IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.16585-2020
Date of Decision:09.02.2021

M/s BR Jain Exclusive Metal through its Proprietor

...Petitioner

Versus

Punjab and Sind Bank and another

...Respondents

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

Present: Mr. Manish Jain, Advocate for the petitioner.

Mr. Anant Bir Singh Sidhu, Advocate
for the respondents-Bank.

<u>JASWANT SINGH, J.</u> (ORAL)

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

Petitioner No.1 is a proprietory concern and petitioner No.2 is the sole proprietor. Petitioner No.1 concern is engaged in the business of scrap metals and availed Cash Credit Limit facility from Punjab and Sind Bank with an enhanced limit of Rs.1.5 crores on 12.06.2015. Apart from the hypothecation of the goods, two properties were offered as collateral security namely Industrial Plot No.9 MC # 543/1, Now MC-7, Focal Point, Ludhiana and residential House No.3000/1, Bagichi Mangal Dass, Dharampur Bazar, Patiala.

The Cash Credit Limit Account was declared NPA on 30.11.2018. A notice (P-3) under Section 13(2) of the SARFAESI Act, 2002 was issued on 14.12.2018 and upon consideration of the reply and rejection of the same, a notice under Section 13 (4) of the SARFAESI Act was issued on 15.02.2019. The physical possession of both the aforesaid properties has not yet been taken.

The petitioner had approached DRT by way of SA against the sale notice issued by the Bank qua the industrial plot, which was ultimately dismissed by the DRT, Chandigarh on 31.05.2019. The industrial plot could not be sold in spite of two efforts.

Apprehending the possibility of the respondent-Bank to proceed against the mortgaged residential house, the present writ petition has been filed. This Court, while issuing notice of motion on 08.10.2020, passed the following order:-

> *"Notice of motion.*
>
> *Mr. Mohit Saddana, Advocate accepts notice on behalf of respondents/bank.*
>
> *The petitioners herein are impugning the recovery proceedings initiated by respondent-Bank under SRFAESI Act, 2002 for recovery of dues by putting up the industrial plot as well as the residential property belonging to them being brought for sale.*
>
> *Learned counsel for the petitioners would submit that besides the two properties which are already mortgaged to the respondents-Bank they have one more property which they have put up for sale and out of the sale proceeds of said property, they would clear the loan amount. When this Court directed the petitioners to deposit at least a substantial sum to show their bonafide, counsel for the petitioners would submit that they are not in a position to raise the funds immediately before the sale of the plot which they are contemplating would take place.*
>
> *Alternatively, petitioners would make one more prayer that instead of putting up for sale of both industrial plot and as*

well as residential property, they would submit that the Bank may proceed to realize the loan amount by initiating procedure for sale of industrial plot alone which according to them would fetch anywhere between Rs. 3.5 to 4 Crores even in this COVID condition and would clear the loan of nearly Rs. 1.57 Crores which according to petitioners is due to respondents-Bank.

However, learned counsel for respondents-Bank would submit that the loan amount is not Rs. 1.57 Crores but it is little more than Rs. 2 Crores.

In any event as stated by learned counsel for the petitioners their industrial plot would fetch more than Rs. 3 Crores. Under the circumstance we find there is some force in the submission made by learned counsel for the petitioners in as much as the second property being the residential house, we are of considered opinion that the Bank may initially proceed to bring the industrial plot (No.9-MC No.543/5-1) which is mortgaged with it, for sale and realize the proceeds towards recovery of the amount due to it at the earliest.

The aforesaid order is passed in consultation with the petitioners and as well as the respondents, therefore, the respondents-Bank may proceed to put up the industrial plot alone for sale and realize the proceeds towards the amount due to it at the earliest.

List this matter on 29.01.2021, within which time the outcome of such sale and realization of the amount shall be placed before this Court by the learned counsel for the respondents/Bank.

However, it is made clear that, the petitioners shall not be dispossessed from their residential house bearing House No. 3000/1, 1704, Tobha Meer Jan (Bagichi Mangal Dasss) near Dharampur Bazar Patiala and also the same shall not be put up for sale.

List on 29.01.2021."

On 29.01.2021, the following order was passed:-

"The cash credit limit account was declared NPA on 30.11.2018 and a sum of Rs.2.10 crore is stated to be due as on today, no amount since then has been paid till today. The mortgaged industrial plot was put to sale twice, but, no bid has been received based on the last reserved price of Rs.1.9 crore. To save other mortgaged property i.e. only residential house with value of Rs.65 lakhs, the petitioner is offering a sum of Rs.1.01 crore, the amount to be received as total sale consideration by 31.03.2021 for sale of another unsecured property of the petitioner (Annexures P-4 & P-5).

We find that the sale deed qua the said unsecured property was to be executed on 30.06.2020, last date for which has now been extended to 31.03.2021. There is no certainty that time would not be got further extended by proposed vendee. We further find that the efforts/conduct of the petitioner is not bonafide for us to invoke our writ jurisdiction.

At this stage, counsel for the petitioner prays for a week's time to seek instructions.

On his request, adjourned to 09.02.2021."

At the time of hearing today, learned counsel for the respondent-Bank submits that the petitioners have not paid a single penny since 30.11.2018 and even the alleged sum of Rs.5 lacs received as earnest money qua sale of the other unsecured property was not deposited. The Bank is hampered in proceeding against the mortgaged residential house in the light of interim protection granted on 08.10.2020.

After hearing the learned counsel for the parties and considering the facts and circumstances of the case, we find that there is a total lack of *bonafide* on the part of the petitioners. We do not find the conduct of the petitioners equitable enough to invoke our jurisdiction under Article 226 of the Constitution of India, more so, in the backdrop of the law laid down by the Hon'ble Supreme Court in **United Bank of India** v/s

Satyawati Tandon 2010 (8) SCC 110. Further, the petitioners have failed to demonstrate that their case falls within any of the exceptions carved out in **Baburam Prakash Chandra Maheshwari** vs. **Antarim Zila Parishad** AIR 1969 Supreme Court 556, **Whirlpool Corporation** vs. **Registrar of Trade Marks, Mumbai,** 1999 (1) R.C.R. (Civil) 220 : **(1998) 8 SCC 1** and **Harbanslal Sahnia and another** vs. **Indian Oil Corporation Ltd. and others**, (2003) 2 SCC 107, for the purpose of invoking the extra-ordinary writ jurisdiction of this Court, especially when the petitioners have alternate statutory remedies, available in law.

In view of above, the present writ petition stands dismissed. Needless to observe, the petitioners shall be entitled to avail their alternative remedies as may be available to them, in accordance with law.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

09.02.2021
mks

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