IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103+216 ***2023:PHHC:064990-DB***

CWP-12171-2022 (O & M)
Date of Decision: 05.05.2023

M/s. Rainbow Rice Pvt. Ltd. and others .....Petitioner(s)

Versus

Deputy Commissioner-cum-District Magistrate, Kurukshetra and others ....Respondent(s)

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

Present: Mr. Vivek Goyal, Advocate,
for the petitioners.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana,
for respondent Nos.1 and 2.

Mr. Gaurav Chopra, Sr. Advocate,
with Mr. Arvind Rajotia, Advocate,
for the applicant-respondent Nos.3 and 4
(in CM-7667-CWP-2023).

Mr. Piyush Aggarwal, Advocate,
for the applicant-respondent No. 5 (in CWP-7636-CWP-2023).

****

G.S.SANDHAWALIA, J. (Oral)

CM-7667-CWP-2023

Application for placing on record short reply on behalf of respondent Nos.3 and 4 alongwith Annexures R/1 to R/10 is allowed, subject to all just exceptions.

The same are taken on record.

CWP-7636-CWP-2023

Application has been filed by M/s. Anubhav Enterprises Pvt.

Ltd., the auction purchaser under Order 1 Rule 10(2) read with Section 151 CPC for being impleaded as respondent No.5 on the ground that property was purchased by him on 31.01.2022 and on account of the fact that there was an interim order in CWP No. 2453 of 2022, the bank could not confirm the sale and issue the sale certificate.

Accordingly, the application is allowed.

M/s. Anubhav Enterprises Pvt. Ltd. is impleaded as respondent No.5.

CWP-12171-2022 (O & M)

1. Prayer made in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to re-deliver the possession of the rice mill/factory land and building measuring 19 kanals and 8 marlas and the residential house-cum-shop measuring 10 marlas which was stated to be illegally taken into possession by the bank. The ground which has been canvassed is that the order passed by the District Magistrate on 21.04.2022 (Annexure P-9) under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') and the subsequent possession which was taken on 26.04.2022 is a non-speaking order and in contravention of the orders passed by the Division Bench of this Court in ***Allahabad Bank vs. District Magistrate, Ludhiana and others, 2021 (4) RCR (Civil) 571.***

2. The argument raised by counsel for the petitioners is that the procedure prescribed and even the application filed under Section 14 of the Act was not as per statutory provisions as such.

3. The argument, at the first blush, may sound attractive but the fact remains that the petitioners have chosen not to challenge the principle

proceedings prescribed under the Act under Sections 13(2) and 13(4) respectively in the present writ petition. Apparently on 25.05.2021 (Annexure P-1), the demand was made of Rs.43,58,20,551.64/- and the six mortgaged properties were duly depicted including property mearsuring 19 kanals 8 marlas, which is now stated to have been sold by way of auction to M/s. Anubhav Enterprises Pvt. Ltd. (now impleaded as respondent No.5) for a sum of Rs.9.73 crores. However, on account of the fact that there was an interim order in CWP No. 2453 of 2022, the bank could not confirm the sale and issue the sale certificate. It is not disputed that the said order has been duly vacated on 29.03.2023, which has also been placed on record by the bank as Annexur R-7 alongwith the reply filed by the bank by way of CM-7667-CWP-2023. Photocopies of sale certificate dated 05.04.2023 issued under Rule 7(2) for the movable properties and for the immovable properties have also been placed on record. As noticed, notice under Section 13(4) of the Act is dated 06.09.2021 (Annexure P-4).

4. The law stands crystalized by a number of judgments of the Apex Court, the latest being in ***SLP No. 22021-22022 of 2022, M/s. South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another*** decided on 17.04.2023 wherein, it has been specifically held that the right as such of the borrower is to file a securitization application under Section 17 of the Act against any of the measures resorted to under Section 13(4) so that the Tribunal can examine whether the same are in accordance with the provisions of the Act and the Rules. The Tribunal has been vested with wide powers under Section 17(2) and 17(3) of the Act wherein, not only it can set aside the proceedings, but it can restore possession and also grant compensation. Apparently, the said provisions were never subject matter of challenge under

Section 17 of the Act. Section 17(1) further provides that there is limitation of 45 days on which such measures having been taken, challenge can be resorted to. Apparently, the petitioners have lost their remedy at least against Section 13(4) notices.

