

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

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2023:PHHC:060195-DB

CM-7028-CWP-2023 in/and
CWP-5548-2023 and
CM-7048-CWP-2023 in/and
CWP-18589-2022

Date of Decision: 27.04.2023

M/s. Pee Pee Agro Industries Pvt. Ltd.

.....Petitioner(s)

Versus

Bank of Baroda

....Respondent(s)

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

Present: Mr. C.S. Pasricha, Advocate,
for the applicant-respondent-Bank.

Mr. Nishant Arora, Advocate,
for Mr. Gaurav Mohunta, Advocate,
for the petitioner (in CWP-5548-2023).

None for the petitioner (in CWP-18589-2022).

G.S.SANDHAWALIA, J. (Oral)

1. The present judgment shall dispose of two writ petitions i.e. ***CWP-5548-2023 and CWP-18589-2022***. Applications have been filed by the bank bearing CM-7028-CWP-2023 in CWP-5548-2023 and CM-7048-CWP-2023 in CWP-18589-2022 for taking up the cases in urgent hearing. CWP-18589-2022 was fixed for hearing for 20.07.2023. Apparently, advance copies have been given to counsels for the petitioners, but none appeared for the petitioner in CWP No. 18589 of 2022.

2. We are constrained to pass orders in these cases as we are faced with repeated litigation filed through different counsels by loanees either through their Directors or the company themselves, every time the property is

put to auction.

3. In CWP-5548-2023, the challenge is to the notice of sale dated 01.03.2023 (Annexure P-1) and subsequent publication dated 02.03.2023 (Annexure P-2) on the ground that it was fixed at a throw away reserve price of Rs.4.48 crores. Apparently, the said sale could not fructify. The bank put the same property on sale vide consequent sale notice dated 24.03.2023 for land measuring 32 kanals and 4 marlas. Another writ petition i.e. CWP No. 7136 of 2023 was filed by the same petitioner challenging the same and by noticing that the remedy lay before the Tribunal, the following order was passed on 11.04.2023:-

“1. Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India, is to the auction sale notice dated 24.03.2023 (Annexure P-12) whereby the immovable property which is stated to be measuring 32 kanals 4 marlas has been put to auction on 12.04.2023.

2. It has been brought to our notice and it is not disputed that in pursuance to the securitization proceedings, the outstanding was Rs.4,80,49,564.95 as on 31.03.2023, which would be clear from the earlier auction which was fixed for 16.03.2023 (Annexure P-4) and the reserve price was then fixed at Rs.5,48,00,000/- which included plant and machinery. Petitioner repeatedly approached this Court in CWP-3231- 2020, CWP-1386-2022 whereas CWP-18589-2022 is stated to be pending for 20.07.2023.

3. A perusal of the various orders would go on to show that the two writ petitions had been withdrawn as the sale could never fructify. It is pointed out that the plant and the machinery have already been sold for

Rs.1,45,00,000/- and CWP-18589-2022 is pending regarding this aspect which would be clear as per the order dated 23.08.2022 which reads as under:

“Challenge in the instant petition is to the auction/sale notice dated 03.08.2022 Annexure P-11 and P-12 issued by the respondent-Bank of Baroda.

Mr.Bhupinder Ghai, learned counsel at the very outset makes a statement that even though the impugned notice refers to movable as also immovable properties but he is confining the scope of the instant petition only Re : movable property i.e. plant and machinery.

Categoric assertion made by counsel is that the hypothecation of the plant and machinery was only against a term loan and which already stands settled on 13.06.2017.

Notice of motion returnable for 19.10.2022.

In the meanwhile it is directed that the auction proceedings pertaining to the movable property i.e. plant and machinery may go on but the final bid be not accepted without leave of this Court.”

4. Challenge to the possession and auction of immoveable property was not pressed in the said case. It is now stated that the land is sought to be sold at the reserved price of Rs.4,50,00,000/- approximately and the outstandings are in the tune of Rs.5,70,00,000/- approximately. It is further pointed out that on account of the litigation initiated, the sale regarding the moveable property had not been confirmed. It is pointed out that another two writ petitions bearing CWP-2497 & 5548-2023 had also been filed which were also

dismissed since the auction proceedings never finalized.

5. In such circumstances, we are of the considered opinion that the petitioner always has a right to challenge the auction proceedings if the same takes place and can always agitate for his grievances by producing a buyer who is willing to pay more than the auction purchaser. The remedy would lie firstly before the Tribunal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Security Interest Act, 2002. In such circumstances, keeping in view the overall track record of the petitioner, we are not inclined to step in at this point of time as it would adversely affect the auction which is now fixed for tomorrow, especially keeping in view the fact that no tangible amount has also been produced to show the bona fides of the petitioner.

