2023:PHHC:145778-DB

218 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14314-2019
Date of Decision: November 15, 2023

Subhash Chander and another ...... Petitioners

Versus

Allahabad Bank and another ..... Respondents

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

Present: Mr. S.P. Chahar, Advocate for the petitioners.

Mr. Rajiv Joshi, Advocate for respondents No. 1 and 2.

Mr. N.K. Malhotra, Advocate for respondent No. 3.

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LISA GILL, J.

1. Prayer in this petition is for setting aside order dated 08.05.2019 (Annexure P5) passed by learned DRT-II, Chandigarh whereby Securitization Application (SA-119/2019) filed by petitioners challenging proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') initiated against them, has been dismissed on the ground of delay. There is a further prayer for setting aside notice dated 12.09.2018 under Section 13(4) of SARFAESI Act as well as e-auction notice dated 30.03.2019.

2. Learned counsel for petitioner submits that loan facility of Rs.7 lakhs was availed of by petitioners in the year 2010. Instalments as due were

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being deposited by petitioners regularly till April, 2018. However, in an illegal manner, notice dated 25.05.2018 was issued under Section 13(2) of the SARFAESI Act seeking deposit of sum of Rs.7,28,040/- including interest up to 25.05.2018 within a period of sixty days. Thereafter, notice under Section 13(4) of the SARFAESI Act was issued in an unjustified manner on 12.09.2018 and ultimately in an absolutely arbitrary manner, e-auction notice dated 30.03.2019 for holding e-auction of property in question on 19.04.2019 was issued.

3. Aggrieved of above action of respondent – bank, SA-119-2019 was filed by petitioners. Said SA was, however, dismissed by learned DRT-2, Chandigarh on 08.05.2019 on the ground of delay of 182 days in filing the application. It is submitted that petitioners' being poor persons did not have necessary knowledge or financial resources to challenge notice dated 12.09.2018. Respondent – Bank thereafter has illegally accepted the auction bid as well but all these facts were not considered by learned Tribunal. Proceedings under SARFAESI Act initiated by respondent – bank, it is submitted, are in complete violation of provisions of SARFAESI Act and applicable Rules, therefore, same should be set aside. It is, thus, prayed that this writ petition be allowed.

4. Learned counsel for respondents has opposed the writ petition while firstly submitting that present petition is not entertainable in view of efficacious alternate remedy available to petitioners under SARFAESI Act. It is further submitted that incorrect facts have been stated in the writ petition. Proceedings under SARFAESI Act have been carried out in strict adherence to the provisions thereunder. Reference has been made to postal receipts regarding service of notice(s). Publication, it is submitted, was duly

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carried out in two newspapers having sufficient circulation in area in question. Moreover, in e-auction held on 22.03.2019, no bid was received. Learned counsel for the respondents submits that pursuant to notice dated 05.02.2019, physical possession of property was handed over to respondent – Bank on 18.02.2019. Thereafter, auction was conducted on 19.04.2019 which was successful, with property being sold to successful bidder. Entire sale amount was deposited with respondent – bank but sale certificate could not be issued due to interim order dated 27.05.2019 passed in this writ petition. Learned counsel for respondent – bank submits that e-auction process was complete before issuance of notice of motion in the present writ petition. Property in question was auctioned for a sum of Rs.14,95,000/-. Rs.9.28 lakhs was outstanding in loan account of borrower. After settlement of account, excess account was transferred to saving account of the borrower. Respondent – bank, it is submitted, was constrained to file CM-15367-CWP-2022 seeking restoration of possession and not to make material alterations in the property in dispute as writ petitioners had started dismantling the disputed property and making material alterations in the same by taking advantage of interim order dated 27.05.2019 passed in this writ petition which was only to the extent that sale of property be not confirmed. Status quo regarding subject property was directed to be maintained vide order dated 12.10.2022 passed in CM-15367-CWP-2022. It is, thus, prayed that this writ petition be dismissed.

5. Heard, learned counsel for the parties and have gone through the file with able assistance.

6. It is undeniable that order dated 08.05.2019 passed by learned DRT-II, Chandigarh is an appealable order in terms of Section 18 of

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SARFAESI Act, which 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.** Hon'ble the Supreme Court in the 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."

7. Learned counsel for petitioners has raised various arguments regarding illegality in the procedure adopted by respondent – bank in proceedings under SARFAESI Act initiated against the petitioners.

8. To counter the same, learned counsel for respondents has referred to various postal receipts, publications, affidavits etc. filed on behalf

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of the respondents. However, keeping in view the facts and circumstances of the case, we do not find the necessity to delve upon the issue of legality or otherwise of proceedings as such in the present proceedings. It was open to petitioners to have filed an appeal challenging order dated 08.05.2019, in view of Section 18 of SARFAESI Act. Action of the respondent in carrying out second auction (successful auction) on 19.04.2019 was also amenable to challenge by petitioners in appropriate proceedings under SARFAESI Act. At this stage, we deliberately refrain from referring to the effect of judgment of Hon'ble the Supreme Court in **CELIR LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. and others 2023 INSC 838** as we are not expressing any opinion on merits of the matter.

9. Learned counsel for the petitioners is unable to point out any extraordinary and exceptional circumstance, which calls for interference by this Court in the given factual matrix.

10. Writ petition is, accordingly, dismissed with liberty to the petitioners to avail remedy/remedies available to them in accordance with law.

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

12. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 15, 2023
rts

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

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