2023:PHHC:135532-DB

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

CWP-15971-2022 (O&M)
Date of Decision: October 17, 2023

M/s Meridian Milk Products and others ...... Petitioners

Versus

Debts Recovery Tribunal-I and others ..... Respondents

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

Present: Mr. Aalok Jagga, Advocate for the petitioners.

Mr. Rakshit Gupta, Advocate and
Mr. Amandeep Singh Punia, Advocate
For respondents No. 2 to 4.

Mr. Karan Singla, Advocate for respondent No. 5.

Mr. Puneet Bansal, Advocate for respondent No. 6.

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LISA GILL, J.

1. Challenge in this writ petition is to order dated 08.06.2022 (Annexure P21) passed by learned DRT-I, Chandigarh in SA-61-2022 filed by the present petitioners whereby SA filed by them has been dismissed. There is a further prayer for quashing of sale conducted by respondent – Bank, pursuant to sale notice dated 24.03.2022 allegedly without considering proposal for One Time Settlement (OTS) as submitted by petitioners. It is prayed in the alternate that the amount so recovered through

auction be adjusted towards the amount payable towards OTS. Petitioners also seek quashing of auction notice published on 16.07.2022 whereby property of the petitioners was put to sale on 25.08.2022.

2. Brief facts necessary for adjudication of the matter are that term loan of ₹1,95,00,000/- was sanctioned to the petitioners for setting up a milk processing unit. Building had to be constructed by the applicants besides purchase of plant and machinery. CC limit of ₹40 lakhs was also sanctioned to the petitioners in the year 2010. Equitable mortgage of three properties, as detailed in the writ petition, was created. Due to financial indiscipline on the part of petitioners, proceedings under SARFAESI Act were initiated with their accounts being declared Non- Performing Asset (NPA) on 21.02.2014. Notice dated 13.09.2013 under Section 13(2) of SARFAESI Act was issued claiming sum of ₹2,22,43,000/-.

3. It is stated that petitioners sold some of their land and deposited substantial amount of money with the respondent – Bank, consequent upon which their loan account was upgraded and classified as standard. Notice under Section 13(2) of the SARFAESI Act was not withdrawn, therefore, aggrieved of the same, SARR-2540-2014 was filed by the petitioners. Learned DRT-II, Chandigarh quashed the said notice under Section 13(2) of SARFAESI Act vide order dated 12.04.2016 while affording liberty to the Bank to proceed afresh in accordance with law in respect to the account of the petitioners having become sub-standard again on 30.11.2013.

4. Demand notice dated 08.06.2016 (Annexure P2) was thereafter issued claiming a sum of ₹2,85,26,954.71. Possession notice dated 19.10.2016 (Annexure P3) was issued. Proposal for OTS was submitted by the petitioners but respondent – Bank, it is alleged, did not consider the

factum of properties of petitioners being agricultural in nature while calculating OTS amount and incorrectly informed the amount of OTS to be ₹1,58,95,889.37. CWP-22761-2020 was filed by the petitioners seeking directions to the Bank to determine the OTS amount correctly and deliver back possession of all the three properties. Sale notice dated 14.12.2020 and possession notice dated 19.10.2016/16.01.2020 was also challenged. By that time, two of the properties belonging to the petitioners, it was submitted, had already been auctioned on 30.12.2020.

5. Notice of motion was issued in the said writ petition while directing that learned counsel for the petitioners would have necessary instructions limited to the extent as to whether petitioners were ready to settle the account as per OTS, which was offered to them alongwith incidental expenses incurred. CWP-22761-2020 was subsequently withdrawn by the petitioners on 21.02.2022 with liberty to avail their remedy under Section 17 of SARFAESI Act. SA-61-2022 was then filed by the petitioners.

6. Learned DRT-I, Chandigarh vide order dated 19.04.2022 listed the case for final arguments while observing that auction of land measuring 11 kanals would be confirmed only after decision by the Tribunal and in respect to the residential house, bank would be free to auction the same and confirm the sale. Claim of present petitioners that land used for running a milk plant cannot be termed to be agricultural land, was duly noted in the said order. SA-61-2022 was ultimately dismissed by learned DRT, Chandigarh vide order dated 08.06.2022 while holding that land measuring 11 kanals cannot be held to be agricultural land, therefore, exempt from SARFAESI proceedings. It was held that applicants i.e. present petitioners

are not agriculturists and they had purchased land in the year 2004 though as agricultural land but purpose was to construct a milk plant thereon and carry on commercial activities. Milk plant was indeed constructed on a portion of land and the same was being used for this purpose.

