IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-31569-2019
Date of Decision:10.08.2021

Gurwaryam Singh

...Petitioner

Versus

State Bank of India

...Respondent

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

Present: Mr. N.K. Verma, Advocate,
for the petitioner.

Mr. Gaurav Goel, Advocate
for the respondent-Bank.

[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 a writ in the nature of certiorari for quashing of public sale notice dated 07.10.2019 (P-4) vide which the respondent-Bank has put the shop of the petitioner on sale.

Learned counsel for the petitioner states that petitioner/borrower availed the cash credit limit of Rs.15 Lakhs from the respondent-Bank in the year 2010 and in lieu of that petitioner mortgaged his property, i.e. shop measuring 2 Marla (544.5 sq. feet) comprised in Khasra Nos. 989(0-11) Khewat No.868, Khatuni Mo.1035 situated at Moga, Tehsil & District Moga. He further submits that though the petitioner had been regularly paying the interest over cash credit limit but in the year

2018, the petitioner could not pay interest for few months. As a result thereof, the respondent-Bank declared the account of the petitioner as Non Performing Asset (NPA) and sent a notice dated 06.10.2018 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "SARFAESI Act") and also possession notice dated 15.06.2019 (P-2). Thereafter, the respondent-Bank issued impugned sale notice dated 07.10.2019 (P-4) under Section 13(4) of the SARFAESI Act read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for short '2002 Rules').

Learned counsel for the petitioner further states that the impugned action of the respondent-Bank is in complete violation of the provisions of the 2002 Rules and therefore, the impugned sale notice dated 07.10.2019 (P-4) is liable to be quashed. He further submits that the respondent-Bank has put the property of the petitioner on sale at throw away price of Rs.24 Lakhs, whereas market price of the property is around Rs.60 Lakhs. He further states that the petitioner is ready and willing to pay the overdue amount and ready to settle the matter under OTS. He also submits that the petitioner deposited a sum of Rs.2.5 Lakhs with the respondent-Bank in a No Lien Account.

Learned counsel for the respondent-Bank, on the basis of written statement so filed, submits that the present writ petition is not maintainable being disputed questions of fact are involved. It is further submitted that the respondent-Bank requested the petitioner several times to regularize his loan account but he failed to do so. It is also submitted that the petitioner has an alternate statutory remedy under Section 17 of the

SARFAESI Act and instead of availing that remedy, the petitioner has approached this Court, which is not legally permissible.

This Court has heard the learned counsel for the parties and perused the case file.

Glancing through the entire paper book, it is evidently crystal clear that the petitioner was granted a cash credit limit of Rs.15 Lakhs on 11.03.2010 for the purchase of sale/purchase of tyres vide sanction letter dated 11.03.2010. In order to secure the loan, the petitioner mortgaged the shop in question as collateral security. The primary security for the cash credit limit was hypothecation of stock/tyres but hypothecated stock was removed by the petitioner. When petitioner failed to deposit the installments, his loan account turned into NPA on 30.3.2018. It has also come in the reply that account of the petitioner is not eligible for OTS. In this view of the matter, secured asset was put to sale vide notice dated 07.10.2019 (P-4).

De hors the aforesaid factual aspects, petitioner has efficacious remedy available before the appropriate authority i.e. Debt Recovery Tribunal. The law in this regard is very 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 <u>Versus</u> Satyawati Tandon and others****, reported as* ***(2010) 8 SCC 110 and Authorised Officer, State Bank of Travancore and another Vs Mathew K.C., 2018 (2) R.C.R. (Civil) 1.***

In view of the aforesaid position, the present writ petition is dismissed and the petitioner is relegated to avail his remedy available before the Debt Recovery Tribunal. However, the amount deposited pursuant to order dated 05.11.2019 of this Court in the No Lien Account amounting to Rs.2.5 Lakhs, shall be refunded by the respondent-Bank.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

10.08.2021
mks

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