2023:PHHC:165739-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5390of 2022 (O&M)
Date of Decision:22.12.2023

M/s Oswal (India)

......Petitioner

Versus

State Bank of India and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anand Chibbar, Sr. Advocate
with Ms. Khyati Avnish, Advocate
for the petitioner.

Ms. Manjari Joshi, Advocate
for the respondent-Bank.

*****

LISA GILL, J.

1. Prayer in this writ petition is for quashing sale notice dated 12.12.2021, Annexure P-1, Sale Intimation Letter dated 05.01.2022, Annexure P-2 and communication dated 05.01.2022, Annexure P-3, whereby petitioner has been accepted to be the successful auction purchaser, being the highest bidder. It is alleged that sale was conducted by respondent-Bank in violation of provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, Act 2002 (for short 'SARFAESI Act') and Rule 8(6) (A) and (F) and Rule 8(7) of the Security Interest Enforcement Rules, 2002 (for short 'Rules').

2. Learned counsel for petitioner submitted that respondent no.3 i.e. M/s Oswal Apparels Private Limited availed of financial facilities from respondent no.1-State Bank of India in the year 2009 and then in 2011.

However, due to financial indiscipline, account of respondent no.3 was declared 'Non Performing Asset' (NPA) in November 2013 and proceedings under SARFAESI Act were initiated against respondent no.3 by respondent no.1. Sale notice dated 12.12.2021, Annexure P-1, for auction of immovable secured assets (factory land and building as detailed therein) of respondent no.3 was published, wherein it was mentioned that property in question is free from encumbrances. Petitioner-Firm participated in e-auction held on 01.01.2022 pursuant to notice dated 12.12.2021. Petitioner was successful in the auction with highest bid of ₹7.36 Crores, reserve price of the same being ₹7.36 Crores. Sum of ₹4,34,12,500/- was deposited by petitioner on 15.01.2022 being 58.94 % of the bid amount.

3. It was submitted that while petitioner was in the process of mobilizing remaining funds, it came to its notice that property in question was encumbered inasmuch as judgment and decree dated 24.12.2014 had been passed against respondent no.3 in Civil Suit No. 464, titled 'Neeraj Bakshi Vs. Anuj Verma and others', Annexure P-4, whereby defendants therein (respondent-Bank was not party to suit) were restrained from interfering in peaceful possession of plaintiff therein, who claimed to be a tenant inducted in May 2012 and to dispossess him or take possession of said property except in due course of law. Learned counsel for petitioner submitted that respondent no.1-Bank being very well aware of the encumbrance did not reveal the same in the sale notice. Respondent-Bank being aware of the said judgment and decree dated 24.12.2014, is apparent from the fact that an application was filed by respondent-Bank in Civil Suit before the learned Civil Judge (Jr. Division), Ludhiana, which was disposed of on 11.01.2020, Annexure P-6.

4. It was vehemently argued by learned counsel for petitioner that in such circumstances, respondent-Bank is not entitled to proceed any further with auction proceedings as the same amounts to fraud and an act of gross misrepresentation of facts. It was further contended that respondent-Bank should either be directed to handover the auctioned property free of all encumbrances to the petitioner or in alternate refund the amount deposited by petitioner till date along with interest at the rate of 18% besides compensation to the tune of ₹ 1 Crore. No coercive action should be taken against the petitioner inasmuch as the amount deposited by the petitioner should not be subject to forfeiture. Reliance has been placed by learned counsel for petitioner on the judgments of Hon'ble the Supreme Court in **Mathew Varghese Vs. M. Amritha Kumar and others, (2014) SCC 610, J. Rajiv Subramaniyan and another Vs. Pandiyas and others, (2014) 5 SCC 651, Vasu P. Shetty Vs. Hotel Vandana Palace and others, (2014) 5 SCC 660 and Leelamma Mathew Vs. Indian Overseas Bank and others, 2022 SCC Online SC 1601.** It is thus prayed that this writ petition be allowed.

5. Learned counsel for respondent-Bank while refuting arguments raised on behalf of the petitioner raised a preliminary objection regarding entertainability of this writ petition on the ground that an efficacious alternate remedy is available to petitioner for redressal of any grievance which it might have in respect to proceedings initiated under SARFAESI Act. It was vehemently argued by learned counsel for respondent-Bank that present writ petition is merely a tactic to delay the whopping recovery of over ₹1.45 Crores including interest costs etc.

6. It was submitted that the oblique and ulterior purpose in filing present writ petition is apparent from the fact that partner of petitioner firm

through whom the present writ petition has been filed i.e., Mr. Sarthak Jain is the son of Mr. Vikas Jain, who is none other but a director of the borrower firm which is arrayed as respondent no.3 in this writ petition. Judgment and decree dated 01.07.2014, it was submitted is a collusive one and in any case, not binding upon either respondent-Bank or the petitioner. This fact, it is submitted has been duly clarified by learned trial Court vide order dated 11.02.2020 wherein it was clarified that judgment and decree dated 01.07.2014 is not an impediment to proceedings under SARFAESI Act as under:-

> "Since the present applicant is neither the plaintiff nor the defendant in the original suit, by no means can the force of the said decree be said to be applicable upon it. By the very virtue of the aforementioned observation, it can be safely concluded that whenever, the judgment and decree of 24.12.2014, in a case titled as 'Neeraj Bakshi Vs. Anuj Verma & Ors.', is confronted to any official, be it of banking, or, revenue or any other department, who at the given point of time, is working under the proceedings and the directives of SARFAESI Act, 2002, it shall not be a valid ground for him/her to halt the said proceedings on the pretext of passage of the said decree in favour, or, against of any of the parties arrayed in the parent suit."

