2023:PHHC:160958-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-18448-CWP of 2023in/and
CWP No. 5239 of 2022 (O&M)
Date of Decision:14.12.2023

Priyanka Kumari **......Petitioner**

Versus

Union Bank of India

...... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Shivjot S. Modgil, Advocate
and Mr. Rahul Vohra, Advocate
for the applicant-petitioner.

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

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LISA GILL, J(Oral).

CM-18448-CWP of 2023.

Prayer in this application is for recalling order dated 09.08.2023 vide which this writ petition was dismissed for non-prosecution and restoration thereof.

Notice of the application.

Mr. Gaurav Goel, Advocate, accepts notice on behalf of the non-applicant-respondent-Bank and does not raise objection to restoration of writ petition.

For reasons mentioned in the application as well as stand taken by learned counsel for non-applicant-respondent-Bank, order dated 09.08.2023 is recalled and this writ petition is restored at its original number.

At request and with consent of learned counsel for the parties, writ petition is taken up for hearing today itself.

Application is accordingly disposed of.

CWP No. 5239 of 2022.

1. Prayer in this writ petition is for setting aside notice dated 18.01.2022, Annexure P-2, under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). It is further prayed that all subsequent proceedings initiated by respondent-Bank under SARFAESI Act be set aside and respondent-Bank be directed to allow at-least six months to the petitioner to deposit entire outstanding dues.

2. It is submitted that petitioner along with her husband were directors of JAP Infratech Private Limited and construction work was being carried out by the said company incorporated on 28.01.2023. Loan facilities were availed of by the petitioner and her husband as detailed in para 4 and 7 of the writ petition. Due to outbreak of pandemic COVID-19 and suffering of petitioner's husband from Bi-Polar disease, business ran into loss leading to financial indiscipline on the part of the petitioner and borrower. Accounts were declared Non Performing Asset (NPA) on 05.10.2021. Proceedings under SARFAESI Act were initiated by respondent-Bank for recovery of amount due. It is pleaded that notice dated 18.01.2022, Annexure P-2, under Section 13(2) of SARFAESI Act is absolutely illegal, arbitrary and in contravention of provisions of SARFAESI Act and The Security Interest (Enforcement) Rules, 2002 (for short 'Rules, 2002'). It is pleaded in the writ petition that period of six months should be afforded to petitioner to settle the accounts in question. It is thus prayed that this writ petition be allowed.

3. Writ petition has been opposed by learned counsel for respondent while firstly raising preliminary objection qua entertainability of this writ petition. It is further submitted that action taken against petitioner and her husband under SARFAESI Act is in accordance with provisions of law. No amount whatsoever has been tendered by petitioner or her husband

despite huge outstanding. It is thus prayed that this writ petition be dismissed.

4. Heard learned counsel for the parties.

5. In the present case availing of loan facility and financial indiscipline on the part of borrower is a matter of record. Furthermore, learned counsel for petitioner is unable to deny that petitioner has an efficacious statutory remedy for redressal of grievance(s) as raised by her. No such exceptional or extraordinary circumstance has been pointed out by learned counsel for the petitioner, which calls for interference in exercise of jurisdiction under Article 226 of the Constitution of India. It has been held by Hon'ble the Supreme Court in a catena of cases that in such circumstances, petitioner should be relegated to remedy under the statute. Gainful reference can be made to the judgment of Hon'ble Supreme Court in **Union Bank of India Vs. Satyawati Tandon and others, 2010(8) SCC 110, Varimadugu Obi Reddy Vs. B. Sreenivasulu and others, 2023(1) RCR (Civil) 34, M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(1) RCR (Civil) 771**. Hon'ble the Supreme Court in **Satyawati Tandon's** case (supra) has held as under:-

> "17. ……*Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while*

dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the

High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order."

6. Hon'ble the Supreme Court in **M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another (supra),** while reiterating its earlier decisions held as under:-

"13……. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.

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14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.

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15. The object and reasons behind the Act 54 of 2002 are very clear as observed by this Court in Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311. While it facilitates a faster

and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order, and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression "any person", who could approach the Tribunal.

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18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal."

7. It is to be noted at this stage that prayer in this writ petition filed in March 2020 is for direction to respondent-Bank to afford a period of six months to the petitioner to deposit outstanding dues. On a pointed query in this regard regarding the timeline within which outstanding amount can be deposited by the petitioner, no response is forthcoming. It is also a matter of record that objections were never filed by the petitioner pursuant to notice dated 18.01.2022, issued under Section 13(2) of SARFAESI Act. We also do not find any merit in the argument raised by learned counsel for the petitioner that as this writ petition has been filed challenging notice under Section 13(2) of SARFAESI Act itself without notice under Section 13(4) of SARFAESI Act having been issued, this writ petition should be entertained. Petitioner along with her husband indeed have efficacious remedy(ies) provided under SARFAESI Act itself for redressal of grievance(s) raised in this writ petition before the Appropriate Forum.

8. Learned counsel for the petitioners is unable to point out any exceptional or extraordinary circumstance, which calls for interference by this Court.

9. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail statutory remedy(ies) available to her in accordance with law. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 14, 2023.
s.khan

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