2023:PHHC:144917-DB

215 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-6792-2021
Date of Decision: November 14, 2023

M/s Inder International and others ...... Petitioners

Versus

Axis Bank Limited and others ..... Respondents

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

Present: Mr. Pankaj Gupta, Advocate for the petitioners.

Mr. Gaurav Goel, Advocate for the respondent.

Mr. Sandeep Jain, Addl.AG, Punjab.

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LISA GILL, J.

1. Prayer in this writ petition is for directing respondent – Bank to consider the proposal submitted by petitioners for release of their residential house and shop to the buyer allegedly arranged by petitioners for purchase at price determined by the Bank. There is a further prayer for setting aside notice dated 25.02.2021 issued by Tehsildar-cum-Executive Magistrate, Ludhiana pursuant to order dated 25.10.2018 passed by District Magistrate, Ludhiana under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short –

'SARFAESI Act'). It is specifically pleaded in para 41 of the writ petition that prayer addressed by petitioners, at this stage, is only for a direction to respondent – bank to consider proposal dated 12.03.2021 submitted by petitioners for settlement and to release subject properties to the buyer arranged by petitioners. It is categorically stated at this stage that petitioners do not intend to challenge proceedings under SARFAESI Act initiated by the Bank while reserving their right to challenge said action in appropriate proceedings.

2. Notice of motion was issued in this writ petition on 23.03.2021, while noting submission on behalf of petitioners that petitioner No. 1 is ready and willing to get two of their mortgaged properties i.e. residential house and shop released through sale by private treaty by deposit of substantial amount viz-a-viz the reserved price in the last unsuccessful auction. It was directed that on deposit of sum of Rs.25 lakhs within one week from the said date, to be kept in a no-lien account, status quo existing as on today, as regards possession be maintained. Petitioner – firm admittedly availed of loan facility i.e. Cash Credit Limit of Rs.5 crore from respondent No. 1 vide sanction letter dated 02.12.2013. Property as detailed i.e. flat, shop and factory were mortgaged. Due to financial indiscipline, account of the petitioner – firm became NPA on 30.09.2017. Proceedings under SARFAESI Act were initiated with notice dated 16.09.2017 being issued seeking clearance of outstanding dues of Rs.6,01,59,612.84 as on 30.09.2017. Possession notice dated 15.03.2018 was thereafter issued with

order dated 25.10.2018 being passed under Section 14 of SARFAESI Act. Current assets and moveable assets were also under charge of the bank.

3. Learned counsel for the respondent – Bank points out that proposal submitted by the petitioners was examined and rejected not being viable. While taking lenient view, the bank even after obtaining order dated 25.10.2018 under Section 14 of SARFAESI Act, took physical possession of the factory only.

4. Petitioners, it is submitted, wanted to settle their loan account alongwith loan accounts of M/s Global Impex and M/s Shree Laxmi Steel for a sum of only Rs.4.80 crores against outstanding balance of approximately Rs.10 crores. OTS offer was, thus, rejected on 18.01.2018. SA-105-2018 filed by petitioners was dismissed on 28.07.2018 on the ground that only symbolic possession of property had been taken and actual physical possession remained with petitioner. SA-28-2020 challenging proceedings under SARFAESI Act was filed by a sister concern, which was allowed on 02.11.2020 by learned DRT-3, Chandigarh. It is pleaded in the writ petition that respondent – Bank in high headed and illegal manner is now seeking assistance of District Administration to take over physical possession of subject properties i.e. sole residential house of the petitioners and the shop, without accepting proposal for settlement submitted by the petitioners.

5. At this stage, learned counsel for the petitioners submits that liberty be afforded to petitioners to avail their statutory remedy in view of judgments of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110; M/s South Indian bank**

Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771 and ***The Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56.*** It is submitted that liberty may, thus, be given to petitioners to approach learned DRT for challenging proceedings initiated against them under the SARFAESI Act and that interim order afforded to petitioners on 23.03.2021 be directed to continue till decision of learned DRT or at least till decision on the application seeking interim relief, which shall be filed by them is decided.

6. Keeping in view the facts and circumstances as above and stand of petitioners as above, this writ petition is disposed of while affording liberty to petitioners to avail statutory remedy(ies) available to them in accordance with law. Keeping in view the fact that interim order was granted in this writ petition on 23.03.2021 and thereafter continued till date, it is directed that same would enure for a period of two weeks to enable petitioners to avail their statutory remedy in accordance with law.

7. It is clarified that said interim order would enure only for a period of two weeks from receipt of certified copy of the order and no longer. Further continuance of order shall not be automatic and would be within the realm of consideration of learned Tribunal in accordance with law. Question of retention or refund of sum of Rs.25 lakhs deposited with respondent – Bank and kept in No Lien Account in terms of order dated 23.03.2021 passed in this writ petition, shall also be within realm of consideration of learned Tribunal, keeping in view judgment of Hon’ble the Supreme Court in **M/s Kut Energy Pvt. Ltd. And others Vs.**

Authorized Officer, Punjab National Bank, Large Corporate Branch, Ludhiana and others, 2019(4) R.C.R. (Civil) 151.

8. It is clarified that there is no expression of opinion on merits of the matter.

(LISA GILL)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

November 14, 2023
rts

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