

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(113+271)

Neutral Citation No.2023:PHHC:071169-DB
CWP-3027-2022 (O&M)

Nirmala Devi and another

....Petitioner(s)

Versus

Punjab National Bank and another

.... Respondent(s)

(2)

CWP-3036-2022 (O&M)

M/s Krishna Traders

....Petitioner(s)

Versus

Punjab National Bank and others

.... Respondent(s)

Decided on: 16.05.2023

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: None for the petitioner(s).

Mr. Rajan Chawla, Advocate and
Mr. Arpit Chawla, Advocate for the respondent-Bank.

Mr. Dushyant Rana, Advocate
for respondent No.3 in CWP-3036-2022.

G.S. Sandhawalia, J.

Present judgment shall dispose of two writ petitions i.e. CWP Nos.3027 & 3036 of 2022, since not only the facts are similar, but the parties are also intertwined in as much as the proprietor of petitioner-M/s Krishna Traders in the second petition i.e. CWP No.3036 of 2022 namely Rashmi Bansal is wife of Sandeep Kumar who is petitioner No.2 in the first writ petition i.e. CWP No.3027 of 2022. The modus operandi is, thus, similar on account of the concealment of facts and, therefore, the petitioners are not entitled for hearing on merits, keeping in view the law laid down in **Prestige Lights Ltd. Vs. State Bank of India, (2007) 8 SCC**

449 and Dalip Singh Vs. State of Uttar Pradesh and others, (2010) 2 SCC 114.

2. The factual aspects are similar to the extent that in the first writ petition i.e. CWP No.3027 of 2022 directions were sought for regularization of the loan account of the petitioner Nirmala Devi which was stated to be classified as a 'Non-Performing Asset' (NPA) and resultantly securitization proceedings dated 25.10.2021 by way of possession notice (Annexure P-3) was subject matter of challenge, wherein outstandings were stated to be ₹20,56,561.90 as on 01.05.2021. Similar auction notice dated 29.10.2022 (Annexure P-4) was also subject matter of challenge, wherein properties were slated for e-auction for 15.02.2022.

3. Apparently, the Securitization Application had already been filed on 15.12.2021 bearing SA No.177 of 2022, which came up for hearing for the first time on 16.12.2022 and was adjourned on account none being present. Thereafter, the same was taken up on 05.01.2023, 09.01.2023, 04.02.2023, 01.04.2023, but none had appeared and even on 10.05.2023 none appeared before it being eventually dismissed in default on the said date. There was concealment regarding the filing of the same and a categorical averment was made that there is no other remedy with the petitioner and since the loan account has been declared as NPA, therefore, the Writ Court would have jurisdiction and the Debts Recovery Tribunal was not holding Court. In the written statement filed by the respondent-Bank in paragraph No.5 specific objection had been taken that it is a case of forum shopping.

4. The Coordinate Bench was persuaded to grant stay on 21.02.2022, subject to deposit of ₹1.35 lakhs and to pay the installments in

time in future and the secured assets were not to be put to sale. It was a conditional order and the stay was to be vacated in case the amount was not deposited. No replication as such has been filed to controvert the allegations made. The petitioners have also not filed any affidavit that they have paid the amount as directed by this Court.

5. Similarly, in the second petition i.e. CWP No.3036 of 2022 challenge was made to the possession notice dated 25.10.2021 (Annexure P-4) wherein outstandings were stated to be ₹1,22,56,905.92 as on 30.04.2021. The mortgaged property is also different as it was consisting of 16 kanals land standing in the name of M/s Krishna Traders. The auction notice dated 29.01.2022 (Annexure P-5) had fixed the reserve price @ ₹1,30,50,000/- and the e-auction was fixed for 15.02.2022.

6. On 21.02.2022 the conditional order was passed, subject to paying ₹20 lakhs and maintaining the CC Limit and the sanctioned limit of ₹95 lakhs, the sale would not be confirmed in favour of the successful bidder till further orders and in default of the same, the stay would stand vacated. The factum of filing of securitization application challenging the said proceedings was also concealed by taking the plea that classification of account as NPA was wrongly done and the Debts Recovery Tribunal was not holding Court. It was the case of the respondent-Bank that SA No.2 of 2023 had been actually filed on 08.12.2021 before passing of the interim order by this Court on 21.02.2022. Interim order dated 07.02.2023 passed by the Presiding Officer, Debts Recovery Tribunal would go on to show that the same was filed on 08.12.2021 and there was a mistake that the Registrar had not listed it and the notice was then issued on the said

date on 07.02.2023 and eventually the application was dismissed in default on 20.04.2023.

7. Thus, apparently, the writ petitioners have concealed all these material facts and in view of the settled principle of law they are not entitled for hearing. The Apex Court has time and again laid down the principles that the Writ Court while exercising its extra-ordinary jurisdiction would not hear a person on merits, if there is suppression of material facts. It was held that disclosure of true, complete and correct facts was the very basis of the writ jurisdiction. Relevant observations made in the judgment passed in **Prestige Lights Ltd. (supra)** read as under:-

“32. It is thus clear that though the appellant- Company had approached the High Court under [Article 226](#) of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under [Article 226](#) of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

XXXXXXXXXXXXXXXXXXXX

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from

abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”

8. The said view was, thereafter, followed in **Dalip Singh (supra)** wherein also the writ petitioner had not stated the correct facts before the High Court and delayed the benefit of the surplus land which was to go to the landless poor persons. It was, accordingly, held that the case belongs to category of persons who not only attempt, but have succeeded in polluting the course of justice and are misleading the Court, no case for interference would be made out. It was also held that a misleading fact was put forward before the High Court and the appellant had succeeded in persuading the Court to pass an order which had resulted in frustrating the efforts made by the concerned authority regarding the distribution of the surplus land.

9. Even otherwise these auction proceedings could only have been challenged by filing an appropriate application before the Tribunal in view of the law laid down by the Apex Court in **Civil Appeal Nos.3152-3153 of 2023 ‘G. Vikram Kumar Vs. State Bank of Hyderabad & others’** decided on 02.05.2023, wherein it has held that even the auction proceedings are to be challenged before the Tribunal under Section 17 of the 2002 Act and, therefore, this Court does not have any jurisdiction. Relevant portion of the said judgment reads as under:-

“8. At the outset, it is required to be noted that what was challenged before the High Court by respondent no.1 in 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 31.08.2016. 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.”

10. In such circumstances, the present writ petitions are also not maintainable. All pending civil miscellaneous application (s) if any also stand disposed of. However, since none have put in appearance on behalf of the petitioners, we do not impose any cost for the colossal wastage of precious judicial time.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

16.05.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No