

2023:PHHC:165794-DB

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

CWP-13178-2022

Date of Decision: December 22, 2023

Priyvar and another

..... Petitioners

Versus

Indian Bank (Erstwhile Allahabad Bank) and others

..... Respondents

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

Present: Mr. Pavan Malik, Advocate for the petitioners.

Mr. Gaurav Goel, Advocate for respondents No. 1 and 2.

Ms. Diwan Sharma, Advocate for respondent No. 3.

Dr. Pritam Sangwan, Advocate for respondent No. 4.

Mr. Rajesh K. Kataria, Advocate for respondent No. 5.

LISA GILL, J.

1. Prayer addressed in this writ petition is for setting aside following orders:-

- i) dated 22.08.2017 (Annexure P10)
- ii) dated 27.02.2020 (Annexure P17)
- iii) dated 28.04.2022 (Annexure P28)
- iv) dated 28.04.2022 (Annexure P31)
- v) dated 04.05.2022 (Annexure P32)
- vi) dated 25.05.2022 (Annexure P33) passed by learned DRT and

order dated 31.08.2020 (Annexure P21), passed by learned DRAT.

2. Loan facility was availed of by M/s Punia Layer Farm – petitioner no.2 through its partners i.e. term loan of Rs.74 lakhs and CC limit of Rs.15 lakhs. Petitioner No. 1 is a partner of petitioner No. 2.

3. Learned counsel for petitioners submits that loan account was illegally and wrongly classified Non-Performing Asset (NPA) allegedly on 28.02.2017. Demand notice dated 01.03.2017 was issued by respondent-Bank calling upon petitioners to deposit a sum of Rs.46,46,369/- plus interest from 31.01.2017 qua the term loan and Rs.16,21,640/- plus interest in respect to CC limit. Thereafter, without lapse of 60 days, notice for symbolic possession dated 06.05.2017 was allegedly issued and sale notice dated 26.05.2017 appeared in a newspaper upon which petitioners approached Bank but they were given a copy of sale notice which was different than the one published.

4. Petitioners filed Securitization Application i.e. SA No. 683 of 2017, challenging sale notice on various grounds mentioned therein. Learned counsel for petitioners submits that due to communication gap it was incorrectly mentioned in said SA that physical possession of property has been taken. Written statement was filed to SA by respondent-Bank.

5. During pendency of SA filed by petitioners, their property was auctioned to respondent no.4 and 5, who were impleaded pursuant to orders passed by learned DRT-II, Chandigarh. Petitioners thereafter filed application dated 9.08.2017, seeking amendment of their SA for incorporation of subsequent event of sale, DM order and correction of facts mentioned therein regarding actual possession of property still being with petitioners. This application was dismissed by learned DRT, vide order dated 22.08.2017 on the ground that such an amendment would change the very nature of Securitization Application as nature of possession would be changed from symbolic to physical. Auction purchasers were impleaded in compliance of order dated 22.08.2017.

6. SA filed by petitioners was dismissed by learned DRT on 12.07.2018 on the ground that it was not maintainable as physical possession has not yet been taken. This order was challenged by petitioners by filing CWP-20859-2018, which was allowed on 15.11.2018. SA was accordingly restored vide order dated 27.02.2020 passed by learned DRT. Respondent - Bank was permitted to file certain documents, which it is stated, were not only beyond pleadings but to some extent were even contrary to pleadings already on record. Affidavits of one Mr. Ram Meena, Branch Manager and Mr. Satyapal Singh, Chief Manager filed on behalf of Bank to explain service of notice upon petitioners.

7. Learned counsel for petitioners submitted that learned DRAT, vide order dated 31.08.2020, on application of respondent-Bank and without affording any hearing to petitioners, directed learned DRT to decide pending SA filed by petitioners within a period of three months in an arbitrary fashion.

8. It was submitted that petitioners thereafter filed IA No.145 of 2020 with a prayer that documents, which have been filed by respondent-Bank should not be taken on record. Vide order dated 21.09.2021, learned DRT directed IA No. 145 of 2020 to be heard alongwith main case and directed to parties to submit written arguments. Learned counsel contended that parties were directed to file written arguments even before arguments were heard, in an illogical fashion.

9. IA No.986 of 2021 was filed by petitioner for directing respondent-Bank to furnish sale notice, which was sent for publication i.e. the one which was published on 26.05.2017, on the premise that notice issued on 26.05.2017 could not appear in newspaper dated 26.05.2017 itself.