7. Notice of motion was issued in this writ petition by co-ordinate Bench on 03.08.2022. Relevant portion thereof reads as under:-

> " In this Writ Petition order dt. 08.06.2022 passed by the Debt Recovery Tribunal-1, Chandigarh in SA-16-2022 is challenged on the ground that the petitioners had questioned in the SA the action of the Bank in valuing agricultural land offered as security for calculating the OTS amount placing reliance on Clause 3 of the Scheme for OTS for NPAs and AUCAs framed by the respondent/Bank on 12.10.2020 which specifically states that "the value of SARFAESI non-complaint securities viz. agricultural land will be treated as Nil" while arriving at the OTS amount.
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> This plea was specifically raised in sub paras 'n' & 'o' of para 5 of the SA and prayer regarding the same was also made in para 6(iii) of the SA.
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> Counsel for the petitioners contends that this contention was specifically noticed by the DRT in para 4 of its order, but it has not been answered. He also contends that the agricultural land measuring 11 kanal was noticed even by the Tribunal to have been mortgaged by depositing sale deed dated 11.05.2004 and the petitioner had produced other revenue record in the form of jamabandis that the said land is agricultural land including photographs, and had also placed reliance on valuation reports filed by the respondent/Bank. But perversely the said evidence has been rejected on the pretext that in a portion of the said land, the petitioner had erected a milk plant presuming that by making such a construction in a small

portion of the said land, of about 250 sq. yards, the entire land of 6655 sq. yards (11 kanals) ceases to be agricultural land.

Prima facie, it appears that the Tribunal had ignored material evidence on record, taken into consideration irrelevant material and given a perverse finding that the land is not agricultural land having itself admitted in the earlier part of para 17 of its order that it was agricultural land. It omitted to consider the main issue raised by the petitioner *as to whether while calculating the OTS amount, its value can be taken into account or not.*

Having regard to the circumstances, since the question as to what would be the proper OTS amount requires to be decided in accordance with the OTS scheme of the Bank by this Court, and since admittedly this agricultural land has been sold for a sum of ₹89.30 lakhs and another residential house property had been sold for ₹59.62 lakhs, it is desirable to stay the sale scheduled to be held on 25.08.2022 of the other secured asset mentioned in the e-auction sale information dt.28.5.2022 published in the Punjabi Tribune, Chandigarh on 16.7.2022 (P28); and no coercive action shall be taken against the petitioners in regard to this asset."

8. Learned counsel for the petitioners vehemently argued that order dated 08.06.2022 has been passed by learned DRT in complete violation of principles of natural justice. Argument raised on behalf of the petitioners though noted was not considered and dealt with by the learned Tribunal, therefore, there is a clear cut infraction in the decision making process itself, therefore, present writ petition should be entertained. Alternate remedy of filing an appeal is not efficacious as it is a pure question of law that is being raised. It was contended that land in question cannot be treated to be anything but agricultural, keeping in view the revenue record and the fact that milk plant has been constructed on a part of property, which

does not render the same to be non-agricultural. Moreover, learned Tribunal was under a duty to have considered the specific plea that calculation of OTS amount was incorrectly arrived at by the respondent – Bank while not excluding the value of 11 kanals of land which was agricultural in nature. Settlement amount should have been assessed by learned DRT after deducting the price of residential house as well. Once this exercise has not been carried out by learned DRT, the decision making process itself is faulty, therefore, entitling petitioners to challenge the same before this Court. Learned counsel for the petitioners relied upon judgment of Hon'ble the Surpeme Court in **M/s Goderj Sara Lee Ltd. versus The Excise and Taxation Officer-cum-Assessing Authority and others (Civil Appeal No. 5393 of 2010 decided on 01.02.2023)** to submit that writ petition should not be dismissed merely on the ground of availability of an alternate remedy. It is, thus, prayed that this writ petition be allowed.

9. Learned counsel for the respondents have opposed this writ petition while firstly submitting that efficacious remedy of appeal available with the petitioners should have been availed of, filing of the present writ petition is a case of forum hunting and should, therefore, be nipped in the bud. Learned counsel for the respondent – Bank submitted that sole intention of the petitioners is to delay the proceedings. Bank had come out with OTS policies on different occasions but petitioners did not avail of the same. Detail of OTS offer is narrated in para 6 of the preliminary submissions in the written statement filed on behalf of respondents No. 2 to 4. It was further denied that 11 kanals of land, which was duly mortgaged with the respondent – Bank can be termed as agricultural in nature thereby entitled for exemption. Moreover, once learned Tribunal had decided that land in

question is not agricultural, it cannot by any stretch of imagination be said that there is any infraction in the decision making process itself, because of learned Tribunal not assessing the amount of OTS in the manner, which was suitable to the petitioners.

