the two remedies, therefore, the doctrine of election has no application."*

46. *A reading of Section 37 discloses that the application of the SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws are not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the*

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> *SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; the Securities and Exchange Board of India Act, 1992; the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force."*
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> *(emphasis in original)*

Faced with the above situation, learned counsel for the petitioner prays for withdrawal of the present writ petition with liberty to avail alternative remedy before the appropriate forum.

In view of the above, the present writ petition is dismissed as withdrawn with liberty as aforementioned.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

29.07.2021
mks

Whether speaking/reasoned: Yes / No
Whether Reportable: Yes / No

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