5. Keeping in view the above, we are of the considered opinion that the order passed under Section 14 of the Act by the District Magistrate on 21.04.2022 (Annexure P-9) though sketchy and not as per the terms of the judgment of the Division Bench in *Allahabad Bank's case (supra),* was only a consequential order which was passed implementing the order under Section 13(4) of the Act. The Apex Court in ***Balkrishna Rama Tarle (D) through L.Rs. and another vs. Phoenix ARC Pvt. Ltd. and others, 2022 AIR (SC) 4756*** also, while placing reliance upon the judgment in ***M/s. R.D. Jain and Co. vs. Capital First Ltd., AIR 2022 (SC) 4820*** decided on 27.07.2022, held that there is no element of *quasi judicial* function or application of mind by the Magistrate who is just to adjudicate and decide the correctness of the information given in the application and nothing more. It resultantly upheld the order of the Division Bench wherein the claim for tenancy was being entertained by the District Magistrate and he had declined to assist the secured creditor and taking possession of the secured assets. The High Court had set aside the said order which was upheld by the Apex Court and the directions which have been issued to proceed further in the application under Section 14 of the Act. The relevant part reads as under:-

> *"8.1 However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets*

and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the advocate commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM

> *under Section 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasijudicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets."*

6. The petitioners if left with any remedy now, as such, would be to challenge the sale certificate which has been issued on 05.04.2023 before the Tribunal in view of Section 17 of the Act which provides that any of the measures taken under Section 13(4) of the Act can be challenged before the Tribunal. Section 13(4) further provides that the action of the secured creditor by transfer of the possession by sale for realizing the secured asset is a measure which is provided and apparently can be challenged under Sections 17(2) and 17(3) of the Act. In such circumstances, we are of the considered opinion that the petitioners have not been left remediless and have a right to approach the Tribunal and, therefore, we do not wish to further entertain the writ petition in view of the settled law.

7. Even otherwise, in the connected CWP No. 2453 of 2022 which was also filed by the petitioners, the challenge was to the auction by setting up one M/s. Goel Agrico Foods Pvt. Ltd. as respondent No.5 to show that he had bidded higher and eventually this Court had been persuaded to grant interim protection on 09.02.2022. The matter was taken to the Apex Court by the said M/s. Anubhav Enterprises and directions were issued to decide the writ petition or the stay application at least keeping in view the fact that

Rs.9.73 crores had already been deposited. Resultantly, this Court passed the order in CM-5678-CWP-2023 for vacating the stay order by noticing as under, which has been appended as Annexure R-7 with CM-7667-CWP-2023:-

> ***“CM-13709-CWP-2022***
>
> *Application has been filed for vacation of interim reliefgranted to the petitioner vide order dated 09.02.2022. Notice in the application was issued on 06.09.2022, but no reply has been filed.*
>
> *Order dated 09.02.2022 reads as under:-*
>
> > *“Notice of motion.*
> >
> > *Mr. PiyushAggarwal, Advocate accepts notice on behalf of respondent No.5 and has filed power of attorney.*
> >
> > *It is the contention of learned counsel for the petitioners as well as learned counsel for respondent No.5 that respondent No.5 had an internet connectivity issue, which prevented respondent No.5 fromparticipating in the e-auction conducted on 31.01.2022 and thatrespondent No.5 is willing to deposit the total of Rs.10 Crores within oneweek from today far more than what was offered to be deposited by respondent No.4 in his bid made on 31.01.2022 in the e-auction.*
> >
> > *It is an admitted case that respondent No.5 has already depositedRs.1 Crore as earnest money deposit with respondents No.1 and 2.*
> >
> > *The respondent No.5 is directed to deposit Rs.9 Croreswithin one week from today, which shall be put in a separate no lienaccount by respondents No.1 and 2 and if such deposit is made within thesaid time, the respondents No.1 and 2 shall not confirm the sale and issuesale certificate to respondent No.4. In default of compliance with thisorder, this order shall stand vacated.*
> >
> > *List on 21.02.2022.”*
>
> *In the application filed for vacation of interim relief in paragraph No.6 the following averments have been made by the applicant:-*

> *"6.That the Directors of the respondent No. 5 and the petitioner have very good relation infact at one point of time, the family members of the Directors of the respondent No. 5, namely Sh. VinodGoel S/o Sh. Devi Chand & Vijay Kumar S/o Sh. Devi Chand stood as guarantor by executing the agreement of guarantee dated 08.03.2016. The copy of the agreement of guarantee dated 08.03.2016 is annexed herewith and marked as Annexure R/1.*

Reference can also be made to the agreement of guarantee dated 08.03.2016 (Annexure R-1) between VinodGoel, Vijay Kumar and the respondent-Bank for an accommodation by way of cash credit etc. to Rainbow Rice Pvt. Ltd., the petitioner-borrower herein.

