122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-1657-2021
Date of Decision :15.03.2022

M/s Flora Exports …Petitioner

Versus

Mr. Loren C.E. ….Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Akhilesh Vyas, Advocate for the petitioner.
Mr. C.S. Pasricha, Advocate for the respondent.
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B.S. Walia, J. (Oral)

[1] Prayer in the petition under Section 12 of the Contempt of Courts Act, 1971 is for initiating action against the respondent for intentional and willful defiance of orders, Annexure P/2 dated 28.04.2021 in CWP-PIL No.77 of 2021 in case titled as Court on its own Motion vs. Union of India and Ors.

[2] Learned Counsel contends that vide orders, Annexure P/2 dated 28.04.2021 in CWP-PIL-77-2021, Hon'ble the Division Bench restrained, Banks / Financial Institutions from taking action for auction in respect of any property of any citizen or person or party or any Body Corporate till 30th June, 2021, whereas the respondent issued notice, Annexure P/4 under Section 13 (8) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (i.e. SARFEASI Act, 2002) read with Section Rule 8(6) of the Security Interest (Enforcement) Rules, 2002. Relevant extract

of orders, Annexure P/2 dated 28.04.2021, CWP-PIL-77-2021 reads as under:-

> *"(x) that it is further directed that any Bank or Financial Institution shall not take action for auction in respect of any property of any citizen or person or party or any Body corporate till 30th June, 2021."*

[3] A perusal of notice, Annexure P/4 reveals that the same was a notice issued in terms of Section 13 (8) of the SARFEASI Act, 2002 read with Section Rule 8(6) of the Security Interest (Enforcement) Rules, 2002. Relevant extract of Section 13 (8) of the SARFEASI Act, 2002 is as under:-

> *"13. Enforcement of security interest-*
>
> *(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets-*
>
> *(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and*
>
> *(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.*

[4] A perusal thereof reveals that notice issued is under Section 13(8) of the SARFEASI Act 2022 giving an opportunity to the borrower to repay the amount due to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations for tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets.

[5] Learned counsel for the respondent contends that Annexure P/4 is not an auction notice, therefore, there is no violation of orders, Annexure P/2 dated 28.04.2021. Learned counsel further contends that till date, no notice for public auction or otherwise for the sale of the residential property mentioned in the notice, Annexure P/4 has been issued by the respondent and further that on 07.03.2022, orders, Annexure P/2 dated 28.04.2021 in CWP-PIL-77-2021 as were continued from time to time, were vacated, besides, clarification had already been issued by Hon'ble the Division Bench on 20.08.2021 that there was no stay on proceedings to be undertaken by Banks/Financial Institutions under Sections 13 and 14, SARFAESI Act. Relevant extract of the same is reproduced as under:-

> *"Having heard the learned counsel for the parties and the learned Amicus Curiae, we consider it appropriate and necessary to clarify that this Court has not granted any stay on the proceedings to be undertaken by the Banks/Financial Institutions, under Sections 13 and 14 of the SARFAESI Act. It is further clarified that this Court has also not granted any kind of interim stay in respect of the steps to be taken by the Banks/Financial Institutions for recovering the amount on account of car loans and gold loans."*

[6] In the light of the position noted above, learned counsel for the petitioner states that he does not press the instant petition and the same may be disposed of as such.

[7] I have considered the submissions of learned counsel.

[8] Admittedly, notice issued is not for auction. Moreover, order, Annexure P/2 dated 28.04.2021 in CWP-PIL-77 of 2021 as was continued from time to time, was clarified by Hon'ble the Division Bench vide its order dated 20.08.2021, as not restraining proceedings to be undertaken by Banks/Financial Institutions under Sections 13 and 14 of the SARFAESI Act. Besides,no notice for public auction or otherwise for the sale of the residential property mentioned in the notice, Annexure P/4 has been issued by the respondent and further on 07.03.2022, orders, Annexure P/2 dated 28.04.2021 in CWP-PIL-77-2021 as were continued from time to time, were vacated.

[9] In view of the position noted above, no action under the Contempt of Courts Act, 1971 is called for against the respondent.

[10] Accordingly, the contempt petition is disposed of as such.

(B.S. Walia)
Judge

15.03.2022
'Amit'

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