IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 6084 of 2020(O&M)

Date of Decision: September 05 , 2023.

Lakhwinder Singh ...... PETITIONER (s)

Versus

State of Punjab and others ...... RESPONDENT (s)

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

Present: Mr. Abhijeet P.S.Chaudhary, Advocate
for the petitioner.

Mr. Sandeep Jain, Addl.AG, Punjab.

Mrs. Manjari Joshi, Advocate
for respondent – Bank.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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<u>LISA GILL, J.</u>

1. Petitioner has challenged proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'SARFAESI' Act) initiated by respondent-Bank against him including notice dated 18.12.2017 under Section 13(2) of the SARFAESI Act and notice dated 12.02.2020 issued by the Tehsildar-cum-Executive Magistrate, Ludhiana(East).

2. Learned counsel for the petitioner submits that petitioner and other family members had secured housing loan of ₹15,61,483/- (Home Loan ₹14,80,000/- + SBI Suraksha ₹81,483/-) on 31.08.2007. Due to financial indiscipline, account of the petitioner was declared Non-Performing Asset (NPA)

on 30.01.2017. Proceedings under the SARFAESI Act were initiated with issuance of notice under Section 13(2) of SARFAESI Act to the petitioner on 18.12.2017 and notice dated 12.02.2020 issued pursuant to order dated 03.01.2020 under Section 14 of the SARFAESI Act. It is submitted that proceedings under the SARFAESI Act have been initiated against the petitioner in violation of the provisions of the Act. Moreover, petitioner approached the respondent-Bank for One Time Settlement (OTS), which was first accepted and thereafter with change of official of the respondent-Bank, OTS was unjustly rejected.

3. Notice of motion was issued in this writ petition on 04.03.2020. Operation of the impugned notice(s) dated 18.12.2017 and 12.02.2020 was stayed subject to the petitioner's depositing a sum of ₹5,00,000/- with the respondent-Bank within four weeks therefrom. It was further clarified in the said order that in case amount of ₹5,00,000/- was not deposited within the stipulated period, interim order would cease to operate. Admittedly, said amount has not been deposited by the petitioner. No application seeking extension of the period for deposit was filed, though somehow it is mentioned in order dated 17.11.2022 passed by coordinate Bench while adjourning the writ petition, that interim order would continue till the next date of hearing.

4. Learned counsel for respondent-Bank points out that while not complying with order dated 04.03.2020, petitioner also did not avail the OTS offered twice on 12.10.2021 and 18.10.2021 to the petitioner in terms of the scheme floated by the respondent-Bank.

5. Learned counsel for the petitioner does not dispute the factual position as above, but submits that it is due to unavoidable financial exigencies that petitioner could not repay the said amount.

6. In view of the judgment of the Hon'ble Supreme Court in **The Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others**, ***2022 AIR (SC) 56***, we find no ground for issuance of a writ of mandamus in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/Bank to enter into a particular OTS or to extend the period afforded to the petitioner to deposit the amount as has been urged before us. It was held that:-

> "9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs.100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the Bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the Bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.
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> 11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the Bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/financial institution

> is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the Bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/Bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove."

7. It is also to be noted at this stage, that petitioner has an efficacious remedy to challenge the proceedings under the SARFAESI Act. Hon'ble the Supreme Court in a catena of judgments has held that the High Court should desist from interference in such matters under the SARFAESI Act in exercise of jurisdiction under Article 226 of the Constitution of India. It has been categorically held by the Hon'ble Supreme Court that when a Tribunal is constituted under the Act, it is expected to consider the issues of law and fact/s involved. Interference in matters under the SARFAESI Act, except under extraordinary and exceptional circumstances has been frowned upon and deprecated. Gainful reference can be made to the judgment of the Hon'ble Supreme Court in ***Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110, Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R. (Civil) 34, M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771***. Hon'ble the Supreme Court in the case of ***M/s South Indian Bank*** (supra) 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."

8. Learned counsel for the petitioner is unable to point out any exceptional or extra-ordinary circumstance which calls for interference by this Court. Pleas as raised before us are very well within the realm of consideration by the learned Tribunal.

9. Keeping in view the facts and circumstances as above, we find no

ground, whatsoever, to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India for setting aside the proceedings initiated against the petitioner by respondent-Bank under the SARFAESI Act.

10. Writ petition is, accordingly, dismissed with liberty to the petitioner to avail the remedy/remedies as available to him in accordance with law to challenge the proceedings under the SARFAESI Act. Pending application, if any, stands disposed of accordingly.

11. It is made clear that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 05 , 2023.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No