IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

117+265

CM-7870-CWP-2023 in/and
CWP No.356 of 2023 (O&M)
Date of Decision: 08.05.2023

1. M/S SHRI GANGA BISHAN COTTON MILLS AND ANR

..... Petitioners

Versus

STATE BANK OF INDIA AND ORS

..... Respondents

2. **CWP No.12830 of 2022 (O&M)**

M/S SHRI GANGA BISHAN COTTON MILLS AND ANR

..... Petitioners

Versus

STATE BANK OF INDIA AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Nitin Sachdeva, Advocate for the petitioners.

Mr. Rakesh Gupta, Advocate
for respondent Nos.1 and 2-SBI.

Mr. Ankush Singla, Advocate
for respondent No.3-Auction Purchaser
(in CWP No.356 of 2023)

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<u>**G.S. SANDHAWALIA,** ***J (ORAL)***</u>

By consent of parties CWP No.356 of 2023 is taken up on board today itself.

2. This common order shall dispose of aforesaid two petitions since identical questions of law and facts are involved in the same.

3. The challenge in the writ petition i.e. CWP No.12820 of 2023 by the borrower is to the letter dated 18.04.2022 (Annexure P-6) wherein the Bank on account of non-deposit of the amount as per the compromise arrived at cancelled the settlement. It is noticed that compromise amount of Rs.4.85 crores was to be paid in four months from the date of acceptance of compromise i.e 18.12.2021 against the total dues of Rs.7.33 crores. Only Rs.75 lacs had been paid and the remaining amount was to be deposited on or before 17.04.2022 and borrower having failed to adhere to the terms, the compromise was withdrawn, by the Bank. Resultanlty, the sale notice was issued regarding the mortgaged property measuring 11 kanals 14 marlas on the GT Road Fatehabad.

4. On 02.06.2022 the following order which was conditional in nature was passed in CWP No.12820 of 2022:-

> *'Notice of motion for 07.09.2022.*
>
> *Mr.Rakshit Gupta, Advocate, accepts notice on behalf of respondents and seeks time to file reply. May do so, on or before the next date of hearing with a copy in advance to the counsel opposite.*
>
> *Subject to the petitioners paying a sum of Rs.1 crore within one week from today and the balance as per the OTS sanction dt. 06.12.2021 with interest by 31.07.2022, no coercive action shall be taken against the petitioners by the respondents.*
>
> *In default of compliance with this order, the same shall stand vacated.'*

5. Not having complied with it, civil miscellaneous application i.e. CM No.78-CWP of 2023 in CWP No.12830 of 2022 was filed to withdraw the petition with permission to file a fresh one with better particulars.

Thereafter, CWP No.356 of 2023 came to be filed wherein the challenge was raised to the auction which was held on 28.12.2022 in favour of respondent No.3.

6. On 10.01.2023, the following order was passed in CWP No.356 of 2023:-

> *'Learned Senior counsel would inter alia contend that the asset in question has been put to auction by the respondent-bank much below the market price/potential.*
>
> *It is submitted that in the e-auction that was conducted on 28.12.2022 the highest bid is of Rs.4,38,50,000/-.*
>
> *To substantiate the assertion that such bid would be below market price, counsel submits that the petitioner has a buyer who is ready and willing to submit a bid of 20% higher than the bid amount of Rs.4,38,50,000/-.*
>
> *To show his bona fide undertaking is furnished that a sum of Rs.1,25,00,000/- would be deposited with the bank within a period of one week from today.*
>
> *Issue notice of motion returnable for 12.04.2023.*
>
> *Mr. Rakesh Gupta, Advocate, who is present in Court accepts notice on behalf of respondents No.1 and 2.*
>
> *In the meanwhile the respondent Bank is restrained from issuing the sale certificate pursuant to the e-auction that had been conducted on 28.12.2022.*
>
> *As per undertaking furnished, the amount of Rs.1,25,00,000/- that is to be deposited would be kept in a 'no lien account'.*
>
> *It is further clarified that if the petitioner defaults in making the afore-noticed deposit within the stipulated time frame, the interim directions would cease to operate.'*

7. The respondent-Bank has filed Civil Miscellaneous Application bearing No.7870-CWP of 2023 in CWP No.356 of 2023 for issuing directions to the petitioner to deposit the balance amount. As per the application, the petitioner was required to deposit further sum of

Rs. 4,01,20,000/- in terms of the undertaking given by the petitioner on 10.01.2023. Since he had given an undertaking to bring a buyer who will pay Rs.5,26,20,000/- to match the bid given by the Auction Purchaser. It is to be noticed that inspite of 10 months having gone by neither Rs.1 crore was deposited as undertaken in the first writ nor the balance amount has been made available as noticed in the order dated 10.01.2023 both of which were conditional orders that in case the petitioner defaults in making the aforesaid deposit in the fixed time frame, the interim directions would cease to operate.

8. It is not disputed that the Auction Purchaser has already deposited the entire bid of Rs.4,38,00,000/- in the prescribed period. The petitioner has failed to get the balance amount as per the earlier order. In such circumstances, we are of the considered opinion that having failed to get the amount as directed by this Court the borrower has failed in its last bid in its an effort to salvage the sale of property. We do not feel that any viable reason remains to continue with the hearing of these cases. The petitioners have a remedy to challenge the auction notice, in accordance with law before the tribunal if there is any discrepancy regarding the action taken by the Bank in view of the provisions of Section 17 (2) and (3) of SARFAESI Act, as per settled law. The Apex Court in ***Civil Appeal Nos.3152-3153 of 2023 'G. Vikram Kumar Vs. State Bank of Hyderabad'*** held that auction proceedings conducted under the SARFAESI proceedings were to be challenged under Section 17 of the Act and not by way of filing writ petition, while setting aside the judgment of the High Court which had granted relief. The relevant para read as under:-

> '8.At the outset, it is required to be noted that what was challenged before the High Court by respondent No.1in a writ petition under Article 226 of the Constitution of India was the

e-auction notice which was pursuant to the action initiated by the Bank in exercise of powers under Section 13(4) of the SARFAESI Act. At this stage it is required to be noted that e-auction was held/conducted on 31.08.2016 in which the appellant participated and was declared as a successful bidder and he made a payment of 25% of the bid amount on the very day i.e., on 31.05.2016. However, thereafter the respondent no.1 filed the writ petition before the High Court challenging the e-auction notice dated 28.07.2016 on 14.09.2016 that is after conducting of the auction. It is required to be noted that against any steps taken by the Bank under Section 13(4) of the SARFAESI Act the aggrieved party has a remedy under the SARFAESI Act by way of appeal under Section 17 of the SARFAESI Act to approach the DRT. Therefore, in view of the availability of the alternative statutory remedy available by way of proceedings/appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India in which the e-auction notice was under challenge. Therefore, the High Court has committed a very serious error In entertaining the writ petition under Article 226 of the Constitution of India challenging the e-auction notice issued by the Bank in exercise of power under Section 13(4) of the SARFAESI Act.'

9. The writ petitions are according dismissed.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
JUDGE

08.05.2023
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Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO