IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.15465 of 2021
Date of Decision: *August 13, 2021*

Rajdeep Jain

..... PETITIONER(S)

VERSUS

State Bank of India, Jalalabad and another

..... RESPONDENT(S)

. . .

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

. . .

PRESENT: - Mr. Rajesh Gupta, Advocate for the petitioner.

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Sant Parkash, J

The instant petition has been preferred under Article 226/227 of the Constitution of India for issuance of a writ of Mandamus directing respondent No.1 – State Bank of India, Jalalabad to release the property i.e. agricultural land at Paonta Sahib, measuring 45 Bigha 12 Biswas in the name of petitioner as per 4 different sale deed Nos.1165, 1166, 1167 and 1168(P-2) and also personal guarantee executed by petitioner in favour of respondent No.2 – M/s Jhamb Enterprises Private Ltd., while granting loan facilities to respondent No.1 as there is no existing contract between petitioner and respondent Bank. Prayer has also been made for staying further proceedings before Recovery Officer, DRT-1, Chandigarh in RC No.879/2019 titled 'SBI vs. Jhamb Enterprises Pvt. Ltd. & others'.

Brief facts of the case are that respondent No.2 availed credit facilities vide sanction letter dated 24.10.2008 (Annexure P-1) to the tune of ₹ 21.06 crore from respondent No.1 – Bank, for which, petitioner stood as guarantor by mortgaging agricultural land situated at Paonta Sahib, measuring 2717 Biswas i.e. 135 bighas 17 biswas in the name of petitioner and his brother Sandeep Jain as per 9 different sale deed Nos.1250, 1251, 1252, 1253, 1165, 1166, 1254, 1167 and 1168. Out of the above land, petitioner's share is 912 biswas i.e. 45 bighas 12 biswas as per 4 separate sale deed Nos.1165, 1166, 1167 and 1168. Respondent No.2 created charge in favour of respondent – Bank vide Form No.8 (Annexure P-3) filed with Registrar of Companies on 24.10.2008, vide which the charge was created for limits of ₹ 21.06 crore. Subsequently, respondent No.2 approached respondent No.1 – Bank to reduce their limits which were reduced from ₹ 21.06 crore to ₹ 17.41 crore, in regard to which, Sanction letter dated 05.09.2012 (Annexure P-4) was issued. Consequently, the charge in favour of the bank was modified and Form No.8 was filed with Registrar of Companies on 05.09.2012 (Annexure P-5) specifically mentioning the aforesaid reduced limit therein. The petitioner has alleged that the aforesaid modification was without his consent and in view of the provisions of Section 133 of the Indian Contract Act 1872, contract of surety was discharged of its liability.

The petitioner, vide letter dated 02.01.2017 (reply to show cause notice dated 08.12.2016), Annexure P-6, pleaded that as the terms of earlier agreement were breached, the petitioner was absolved of its liability and thus, respondent – Bank was required to release his property and to absolve him of his personal guarantee which the respondent – Bank failed to do so. Annexure P-7 is reply dated 24.08.2020 in response to notice for personal hearing before the Willful Defaulter Identification Committee wherein petitioner submitted that he was a third party guarantor at the time of initial sanctioning of credit facilities in the year 2008-09, the validity of which, ceased to exist in the year 2012-13 when the terms & conditions of credit facilities were amended by renewing/reducing the limits.

Respondent No.1 – Bank filed OA No.2051 of 2017 in DRT-1, Chandigarh against respondent No.2 and other persons including petitioner, however, petitioner was never served. The Tribunal, vide order dated 14.03.2019, allowed the claim of respondent No.1 Bank against all the respondents therein including petitioner, and initiated recovery proceedings vide RC 879/2019. Consequently, respondent No.1 filed POS for sale of mortgaged property including the property of petitioner. Petitioner filed objections before DRT-1 which have been raised in this petition.

From the sequence of events, it is evidently clear that the petitioner had filed Objections before DRT-1 and the appropriate remedy with the petitioner was to seek the setting aside of *ex parte* order or to approach the DART for redressal of his grievances. Otherwise also, the law is well settled that when the petitioner has efficacious remedy available before the appropriate authority, this Court stands injuncted from interferring. This view has been expressed by Hon'ble Supreme Court in the cases of **Union Bank of India vs. Satyawati Tandon & others,** ***(2010) 8 SCC 110*** and **Authorised Officer, State Bank of Travancore & another vs. Mathew K.C.,** ***2018 (2) RCR (Civil) 1.***

Faced with the aforesaid situation as also realizing that specific remedy is available under The Securitizatiion and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002, learned counsel for the petitioner seeks to withdraw the present petition with liberty to avail the remedy available under law.

Dismissed as withdrawn with liberty aforesaid.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

August 13, 2021
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No

AVIN KUMAR
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I attest to the accuracy and
integrity of this document