A perusal of the said document (Annexure R-1) would go on to show that for Rs.58 crores credit facility the guarantor had given his consent. It is, thus, submitted that the present writ petition has not been filed by respondent No.5, who is supposed to have the unsuccessfully bidded but not got through due to internet connectivity. It is, accordingly, submitted that it is only a set up by closely related person to stall the auction proceedings, which was scheduled to be held on 31.01.2022 and Rs.9.73 crores has already been bidded.

It has also been brought to our notice that auction purchaser respondent No.4 went to the Apex Court in MA No.352 of 2023 in SLP Nos.18999 and 19000 of 2022, wherein directions have been issued on 17.03.2023 (Annexure R-4/11) to dispose of the writ petition when it was listed i.e today 28.03.2023 or within a week thereafter. The other option which has been given is that the stay application may be considered or modified. Relevant portion of the said order reads as under:-

> *"In the event, if it is not possible to do so, the High*

Court may consider examining the feasibility of continuing, modifying or vacating the interim order as may be expedient and in the interest of justice in accordance with law, after hearing learned counsel for the parties.

List on 10.04.2023."

Keeping in view the heavy cause list, it is not possible to decide the case today itself as directed by the Apex Court, since as many as 78 urgent and 87 motion cases are listed, due to the fact that 31.03.2023 is approaching and all properties have been put to sale and the 10 days vacations are coming up.

Keeping in view the above, we are of the considered opinion that neither the respondent No.5 has filed any writ petition aggrieved by the fact that he could not take part in the auction proceedings. Thus, it is not for the borrower as such to put forth his case, who has claimed that the private respondent shall deposit Rs.10 crores which is a little more than what auction purchaser had bid for. It is, accordingly, prima faciein our opinion an effort as such to ensure that the auction purchaser loses interest and the auction does not go through.

Counsel for the applicant/respondent-Bank also informs us that the outstanding are huge to the tune of Rs.43,58,20,551/-

In such circumstances, we are of the considered opinion that since the averments made in the application have not been controverted regarding the petitioner and the respondent No.5's relationship, the stay granted vide order dated 09.02.2022 has to be vacated. The amount which has been deposited by respondent No.5 be refunded by the respondent- Bank to the said respondent. However, in case the sale is confirmed, the same shall be subject to the final outcome of the present *writ petition.*

CM stands disposed of."

8. It is pertinent to notice that the Supreme Court on 10.04.2023 has dismissed the Miscellaneous Application No. 352/2023 and SLP (C) No. 18999-19000/2022, M/s. Anubhav Enterprises vs. M/s. Rainbow Rice Pvt. Ltd. The order reads thus:-

> *"It is submitted that after this Court's order on 09.02.2022, the High Court considered the petitioner's application and vacated the interim order and has listed the writ petition for final hearing on 11.05.2023.*
>
> *The miscellaneous application has therefore been rendered infructuous; it is accordingly dismissed.*
>
> *Having regard to the above facts nothing survives for consideration in these petition, which are, accordingly dismissed."*

9. It is pertinent to notice that in CWP No. 2453 of 2022, an application for amendment has been filed on 27.10.2022 at a belated stage wherein the challenge is now sought to be raised to Sections 13(2) and 13(4) notices in order to get over the legal lacuna including the order of the Magistrate dated 21.04.2022 which has already been challenged in the present writ petition.

10. The above sequence of events would go on to show that how a desperate attempt is made by seeking to invoke the extra ordinary jurisdiction of this Court in order to ensure that properties which are being put to auction are not taken to the logical end by embroiling the parties in one round of litigation or the other; at the hands of one Director or the other or the companies and at all stages; before this Court by raising challenge to the Section 14 proceedings, thus, frustrating the whole purpose of the

Securitization Act.

11. Even the petitioners, in such circumstances, do not deserve a hearing on merits keeping in view the law laid by the Apex Court down in ***Prestige Lights Ltd. Vs. State Bank of India, (2007) 8 SCC 449***, wherein it has been held 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.*
>
> *xxx xxx xxx*
>
> *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."*

12. The said view was, thereafter, followed in ***Dalip Singh Vs. State 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. We are forced to keep off our hands for such kind of litigation by litigants who are polluting the course of justice and blocking valuable judicial time.

13. Accordingly, the writ petition stands dismissed with costs of Rs.1,00,000/- to be deposited with District Legal Services Authority, Kurukshetra.

(G.S. SANDHAWALIA)
JUDGE

05.05.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No