209 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14837 of 2020
Date of Decision: 26.03.2021

M/s Dee Pee Plaza and another …Petitioners

Versus

State of Punjab and others …Respondents

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

Present: Mr. S.S. Rangi, Advocate
for the petitioners.

Mr. Avinit Avasthi, AAG, Punjab.

Mr. H.S. Bedi, Advocate
for respondents No.2 to 4.

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SANT PARKASH, J.

(The aforesaid present is being recorded through video conferencing since the proceedings are being conducted in virtual court)

The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing the respondents No.1 to 4 not to adopt coercive methods against the petitioners to recover the outstanding loan until the final disposal of Appeals No.63 and 68 of 2019 pending in the Court of learned Registrar Co-operative Societies (Punjab)- respondent No.6 and also issuance of a writ in the nature of certiorari seeking quashing of the notice dated 14.08.2020 (Annexure P-13) issued against the petitioners.

Learned counsel for the petitioners states that petitioner No.1 obtained credit limit amounting to Rs.60 lakh from the respondent bank in the year 2001 and a term loan of Rs.70 lakh in the year 2004. The petitioner No.2 stood as guarantor and mortgaged his properties in favour of the bank for availing the said loan facility. The petitioner paid approximately 2,42,00,000/- against the said CC limit and Rs.44,00,000/- against the term loan but the said account of the petitioner was declared as NPA on 30.06.2012. In the petitions filed under Section 138 of Negotiable Instruments Act, a compromise was arrived at between petitioners and the respondent bank in National Lok Adalat held on 10.02.2018 and the respondent bank had proposed OTS scheme, which was not provided to the petitioners. Respondent bank initiated proceedings under Section 55 and 56 of Punjab Co-operative Societies Act, wherein, ex-parte order dated 31.10.2018 was passed against the petitioner-firm. The petitioners challenged the said ex-parte order by moving two appeals No. 63 and 68 of 2019. The petitioners made two representations dated 17.04.2019 and 01.05.2019 to respondents No.2 to 4 requesting them to furnish the details of the loan terms but the same fell upon the deaf ears of the respondent-Bank. Despite the pendency of the aforesaid appeals, respondent No.5-Assistant Registrar Co-operative Societies issued a writ of demand under Section 68 of Punjab Land Revenue Act, 1887 against the petitioners. Aggrieved against the said writ of demand, the petitioners preferred a Civil Writ Petition No.12832 of 2019 and this Court vide order dated 18.10.2019 directed the respondent bank not to take any coercive action till the aforesaid appeals are pending before the Registrar Co-operative Societies. Since the Registrar Co-operative Societies could not complete the adjudication of the appeals within the time frame afforded by this Court vide order dated 18.10.2019, it moved an application seeking extension of time which was disposed of vide order dated 06.03.2020 with the direction to decide the same on 25.03.2020, but the same could not be decided due to outbreak of Covid-19 Pandemic. The respondent bank put the properties of the petitioners for auction to be held on 18.09.2020, vide notice dated 14.08.2020 under Section 13(4) of the SARFAESI Act.

Learned counsel for the respondent bank has filed reply dated 09.12.2020, wherein it has been averred that the respondent No.2-bank is a Co-operative Society under the provisions of Punjab Co-operative Societies Act, 1961. The Bank being a co-operative society is not a State or an instrumentality of the State as per Article 12 of the Constitution of India and therefore, no writ petition is maintainable against the respondent No.2. Learned counsel further contended that the petitioners have no locus standi to file the instant petition as they have not approached the Court with clean hands and they have no right or title over the secured assets/mortgaged property. Learned counsel also contended that in case, the petitioners have any grievance against the auction notice dated 14.08.2019 issued under Section 13(4) of the SARFAESI Act, they have an efficacious alternative remedy available with them to file an appeal before the Debts Recovery Tribunal.

We have heard learned counsel for the parties and with their kind assistance, gone through the record.

Admittedly, the petitioners obtained cash credit facility as well as term loan from respondent No.2-bank but failed to adhere to the financial discipline due to which their account was classified as NPA. If glanced through, it would be revealed from the reply filed on behalf of the respondent bank that as on 30.04.2018, an amount of Rs.2,37,56,031/- as principle and Rs.1,09,40,567/- as interest, i.e. total Rs.3,81,66,257/- was outstanding in the CC limit and Rs.86,06,080/- was outstanding in term loan account, which was required to be paid by the petitioners to the respondent bank. After the award dated 31.10.2018 passed by Joint Registrar, Co-operative Societies, Chandigarh, only an amount of Rs.1 Crore was paid in CC limit during the pendency of the earlier writ petition filed by the petitioners and thereafter, not even a single penny has been paid since last one year.

In the given circumstances, the appropriate and efficacious remedy available with the petitioner is to approach the Debts Recovery Tribunal. The law in this regard is already settled 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 vs. 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 Hon'ble Supreme Court in case

“**Authorised Officer, State Bank of Travancore and another Vs. Mathew K.C.,** reported as **2018(2) R.C.R. (Civil) 1**.”

Taking into consideration the settled law, the petitioner is relegated to the Debts Recovery Tribunal for the redressal of his grievances, under the SARFAESI Act.

In view of the above, the instant writ petition is disposed of.

(JASWANT SINGH)	**(SANT PARKASH)**
JUDGE	**JUDGE**

26.03.2021
Maninder

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No