10. Learned counsel for the respondents have relied upon judgment of Hon'ble the Supreme Court in **K. Sreedhar versus M/s Raus Constructions Pvt. Ltd. and others 2023 AIR (Supreme Court) 306,** to submit that once property is put up as security by way of mortgage etc., the same cannot be treated as agricultural land and cannot be exempted from proceedings of SARFAESI Act and that too merely on the basis of entries in revenue records. Reliance was also placed upon judgment of Hon'ble the Supreme Court in **ITC Ltd. versus Blue Coast Hotels Ltd. & ors 2018 (2) RCR (Civil) 646** and **Indian Bank and another versus K. Pappireddiyar and another 2018 (3) RCR (Civil) 875** in this respect. It was, thus, prayed that this writ petition be dismissed.

11. We heard learned counsel for the parties and went through the file with their able assistance and have carefully scrutinized it.

12. Availing of facility(ies) of loan(s) by petitioners and subsequent declaration of their accounts as NPA and initiation of proceedings under SARFAESI Act by respondent – Bank is a matter of record. It is further admitted that petitioners had earlier filed CWP-22761-2020, which was dismissed as withdrawn on 21.02.2022 with liberty to the petitioners to avail their remedy under Section 17 of the SARFAESI Act. Present writ petition has been filed challenging order dated 08.06.2022 passed by learned DRT while by-passing remedy of appeal available to petitioners under Section 18 of the SARFAESI Act. Learned counsel for the petitioners was at pains to

impress upon us that there has been an infraction in the decision making process itself, therefore, as a pure question of law is involved for adjudication it is incumbent upon Court to adjudicate upon the controversy as raised in this writ petition, dehors availability of remedy of appeal.

13. We have carefully perused order dated 08.06.2022 passed by learned DRT but do not find any such infraction in the decision making process itself, which calls for interference in this writ petition, despite the availability of an efficacious remedy under the SARFAESI Act. It is a settled position of law that SARFAESI Act is a complete code in itself wherein remedy/ies for any grievance arising out of the proceedings undertaken therein are specifically provided. In the present case, petitioners had earlier withdrawn their writ petition challenging SARFAESI proceedings against them to avail their remedy under Section 17 of SARFAESI Act. To say that due to non-assessment of OTS amount in a particular manner and non-adjudication of manner of determination of the said account entitles the petitioners to file this writ petition without resorting to its remedy under Section 18 of the SARFAESI Act is an argument devoid of any merit, hence rejected. It is a matter of record that learned Tribunal has held that 11 kanals of land cannot be treated as agricultural land for the reasons which have been detailed therein. Averment of the petitioners was that value of said land needs to be ignored and not included in the OTS amount so assessed because of it being agricultural land, therefore, exempt under the SARFAESI Act. In view of nature of land being determined to be non-agricultural, question of calculation or assessment of OTS amount being carried out or not after exclusion of its value was indeed irrelevant.

14. Another argument raised during the course of hearing, was that settlement account should have been assessed by learned DRT after deducting the price of residential house which was sold during the pendency of SA. This argument is yet again devoid of any merit and cannot entitle the petitioners to bye-pass the remedy of appeal. It is to be noted at this juncture that a borrower/guarantor does not have a vested right to a One Time Settlement in any case as has been held by Hon'ble the Supreme Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56.** It is further a settled position that once efficacious remedy is available to a litigant and more so in commercial matters, interference therein has to be minimal in exercise of jurisdiction under Article 226 of Constitution of India. While taking note of earlier decisions including **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110,** 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."

15. Said decision has been reiterated by Hon'ble the Supreme Court in the case of **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**, wherein it was held that:-

> "13. ...... We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.
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> 14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.
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> 15. The object and reasons behind the Act 54of 2002 are very clear as observed by this Court in **Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311**. While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range or powers to set aside an illegal order and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression "any person", who could approach the Tribunal.
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> xxx xxx xxx
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> 18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal."

16. Learned counsel for the petitioners was unable to point out any exceptional and extraordinary circumstance or any infraction in the decision making process or involvement a pure question of law, which would impel

us to interfere in this matter in exercise of jurisdiction under Article 226 of Constitution of India. Therefore, reliance by learned counsel for petitioners on the judgment of Hon'ble the Supreme Court in the case of **M/s Goderj Sara Lee Ltd.** (supra) is of no avail to the petitioners. In the said case, very jurisdiction of Revisional Authority had been questioned in the writ petition, on account of which it was held by Hon'ble the Supreme Court that High Court should have examined the matter on merits.

17. At this stage, we consciously refrain from expressing any opinion on the merits of the controversy, including the nature of land in question, lest there be prejudice to any of the parties.

18. No other argument has been raised.

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

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

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 17, 2023
rts

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