114

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2163-2023 (O&M)
Date of Decision: 13.04.2023

Kotak Mahindra Bank Limited ..…Petitioner

Versus

Jatinder Kumar and others ….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Akshay Bhan, Sr. Advocate
with Mr. Aman Bansal, Advocate
for the petitioner.

****

<u>ARUN MONGA, J. (ORAL)</u>

Petition herein is for setting aside order dated 25.04.2022 (Annexure P-12) passed by Ld. Civil Judge (Jr. Divn.), Jagadhari, whereby plaintiff allegedly in connivance with defendant/respondents No.1 to 6 got interim stay.

2. Succinct facts first, as pleaded in the instant petition.

2.1. On 17.10.2018, the company namely M/s Ambala Automobile India Ltd. (Borrower) had availed credit facilities from the petitioner bank which was renewed again vide sanction letter dated 17.01.2019 in the form of term loan amounting to Rs.2.43 Crore, working capital limit amounting to Rs.10.50 Crore including CC Limit of Rs.6 Crore and inventory funding of Rs.4.5 Crore, with total availed credit facilities amounting to Rs.12.93 Crore. Plot measuring 1999.66 sq. yards situated at Jagadhari, Yamuna Nagar, Haryana belonging to respondent Nos.1, 3, 5 & 6 is lying mortgaged with the petitioner bank since 2018 which is not in dispute. Furthermore, the title deeds were deposited by respondents No.1, 3, 5 and 6 and respondents No.2 & 4 stood as guarantors of the aforesaid sanction of the facilities *qua* their respective shares mentioned in sanction letter.

2.2. Admittedly on 31.08.2019, the account of borrower was declared as NPA and notice dated 27.09.2019 (Annexure P-1) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as 'SARFAESI Act'*) was issued by petitioner bank to the borrower and also to respondents No.1 to 6 being guarantor/mortgagors whereby the total outstanding amount as on 24.09.2019 was Rs.12,81,93,071.11/- (Rupees Twelve Crores Eighty One Lacs Ninety Three Thousand Seventy One and Eleven Paisa Only) along with future interest thereon. Vide Clause 17 of the said Statutory Demand Notice dated 27.09.2019, respondents No.1, 3, 5 & 6 being the owners and co-owners of the subject property were specifically barred for creating 3rd party interest, lien, further encumbrances etc. Pursuant thereto, respondents No.1 to 6 neither adhered to the said clause nor did they pay/clear the amount and subsequently petitioner took possession of the said property and notice dated 22.01.2020 (Annexure P-2) under Section 13(4) of the SARFAESI Act was issued to the borrower and respondents No.1 to 6.

2.3. Petitioner bank had filed an OA before the Debt Recovery Tribunal, Chandigarh (for brevity, 'Tribunal') for recovery of the outstanding amount and vide order dated 24.01.2020 (Annexure P-3), notices were issued to respondents No.1 to 6. However, they failed to appear before learned

Tribunal and were thus proceeded *ex parte* vide order dated 02.03.2022 (Annexure P-5). Said respondents moved an application for setting aside order dated 02.03.2022, which is also pending adjudication. On an application moved by the petitioner bank, the Presiding Officer vide order dated 24.01.2023 (Annexure P-6) restrained respondents No.1 to 6 (who are defendants in O.A.) from dealing with the property in question in any way.

2.4. In the interregnum, respondents No.1 to 6 filed a civil suit (Annexure P-7) for separate possession by way of partition on 20.04.2022 along with application under Order 39 Rules 1 & 2 CPC concealing all material facts and also very cleverly impleaded Tehsildar-respondent No.7 as a necessary party and obtained impugned order dated 25.04.2022 (Annexure P-12), whereby status-quo was granted *qua* possession of the suit property.

3. Learned Senior counsel relies upon a Division Bench judgment dated 28.07.2017 passed by this Court in CWP No.16529 of 2017 titled ***India Infoline Finance Limited vs. District Magistrate-cum-Deputy Commissioner, SAS Nagar, District Mohali and others***, to contend that this Court deprecated the practice of the Civil Court to entertain the suits which are specifically barred by law especially under the provisions of SARFAESI Act and notwithstanding, in order to avoid hoodwinking of the Court, certain parameters have been laid down by this Court in the judgment *ibid*.

4. The parameters laid down by this Court are reproduced herein below for ready reference:

> *"[5] We have heard learned counsel for the petitioner. There appears to be some genuine difficulty being faced by the District Magistrate in handing over the physical possession of the*

'secured assets' in view of the injunction orders passed by the Civil Court in the, prima facie, collusive civil suits. Since we have not heard the borrowers at this stage, suffice it would be to dispose of this writ petition with liberty to the petitioner-Institution to immediately apply to the Courts of concerned Civil Judge (Junior Division), Mohali, before whom the above-stated civil suits are pending, to seek its impleadment as a co-defendant. The Civil Courts are directed (i) to entertain such application(s) and decide the same within one week and if need be, the next date of hearing in the civil suits shall also be preponed;

ii) the petitioner-Institution shall be at liberty to move application(s) for recalling of injunction orders, which have been passed with the consent of the borrowers;

iii) the Civil Courts are directed to decide such application(s) within two weeks and if so required, let the applications be heard on day-to-day basis;

iv) the petitioner-Institute shall also be at liberty to point out to the Court that under the SARFAESI Act, the jurisdiction of the Civil Court is expressly barred and such bar on jurisdiction will have to continue, even in a matter which is relatable to the action taken under the SARFAESI Act. Such objections shall be decided by the Civil Courts in accordance with law and in a time bound manner."

5. Learned Senior counsel further argues that petitioner bank had issued an auction notice (Annexure P-14) on 15.02.2023 of the property in question by way of e-auction and the same is already sold to auction purchaser who has also deposited 25% of the bid amount. Further, purposely petitioner bank was not made a party in the civil suit filed by respondents No.1 to 6.

6. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no serious prejudice would be caused to them. Notice to respondents is thus dispensed with.

7. After having heard learned senior counsel, I see no reason why Ld. trial Court should not be directed to proceed in accordance with the aforesaid guidelines. Therefore, petitioner is granted liberty to file appropriate application for impleadment and can also avail any other remedy as available under law, within 2 weeks from today, and Ld. Court below may dispose of the same within a period of 3 weeks thereafter.

8. Disposed of in above terms.

9. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 13, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No