IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 16415 of 2020 (O&M)
Date of Decision: February 12, 2021

MAJOR SINGH ..... PETITIONER

VERSUS

AUTHORIZED OFFICER,
PUNJAB NATIONAL BANK AND OTHERS .... RESPONDENTS

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

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PRESENT: - Mr. Ramesh Sharma, Advocate for the petitioner.

Mr. Harsh Garg, Advocate for respondents No. 1 and 2.

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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 notice dated 06.08.2020 (Annexure P-2) as well as notice dated 08.08.2020 (Annexure P-3) and auction dated 28.08.2020 (Annexure P-4) issued by respondent Bank under Rule 13(4) of the 'Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') and Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 and subsequently auction held on 15.09.2020 in favour of respondent No. 2 and also for issuance of a writ in the nature of mandamus directing the respondent not to sell the property of the petitioner i.e. plot measuring 4.50 marla situated at Vakiya Mohalla Ravidaspura, Main Road Mehatpur, Near Pandori Gate Nakodar vide sale deed No. 275 dated 27.04.2008 comprised in Khewat No. 3207 Khatauni No. 3635, Khasra No. 230//11(4-14).

Learned counsel for the petitioner states that One Shammi Kumar got registered a company namely M/s Esknna Trends Private Limited and became its Managing Director. In order to run the business, the said company took loan of Rs. 5 Lakh and credit limit of Rs. 6 Lakh and the petitioner stood guarantor of the said loan and credit limit. On the assurance that the entire money would be paid by the company, the petitioner got his property mortgaged with the bank being guarantor of the loan and credit limit, bearing Plot measuring 4.50 Marla situated at Vakiya Mohalla Ravidaspura, Main Road Mehatpur, District Jalandhar. The company used to pay the installment of the said term loan. However, due to demonetization in the year 2016, company could not pay the installments of the said loan. As a result thereof, the respondent Bank declared the account of the company as Non Performing Asset (NPA) and sent the notice dated 28.07.2017 under Section 13(2) of SARFAESI Act and also possession notice dated 17.10.2017. Thereafter, the respondent-Bank issued notice dated 05.03.2020 (Annexure P-1) under Section 13(4) of the SARFAESI Act, 2002 read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, however, sale of the plot could not be done. Again, sale notice was issued on 06.08.2020 (Annexure P-2) to the petitioner under Section 13(4) of the SARFAESI Act, 2002 read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002. Thereafter, public notice was issued on 08.08.2020 (Annexure P-3) for fixing e-auction of the property on 24.08.2020, however, the said e-auction could not be held and again public notice was issued on 28.08.2020 (Annexure P-4) whereby e-auction was fixed for 15.09.2020.

Learned counsel for the petitioner further states that the action of the respondent-Bank is in complete violation of the provisions of Security Interest (Enforcement) Rules, 2002 and therefore, the impugned sale in favour of the respondent No. 3 of the plot of the petitioner is liable to be quashed by this Court. As per Rule 8(6) of the Rules ibid the authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub rule (5) but in the case in hand, initially notice was served upon the petitioner on 05.03.2020 for a period of fifteen days and thereafter, no notice was served upon the petitioner regarding date of auction for participation and thereafter, notice was served upon the petitioner on 06.08.2020 only for fifteen days and no notice was served regarding date of auction. Therefore, impugned action of the respondent-Bank is not legally sustainable and liable to be quashed by this Court. Learned counsel submits that the petitioner is ready and willing to pay the reasonable amount upfront to the respondent-Bank and rest of the amount will be paid in installments.

A reply has been filed on behalf of respondent No. 1-Punjab National Bank with the pleas that the present writ petition is not maintainable there being disputed questions of fact. Loan account involved in the present writ petition belongs to M/s Esknnaa Trends Private Limited and the petitioner is director/mortgagor/guarantor in the loan account which was declared as NPA on 24.12.2016 as per guidelines issued by Reserve Bank of India. Accordingly, notice under Section 13(2) of SARFAESI Act was issued on 28.07.2017 demanding an amount of Rs. 10,75,683.95 and possession notice under Section 13(4) of SARFAESI Act was issued on 17.10.2017. After auction sale, an amount of Rs. 8,13,050/- was recovered in the defaulted account and after adjusting sale proceeds, an amount of Rs. 4,16,070.78 is still pending as on 15.01.2021. Moreover, the petitioner has an alternate statutory remedy under Section 17 of the SARFAESI Act to approach the Debt Recovery Tribunal and without exhausting this remedy, petitioner has no locus to approach this Court.

Learned counsel for the respondent has also contended in the line of the pleas taken in the written statement.

We have heard learned counsel for the parties but do not find any force in the submissions made by learned counsel for the petitioner.

From the record, it is evidently clear that account of the petitioner-company was declared as Non Performing Asset on 24.12.2016 and notice dated 28.07.2017 was issued under Section 13(2) of SARFAESI Act, demanding an amount of Rs. 10,75,683.95. Petitioner was also served possession notice dated 17.10.2017. In this view of the matter, secured assets were put to sale vide sale notices dated 05.03.2020, 06.08.2020 and 27.08.2020 which has already been confirmed in favour of auction purchaser i.e. respondent No. 3 on 03.10.2020.

In the aforesaid circumstances, the present writ petition has become infructuous and is disposed of as such. However, in view of the law laid down by the Supreme Court in the cases of **United Bank of India vs. Satyawati Tandon and others**, reported as **(2010) 8 SCC 110** and **Authorised Officer, State Bank of Travancore and another vs. Mathew K.C.**, reported as **2018(2) R.C.R. (Civil) 1**, petitioner would be at liberty to avail remedy before the Debt Recovery Tribunal under Section 179 of the Act, raising all the pleas taken in this petition.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

February 12, 2021
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No