6. Accordingly, we are not inclined to exercise our extraordinary writ jurisdiction under Article 226 of the Constitution of India and resultantly, the present writ petition is dismissed.”

4. In such circumstances, we are of the considered opinion that the present writ petition i.e. **CWP-5548-2023** has been rendered infructuous and is disposed of as such as counsel for the Bank has also pointed out that even the sale notice dated 24.03.2023 also was not successful.

5. Coming to **CWP-18489-2022** while challenging sale notices dated 03.08.2022 regarding the plant and machinery of the petitioner-company (Annexures P-11 and P-12), it has been pointed out that an incorrect statement was made on 23.08.2022. The following contention was recorded on 23.08.2022:-

“Challenge in the instant petition is to the

auction/sale notice dated 03.08.2022 Annexure P-11 and P-12 issued by the respondent-Bank of Baroda.

Mr. Bhupinder Ghai, learned counsel at the very outset makes a statement that even though the impugned notice refers to movable as also immovable properties but he is confining the scope of the instant petition only Re : movable property i.e. plant and machinery.

Categoric assertion made by counsel is that the hypothecation of the plant and machinery was only against a term loan and which already stands settled on 13.06.2017.

Notice of motion returnable for 19.10.2022.

In the meantime it is directed that the auction proceedings pertaining to the movable property i.e. plant and machinery may go on but the final bid be not accepted without leave of this Court.

6. Thereafter, an application was filed by the Bank i.e. CM-14583-CWP-2022 for bringing to the notice of this Court that the bid was of Rs.144.50 lakhs but due to litigation, they were not able to confirm the said bid. Reliance was also placed upon earlier CWP-3231-2022 in which the petitioner had himself annexed sanction letter dated 28.02.2015 (Annexure P-2) wherein, it had been mentioned that the hypothecation of the present and future plant and machinery and assets of the company was also done. Reliance was also placed upon sanction letters Annexures R-1 and R-2 to show that the stand set up by the petitioner is without any basis. The reply to the said application was filed and on 24.01.2023, the following order was passed:-

“Mr. C.S. Pasricha, learned counsel for respondent No.1-bank referred to the document appended as Annexure R-2/1 along with the reply to

assert that even the movable assets in the nature of plant and machinery had also been hypothecated. It is submitted that the assertion made on behalf of the petitioner and recorded by this Court at the stage of issuance of notice of motion on 23.08.2022 was factually incorrect.

List on 20.02.2023.

It is made clear that in case counsel for the petitioner does not appear on the adjourned date as well, the interim order dated 23.08.2022 shall stand vacated.

To be shown in the urgent motion list.”

7. On 20.02.2023, counsel for the petitioner sought time to file reply to CM-14583-CWP-2022 but did not do so till 14.03.2023 when the case was to be taken up.

8. In the written statement filed way back in September, 2022, it has been mentioned that the bid had been received from M/s. Stone India for Rs.144.50 lakhs regarding the plant and machinery and also the fact that the said plant and machinery was also mortgaged as per Annexures R-1 and R-2. No replication has been filed to the said averments made in spite of a period of over 6 months having gone by.

9. Accordingly, we are of the considered opinion that the petitioner has concealed material facts and is not liable to be heard on merits. 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 a very basis of the writ jurisdiction. Relevant observations made in the judgment passed in ***Prestige Lights Ltd. Vs. State***

Bank of India, (2007) 8 SCC 449, reads 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.

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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.”

of Uttar Pradesh and others, (2010) 2 SCC 114 wherein also the writ petitioner had not stated the correct facts before the High Court and had the benefit of the surplus land which was to go to the landless poor persons. It was, accordingly, held that when the case belongs to category of persons who not only attempt, but have succeeded in polluting the course of justice and mislead the Court and no case for interference would be made out. It was also held that once a misleading statement 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, the case was liable to be dismissed on that ground itself.

11. Accordingly, hearing of the writ petition i.e. CWP-18589-2022 is also preponed from 20.07.2023 as the petitioner is not entitled for hearing on merits. The petition stands dismissed. Keeping in view the conduct of the petitioner, conditional costs of Rs.1,00,000/- are also imposed on the petitioner, if it files any other application or petition before this Court challenging the same cause of actions as the remedy lies before the Tribunal under Sections 17(2) and 17(3) of the 2002 Act, in any case.

(G.S. SANDHAWALIA)
JUDGE

27.04.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes