IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16964-2021
Date of Decision:01.09.2021

M/s Atma Ram and Sons through its proprietor

...Petitioner

Versus

Yes Bank Limited

...Respondent

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

Present: Dr. Sumati Jund, Advocate,
for the petitioner.

[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 seeking issuance of a writ in the nature of certiorari for quashing of order dated 08.07.2021 (P-1) passed by the Additional District Magistrate, Roopnagar, whereby the application of the respondent-Bank for handing over the possession of immovable secured asset, i.e., Godown bearing No.78 situated at Ward No.10, Municipal Council Morinda, Tehsil Morinda, District Roopnagar has been allowed; with a further prayer for quashing of order dated 16.07.2021 (P-3) passed by the District Magistrate, Roopnagar, vide which application of the petitioner for recalling of order dated 08.07.2021 (P-1) was dismissed and also for issuance of a writ in the nature of mandamus directing the respondent-Bank to settle the matter under One Time Settlement (OTS) scheme.

Undisputed facts of the case are that the petitioner, who is a sole proprietorship concern, availed the facility of Cash Credit limit of Rs.1,40,00,000/- from the State Bank of Patiala (now known as State Bank of India) in the year 2018 through its sole proprietor, namely, Lalit Goyal by mortgaging the property in question. Thereafter, the petitioner-Firm got transferred his Cash Credit facility from the State Bank of India to respondent-Yes Bank. It is further averred in the petition that the petitioner-Firm had been regularly paying the installments but due to scarcity of funds, petitioner-Firm could not timely pay some of the installments and thus, respondent-Bank initiated proceedings under the SARFAESI Act against the petitioner-Firm. Thereafter, a suit for permanent injunction was filed before the Civil Judge (Senior Division), Roopnagar for restraining the defendants therein from auctioning, alienating, selling, transferring and mortgaging the property in question. Rather than filing the written statement to the suit, the respondent-Bank filed an application before the Additional District Magistrate, Roopnagar for taking possession of the property in question, which was allowed vide impugned order dated 08.07.2021 (P-1).

The sole contention of the learned counsel for the petitioner is that before passing of the order dated 08.07.2021 (P-1) by the District Magistrate, the petitioner was not heard nor any notice/information was received from the respondent-Bank before filing of the said application before the District Magistrate.

After having heard learned counsel for the petitioner and perusing the case file, this Court does not find any substance therein as the plea of non-issuing of notice by the District Magistrate, Roopnagar before passing of the impugned order dated 08.07.2021 (P-1) is not available to the petitioner, otherwise also, the said order being appealable before the DRT, in view of the law settled by the Hon'ble Supreme Court in **Kaniyalal Lalchand Sachdev Vs State of Maharashtra, 2011 (2) SCC 782.** When appropriate remedy is provided under the SARFAESI Act, this Court stands injuncted from interfering with any matter arising out of the proceedings under the SARFAESI Act.

In view of the aforesaid position, the present writ petition is dismissed and the petitioner is relegated to avail its remedy available before the Debts Recovery Tribunal.

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

01.09.2021
mks

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