IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 16369 of 2022(O&M)

Date of Decision: December *22* , 2023.

Sushil Kumar Goel and others ...... PETITIONER (s)

Versus

Debts Recovery Tribunal-III and others ...... RESPONDENT (s)

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

Argued by: Mr. Manish Jain, Advocate
for petitioners No.1 to 3.

Mr. Akshay Bhan, Senior Advocate with
Mr. C.S.Pasricha, Advocate
for respondents No.2, 3 and 5.

Mr. Sandeep Jain, Addl.AG, Punjab.

Mr. Sandeep Suri, Advocate
for respondent No.4.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

1. Present writ petition is for setting aside auction notice dated 08.07.2022 (Annexure P20) issued by respondent No.3-Punjab National Bank for auction of the property as has been detailed in the writ petition. There is further prayer for setting aside order dated 29.03.2022 (Annexure P18) passed by learned DRT-III, Chandigarh. It is also prayed that respondent No.5-auction purchaser be directed not to demolish, alienate, transfer the property, in question, or create any encumbrance thereon and status quo be maintained in respect of remaining securities & assets mortgaged/hypothecated with respondent-Bank and not to take any coercive steps against the petitioners during the pendency of SA No.4 of

2022 pending before learned DRT-III, Chandigarh.

2. It was submitted that petitioner No.3 is proprietorship firm of petitioner No.1. Petitioners No.4 and 5 are private limited companies. Three different loan facilities were afforded to petitioners No.3, 4 and 5 vide three different Sanction letters. CC limit facilities were enhanced from time to time with last sanction of ₹13 Crores vide letter dated 27.04.2018 (Annexure P3). Petitioners No.4 and 5 are stated to be engaged in manufacturing of hosiery goods and knitted fabrics as MSME units. Petitioner No.1, who is also the proprietor of petitioners No.4 and 5, suffered serious medical issues. Financial indiscipline ensued. Respondent-Bank instead of providing any kind of support for restructuring of loan accounts, classified loan accounts of petitioners No.3 to 5 as NPA (Non-Performing Assets) on 30.06.2019 purportedly in gross violation of rules and regulations.

3. It was submitted that a single combined notice dated 04.07.2019 was illegally issued under Sections 13(2) of the SARFAESI Act claiming deposit of ₹38,10,98,380.03/-. Three separate Original Applications were filed by respondent-Bank before learned DRT-III, Chandigarh claiming individual recoveries from the three respective units. Possession notice dated 10.09.2019 which, it is claimed, was never received by the petitioners, was also issued in violation of rule 8 (1) & (2) of the Security Interest (Enforcement) Rules, 2002. Sale notice dated 20.02.2021 as well as e-auction conducted on 15.03.2021 pursuant thereto is claimed to be absolutely illegal and liable to be set aside.

4. Physical possession of the property was taken on 03.12.2019 again in purported violation of provision of SARFAESI Act. SA No.4 of 2022 was filed by petitioners on 30.12.2021 for setting aside demand notice dated 04.07.2019 as well as all subsequent actions taken thereafter including taking of

physical possession of the property, sale notice dated 20.02.2021, auction notice dated 15.03.2021, besides, sale confirmation certificate 22.03.2021. Petitioners also sought direction to respondent-Bank to place on record proof of service of notices under Section 13(2) and 13(4) of SARFAESI Act, videography of taking over of physical possesion and other documents as detailed in SA, attached as Annexure P16. Further prayers as are detailed in para 7 of said SA were addressed.

5. It is submitted that when SA No.4 of 2022 came up for hearing before learned DRT-III, Chandigarh on 29.03.2022, it was, *inter alia*, argued on behalf of petitioners that property in question at village Jhamat is agricultural property and that in view of violation of provisions of SARFAESI Act and applicable rules, interim order should be passed to restrain the auction purchaser from alienating, transferring or creating any kind of encumbrance upon the property in question or changing its nature. However, learned DRT without even dealing with arguments as raised, simply issued notice to respondents without affording any interim relief to petitioners. It is in this scenario that present writ petition has been filed.

