108 **2023:PHHC:115714-DB**

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13500-2023
Date of Decision: September 04, 2023

SURINDER VEERD ..... Petitioner

Versus

KOTAK MAHINDRA BANK LTD. .... Respondent

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

Present: Mr. Arun Sharma, Advocate for the petitioner.

Mr. D.K. Singal, Advocate for the respondent.

****

LISA GILL, J.

1. Prayer in this petition is for quashing notice dated 15.05.2023 (Annexure P2) under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') and restraining the respondents from taking possession of petitioner's property in question.

2. It is submitted that loan facility of ₹16 lakhs was availed of by the petitioner in the year 2015 from Magma Housing Finance Limited, which merged into Poonawalla Housing Finance. Thereafter, debt was taken over by the respondent - Bank. Due to outbreak of pandemic COVID-19, there was default in payment from March 2021, due to which proceedings under SARFAESI Act were initiated against the petitioner by the respondent – Bank.

3. Learned counsel for the petitioner submits that proposal for One Time Settlement (OTS) submitted by the petitioner has been rejected by the

respondent on 11.07.2023. As per communication dated 11.07.2023 by respondent – Bank, OTS proposal for a sum of Rs.8 lakhs has been rejected while finding the same to be too less qua an outstanding of Rs.27,87,100/- as on 11.07.2023. Communication dated 11.07.2023 regarding rejection of OTS furnished in Court today is taken on record subject to just exceptions. Initiation of proceedings under the SARFAESI Act and thereafter rejection of petitioner's proposal for OTS, it is submitted is illegal and arbitrary.

4. Per contra, learned counsel for the respondent while submitting that proceedings initiated against the petitioner are in accordance with provisions of applicable statute, asserts that present writ petition should not be entertained in view of the effacious alternate remedy available to the petitioner.

5. Heard.

6. Learned counsel for the petitioner is unable to deny that petitioner indeed has an efficacious remedy for redressal of the grievance/s raised in this writ petition. It is a settled position of law that as a general rule, there would be no interference by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India in the wake of availability of efficacious alternate remedy to the litigant, except in exceptional circumstances. Gainful reference in this regard can be made to the judgment of the Hon'ble 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; 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 **M/s South Indian Bank** (supra) held as under:-

> "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.
>
> xxx xxx xxx
>
> 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.
>
> xxx xxx xxx xxx
>
> 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.
>
> xxx xxx xxx
>
> 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."

7. Furthermore, prayer addressed before us regarding direction to the respondent to accept a particular One Time Settlement (OTS) is devoid of any merit, hence, rejected especially in view of the judgment of Hon'ble the Supreme Court in ***The Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56,*** wherein issues/questions for consideration were as under:-

> *i) Whether benefit under the OTS Scheme can be prayed as a matter of right?;*

> *ii) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a writ of mandamus directing the Bank to positively consider the grant of benefit under the OTS Scheme and that too de hors the eligibility criteria mentioned under the OTS Scheme?*

8. Hon'ble the Supreme Court in the above said case held that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. It was held that:-

> "9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs.100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the Bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the Bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the

> guidelines issued from time to time. If the Bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the Bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/Bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

9. It is reiterated that no exceptional or extraordinary circumstance has been pointed out by learned counsel for the petitioners calling for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. All the pleas/arguments raised are very well within the purview of consideration of learned Debt Recovery Tribunal.

10. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail statutory remedy/remedies as available to him in accordance with law

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 04, 2023
rts

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