IA No.987 of 2021 was also filed by petitioners with prayer that in order to counter documents presented by the Bank, which could be taken on record, petitioners should be permitted to lead evidence and to cross-examine Mr. Ram Meena and Mr. Satyapal Singh.

10. It was submitted that both applications were dismissed by learned Tribunal in an illegal and arbitrary manner vide separate orders of even date i.e. 28.04.2022. IA No.335 of 2020 for placing on record copy of notice under Section 13(4) of SARFAESI Act was allowed by learned Tribunal vide order dated 25.05.2022 while observing that genuineness of documents could be looked into at appropriate stage and arguments raised by petitioners were without substance, whereas IA No.145 of 2020 was illegally dismissed vide order dated 04.05.2022.

11. Learned counsel for petitioners submitted that all orders as above passed by learned DRT-II as well as order dated 31.08.2020 passed by learned DRAT are absolutely illegal and arbitrary, passed by said Forum/Tribunal de-hors the provisions of law. Petitioners, it was submitted, are poor farmers running a poultry farm, which is not a big industry, therefore, present writ petition should be entertained. It was strenuously urged that petitioners do not have sufficient wherewithal to furnish amount of pre-deposit which is required for challenging an order before learned DRAT, thus, this writ petition should be entertained and allowed.

12. Learned counsel for respondent-Bank has opposed this writ petition. Preliminary objection regarding entertainability/maintainability of this writ petition has been raised on the ground of petitioners having an efficacious remedy of filing an appeal before learned DRAT to challenge orders passed by learned DRT in view of Section 18 of SARFAESI Act. It

was further submitted that petitioners are not entitled to file present writ petition in this fashion and that impugned orders passed by learned DRT as well as DRAT are in consonance with provisions of law. Moreover, petitioners chose not to challenge order dated 31.08.2020 passed by DRAT and continued to associate with proceedings before learned DRT thereafter, thus, have no right to challenge the same at this stage. Learned counsel submitted that respondent-Bank has been rightly permitted to place on record documents as mentioned above as well as affidavits in question. The same, it was submitted, are essential for just and proper adjudication of the matter and are not beyond pleadings. It was further contended by learned counsel for respondent-Bank that sole intention of petitioners is clearly to stall recovery proceedings and there is no question of Bank being permitted to fill up lacunas in their evidence. It is, thus, prayed that this writ petition be dismissed.

13. We heard learned counsel for parties and have perused the file carefully.

14. Admittedly, in present writ petition, petitioners seek to challenge various orders passed by learned DRT-II, all of which are admittedly appealable orders in terms of Section 18 of SARFAESI Act. When faced with question of entertainability of this writ petition, learned counsel for petitioners had stated that as notice of motion has already been issued in this writ petition, there is no question of prayer in writ petition being declined on the ground of entertainability. We do not find any merit in this arguments. Mere issuance of notice of motion in a petition without adjudication on the aspect of entertainability of writ petition as such, does not preclude the Court from examining this aspect at the time of final disposal.

15. It is pertinent to note at this stage that SARFAESI Act is a complete code in itself. It is a settled position that interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India has to be minimal and actuated only in extra-ordinary and exceptional circumstances. Reference in this regard can be made to judgments of Hon'ble the 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** and **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.**

16. Hon'ble the Supreme Court in case of **Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34** held as under :-

“34. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the Act 2002.”

17. Learned counsel for petitioners is unable to point out any exceptional or extraordinary circumstance, which calls for intervention in

this case. Argument that petitioners do not have necessary wherewithal to ensure statutory pre-deposit is certainly not a ground for interference and neither is there any merit in the argument that once notice of motion has been issued in writ petition, Court is estopped from taking into consideration this aspect at the time of final disposal. There is no pure question of law or any jurisdictional issue, which is involved for consideration in writ petition.

18. It is to be mentioned at this stage that petitioners have also challenged order dated 31.08.2020 passed by learned DRAT, in this writ petition, filed in May, 2022. Admittedly, petitioners never challenged the said order and continued to pursue the matter before learned DRT. It is not open to petitioners to turn around at this stage and challenge order dated 31.08.2020 in this writ petition filed in May, 2022. We do not find any ground whatsoever to interfere for setting aside said order in present proceedings also challenging various orders passed by learned DRT.

19. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail the remedy(ies) available to them in accordance with law for challenging the orders passed by learned DRT and to pursue SA filed by them before learned DRT while taking up all available pleas.

20. It is clarified that there is no expression of opinion on merits of the case.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 22, 2023
Rts

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