IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

126 **CRM-M-29283-2023**
Judgment reserved on: 02.06.2023
Judgment Pronounced on: 21.07.2023

PARDEEP PHULCHAND AGARWAL
… Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER
... Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Abhishek Masih, Advocate for the petitioner.

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SANDEEP MOUDGIL. J.

CRM-25769-2023

Allowed as prayed for.

MAIN CASE

1. The present petition has been filed under Section 482 read with Section 483 of the Cr.P.C. seeking quashing of complaint No.NACT-28637 of 2019 titled as 'Indiabulls Housing Finance Ltd. Versus Pradeep Phulchand Agarwal' under Section 138/142/143-A of the Negotiable Instruments Act, 1881 and Section 357 of Cr.P.C. alongwith all consequential proceedings including summoning order dated 31.07.2019 and order dated 16.01.2023 whereby Non-Bailable Warrant has been ordered to be issued against the petitioner.

2. Brief background of the case is that the petitioner is alleged to have approached the respondent No.2- Indiabulls Housing Finance Ltd.

(hereinafter to be referred to as “Indiabulls HFL”) for availing loan of Rs.8,40,96,328/- on payment of interest basis. On the assurance of the petitioner qua timely repayment of the said loan and subject to execution of loan agreement, the respondent No.2 agreed to and disbursed the above said loan amount to him. Requisite loan agreement/documents were duly executed between the parties. Thereafter, in order to make part payment towards repayment of the alleged loan, the petitioner issued a cheque in favour of respondent No.2 bearing No.317853 dated 24.04.2019 amounting to Rs.48,06,021/- drawn on State Bank of India with an assurance that the said cheque would be duly honoured upon presentation. Pursuant thereto, the respondent No.2- Indiabulls HFL, presented the said cheque for encashment before its banker namely Yes Bank, Gurugram. However, the same was dishonoured vide bank memo 26.04.2019 due to the reason “MIS010-4-Refer to Drawer”.

3. A statutory notice was served upon the petitioner seeking payment of the cheque amount, but of no avail. Hence, the complaint in question was filed by respondent No.2- Indiabulls HFL, wherein the petitioner was summoned to face trial vide order dated 31.07.2019 (Annexure P5) which is subject matter of challenge herein.

4. Furthermore, the case before the trial Court was fixed for 16.01.2023 for presence of accused i.e. the petitioner herein. He, however, failed to appear before the Court, whereupon warrant of arrest was ordered to be issued against the petitioner. The said order is also a subject matter of challenge herein.

5. Mr. Patwalia, learned Sr. Counsel for the petitioner has argued that the property mortgaged as security against the above said loan

does not belong to the petitioner rather the same belongs to some Mr. Prateek Agarwal and it has been fraudulently mortgaged to the complainant bank. It is further argued that by dint of purported Deed of Agreement dated 30.09.2019 (Annexure P-2), the respondent no.2-Indiabulls HFL has assigned all its debts including the debt in question and all the proceedings in relation to the said debts in favour of India Bulls Asset Reconstruction Company Limited (hereinafter to be referred to as "India Bulls ARC" for a total sale consideration of Rs.226,35,61,000/-.

6. As such, the India Bulls ARC has stepped into the shoes of Indiabulls HFL. It is further argued that after the aforesaid assignment agreement, the India Bulls ARC sold the mortgaged property i.e. Heritage Bungalow, Mittal Grandeur, Junction of Khatau Road & Captain Prakash Rethe Marge, Street No.25, Cuff Parade Mumbai, Maharashtra 400030 in order to recovery its debt. It is further argued that the said sale is under challenge before Debt Recovery Tribunal, Mumbai-1 in a Scrutinisation Application No.116 of 2010 titled as 'M/s Prateek Agarwal Vs. Indiabulls Housing Finance Ltd. and others'.

7. It is also the case of the petitioner that the said property has been sold deliberately by the India Bulls ARC at a throw away price as it undervalued the price of the same i.e. Rs.77 crores which amount has been credited to the account of India Bulls ARC. It is asserted on behalf of the petitioner that as a matter of fact the said sale is under challenge before DRT, Mumbai and for the sake of argument, if it is assumed that said sale proceedings are not quashed, in that eventuality, the debt of the complainant bank stands fully recovered and the complaint in question

and all consequential proceedings are liable to be quashed/set aside. It is contended vehemently that the loan amount in question was only an amount of Rs.8,40,96,328/- and the cheque in question is for an amount of Rs.48,06,021/- whereas by virtue of the above said sale proceedings, the complainant bank has recovered an amount of Rs.77 crores, which is many folds the alleged loan amount. As such, the present proceedings do not stand anywhere and are liable to be set aside.

8. I have heard the learned Sr. Counsel for the petitioner and have gone through the documents and record available on case file with his able assistance.

9. At the very outset, this Court would like to point out that the complaint in question and all consequential proceeding have been carried out in a legal manner and proper procedure has been followed therefor. The complaint in question is at the stage of summoning only and no order has been passed on merits qua or against the petitioner. As such, the petitioner has every opportunity to raise all his pleas before the trial Court. It is pertinent to mention herein that the summoning is passed upon finding a *prima facie* commission of offence and it is not a conclusive finding qua commission of such offence. The accused, by way of a summoning order, is called upon to appear before the Court and to put his defence in accordance with law and to rebut the presumption drawn against him. A complaint or summoning order can only be set aside only when there is a blatant error or law or that the proper procedure has not been followed. Apparently, this is not the case of the petitioner that there is any error or law in the impugned order or that the proper procedure has not been followed by the trial Court. Furthermore, as far as the question of

selling all the debts and proceedings by Indiabulls HFL to India Bulls ARC and all other arguments raised by the learned Sr. Counsel qua sale or mortgage property etc. are concerned, the same are matter of merits and also involve the disputed questions of law and facts, which can only be examined and determined by way of leading affirmative evidence before the trial Court and as such, the same cannot be gone into at this stage by this High Court. The petitioner has every right to appear before the trial Court and to raise all his statutory pleas before it. At this stage, there appears no error or law or procedure in the proceedings so initiated against the petitioner and in passing the impugned orders dated 31.07.2019 and 16.01.2023.

10. Accordingly, the present petition is hereby dismissed in limine being devoid of any merit.

11. However, nothing observed hereinabove shall be construed as an expression of opinion on the merit of the case.

(SANDEEP MOUDGIL)
JUDGE

21st July, 2023
sham

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