7. It was strenuously argued by learned counsel for respondent-Bank that *modus operandi* undertaken in this case is for a sister concern to engage in the e-auction process merely to frustrate proceedings of recovery. Learned counsel contends that it is opposed to all probability and possibility that Mr. Sarthak Jain, a partner of the petitioner-firm being the son of Judgment Debtor (JD) i.e., defendant no.2 in Civil Suit which culminated in judgment and decree dated 24.12.2014 would not have been aware of the decree passed against his own father. Moreover, it is not the case of Mr.

Sarthak Jain that he is not on cordial terms with his father. Furthermore, collusive nature of judgment and decree dated 24.12.2014, it was submitted is apparent from the fact that suit was not in-fact contested by the defendants. Statement was suffered by counsel for defendants that ejectment petition against the tenant had been filed, therefore, they would not lead any evidence in the suit. Surprisingly ejectment petition filed by said defendants was dismissed in default in the year 2017. Moreover, tenancy, even if accepted, was admittedly created in May 2012, whereas mortgage in question was created on 20.08.2009.

8. While referring to notice dated 12.12.2021, learned counsel for respondent-Bank submitted that it is clearly mentioned in the notice that property is being sold on 'As is where is', 'As is what is' and 'whatever there is' basis and that to best of knowledge and information of Authorized Officer there was no encumbrance on the property. Said affirmation was correct especially in view of order dated 11.02.2020. Apart from the fact that it was incumbent upon purchaser to make necessary inquires in terms of notice dated 12.12.2021, it was reiterated that in the given factual matrix, it is unbelievable that Mr. Sarthak Jain, being son of one of the Directors of respondent no.3, was unaware of the ground reality.

9. Learned counsel for respondent-Bank further submitted that 25% of bid amount i.e. ₹1,84,12,500/- was deposited within the stipulated period. Thereafter, ₹50 Lacs was deposited on 14.01.2022 and another amount of ₹2 Crores was deposited on 15.01.2022. However, petitioner-firm requested for extension of time for depositing the balance amount up to 90 days. This request was accepted and petitioner was afforded time to deposit the balance amount up to 04.02.2022. Further extension was granted up to 19.02.2022 then to 03.03.2022, 18.03.2022, however instead of depositing

the amount in question, present writ petition has been filed on11.03.2022. Reliance is placed by learned counsel for the respondent-Bank upon judgment of Hon'ble the Supreme Court in **Authorized Officer State Bank of India Vs. C. Natarajan and another, Civil Appeal No. 2545 of 2023 (Arising Out of SLP (C) No. 14896 of 2018), d/d 10.04.2023** and **Agarwal Tracom Private Limited Vs. Punjab National Bank and others, 2018(1) RCR (Civil) 88**. It is thus prayed that this writ petition be dismissed with costs.

10. We heard learned counsel for the parties at length and have gone through the file carefully.

11. Petitioner in this writ petition has sought setting aside of sale notice dated 12.12.2021, Annexure P-1 and resultant sale proceedings wherein petitioner itself was the successful bidder. Sale is claimed to be violative of provisions of SARFAESI Act as well as 8 (6) (A) and (F) as well as Rule 8 (7) of 2002 Rules. Averments, allegations and counter allegations by both sides have been detailed in foregoing paras, however at this stage, we do not deem it appropriate to express any opinion on the merits of the matter as has been agitated before us keeping in view the fact that interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India is not called for, at this stage. It is a settled position that SARFAESI Act is a complete code in itself providing specific remedies for any grievance which may arise on account of proceedings taken thereunder. Interference by the High Court in such cases has to be minimal and actuated only in extraordinary or exceptional circumstances. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in **Union Bank of India Vs. Satyawati Tandon and others, 2010(8) SCC 110**, wherein it has been 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."*

12. This view has been reiterated by Hon'ble the Supreme Court in a number of subsequent judgments as well including in the case of **M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(1) RCR (Civil) 771.**

13. Argument that petitioner being an auction purchaser is not entitled to approach learned DRT for redressal of its grievances is devoid of any merit, hence rejected. Hon'ble the Supreme Court in case of **Agarwal**

Tracom Private Limited Vs. Punjab National Bank and others (supra) held that an auction purchaser who may be aggrieved by action of the secured creditor was also a person falling within the expression "any person" as specific under Section 17(1) and is hence entitled to challenge action of secured creditor before learned Debt Recovery Tribunal. It was categorically held in the said case as under:-

> "30. In our view, therefore, the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section13(4)."

14. It was further held in aforesaid matter that:-

> "28. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2),(3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?"

15. In the present case, petitioner is admittedly aggrieved of action taken by respondent-Bank under Section 13(4) of SARFAESI Act. Arguments as raised before us do not in any manner constitute a pure

question of law or a jurisdictional issue which call for intervention by this Court.

16. Keeping in view the facts and circumstances of the matter, this writ petition is dismissed with liberty to petitioner to avail the remedy(ies) as available to it in accordance with law. It is clarified that there is no expression of opinion on the merits of the matter. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

December 22, 2023.
s.khan

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