213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15860-2020 (O&M)
**Date of Decision: 22.04.2021**

**SATPAL ... PETITIONER**

**V/S**

**THE DCB BANK LIMITED THROUGH ITS AUTHORISED OFFICER**
**... RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**
**HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. Ferry Sofat, Advocate for the petitioner.

Mr. ADS Sukhija, Advocate for the respondent.

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**JITENDRA CHAUHAN , J. (ORAL)**

The matter has been taken up through video conferencing in the light of the pandemic Covid-19 situation and as per instructions.

The petitioner seeks issuance of a writ in the nature of certiorari for quashing the demand notice dated 17.09.2019 (Annexure P-1) issued by the respondent-Bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002.

The brief facts of the case are that the petitioner had obtained a SME Bachat Business loan against his residential property for a sum of Rs.23,94,526/- from the respondent-Bank on 28.02.2018. Due to loss in business and market fluctuations, he could not pay the instalments regularly after July 2019. The account of the petitioner was classified as Non-performing Asset (NPA) on 31.08.2019. The petitioner sent representation/objections dated 02.09.2020 (Annexure P-3) for restructuring of loan account but to no avail.

Vide order dated 07.01.2021, this Court had directed the parties to negotiate regarding restructuring/regularizing of the loan account if permissible by the banking laws.

Today learned counsel for the petitioner submits that nothing fruitful could be achieved in the meeting between the petitioner and the representative of the respondent-Bank.

Learned counsel for the petitioner submits that the account of the petitioner was wrongly declared as NPA on the basis of only one default. He has deposited a sum of Rs. 3 Lakh in pursuance to order dated 16.10.2020 passed by this Court. He further undertakes to pay regular instalments in case the loan account is restructured.

Learned counsel for the respondent submits that the petitioner is a defaulter. He is creating stories and excuses and undertaking laches. The loan account was rightly declared NPA on 31.08.2019 as per RBI guidelines. A notice dated 17.09.2019 (Annexure P-1) was sent to him whereby an amount of Rs.25,08,755/- was demanded by the respondent-Bank.

On the other hand, learned counsel for the petitioner is trying to gain time on one pretext or the other. Even otherwise, the present petition is not maintainable. The petitioners have efficacious alternate remedy against the actions of the bank under SARFAESI Act and as such the writ jurisdiction cannot be invoked, as has been observed by Hon'ble the Supreme Court in ***ICICI Bank Ltd. V. Umakanta Mohapatra, 2018(3)***

***SCALE 724***, In fact, before filing of the writ petition, notice under Section 13 (2) of the SARFAESI Act dated 17.09.2019 had been issued by the bank which is Annexure P-1 with the writ petition. The petitioner had filed objections dated 02.09.2020 (Annexure P-3) to which reply was sent on 09.09.2020 wherein the respondent bank had categorically averred that the loan account was classified as NPA on 31.08.2019. Thereafter a notice dated 17.09.2020 of 60 days was delivered to the borrowers and the petitioner is only interested in gaining undue time, which is impermissible.

In ***United Bank of India Versus Satyawati Tandon & Ors., 2010 (8) SCC 110,*** Hon'ble the Supreme Court in para Nos. 17 and 27 has observed thus:-

> *"17. There is another reason why the impugned order should be set aside. If respondent No.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 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 order under Section 17 and Section 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 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, 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".*
> *xxxxx*
> *"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".*

In the light of the above facts and circumstances and keeping in view the ratio of law laid down by Hon'ble the Supreme Court in ***United Bank of India's Case (Supra),*** *w*e feel that wherever a statute provides for an alternate statutory and efficacious remedy, the same ought to be availed of and must not be bye-passed. In the instant case, admittedly, the petitioner had moved objections dated 02.09.2020 (Annexure P-3). The alternate efficacious and adequate remedy is available to the petitioner under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

In the final analysis, we find no merit in the instant petition and the same is hereby dismissed.

Pending applications, if any, stand disposed of.

**[JITENDRA CHAUHAN]**
**JUDGE**

**[VIVEK PURI]**
**JUDGE**

**22.04.2021**
Janki

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