6. Learned counsel for petitioners vehemently argued that entire proceedings undertaken by the respondent-Bank are absolutely illegal and arbitrary. Sale in question carried out on 15.03.2021 subsequent to auction notice dated 20.02.2021 is dehors the provisions of law. First and foremost, a combined notice in respect to three loans sanctioned separately to three independent entities could not have been clubbed together. Furthermore, learned DRT has grossly erred in not affording interim relief to petitioners. Property in question is agricultural in nature, therefore, the same is exempted from proceedings under the said Act in terms of Section 31 thereof. Notice(s) in question were never

served upon the petitioners in accordance with law. Physical possession of respective properties were taken without service of required notice. Learned DRT has failed to exercise its jurisdiction in accordance with law. Therefore, present writ petition is entertainable and that same should be allowed keeping in view the facts and circumstances of the case.

7. Learned counsel for respondent-Bank has opposed this writ petition while firstly, raising objection qua entertainability of this writ petition. It was submitted that SA No.4 of 2022 filed by the petitioners already stands filed before learned DRT-III, Chandigarh and is pending adjudication. All the issues which are sought to be raised in this writ petition, can very well be adjudicated upon by learned DRT-III, Chandigarh. Furthermore, for redressal of grievance which petitioner may have qua order passed by learned DRT-III, Chandigarh, remedy under Section 18 of the SARFAESI Act is available to petitioners.

8. Learned counsel for respondent-Bank further argued that borrowers in question are part of family concern(s). There is huge outstanding from the petitioners of about Rs.40 Crores. Serious objection has been raised regarding filing of the present writ petition through an alleged attorney, who has further given a sub-attorney to one Tarun Arora who has filed the present writ petition. It was contended that writ petition has been filed by an alleged signatory authorized vide resolution passed in meeting dated 20.10.2018 i.e., even before initiation of action under the SARFAESI Act or even declaration of the accounts as NPA (accounts were declared as NPA on 30.06.2019). Business units of the petitioners, it is stated, are lying closed since long. It is denied that property in question is purely agricultural land, therefore, exempt from proceedings under SARFAESI Act. Mere classification of property as 'agricultural' in revenue records can never be

enough or sufficient to treat the same as such. Reliance is placed by learned counsel for respondents upon the judgments of Hon'ble the Supreme Court in **Authorised Officer State Bank of India v. C. Natarajan**, ***2023(2) Law Herald (SC) 1017,*** **K. Sreedhar v. M/s Raus Constructions Pvt. Ltd. and others**, ***2023 AIR (SC) 306,*** **ITC Limited v. Blue Coast Hotels Limited and others**, ***(2018) 15 SCC 99*** and **Indian Bank and another v. K. Pappireddiyar and another**, ***(2018) 18 SCC 252***.

9. It was further pointed out by learned counsel for respondents that no action was taken by petitioners for sufficiently long time even after issuance of sale notice dated 03.07.2021. Furthermore, as all loan accounts are admittedly of parties who are inter-related and are, in fact, family concern(s), no prejudice has been caused. It was thus prayed that this writ petition be dismissed.

10. We heard learned counsel for the parties and perused the file with their able assistance.

11. Availing of loan facility (IES) by petitioners, subsequent financial indiscipline on their part and declaration of their accounts NPA, is a matter of record. Various arguments have been raised as detailed in the foregoing paras with petitioners claiming proceedings under SARFAESI Act to be illegal and arbitrary, whereas, learned counsel for respondents have refuted the said arguments. However, at this stage, it is not considered expedient to express any opinion on the merits of the matter, especially keeping in view the fact that SA No.4 of 2022 filed by the petitioners is still pending adjudication before learned DRT-III, Chandigarh. Notice of motion was issued in the said SA. In case petitioners are aggrieved of denial of interim relief by learned DRT, it was open to them to have availed remedy as provided under Section 18 of the SARFAESI Act. Argument raised by learned counsel for the petitioners that their

application/prayer for interim relief was not declined, therefore, they were unable to approach learned DRAT, is devoid of any merit, hence rejected. Once it is reflected that the petitioners on a specific prayer had been made seeking interim relief or a separate application in this regard had been filed, it was always open to petitioners to have approached learned DRAT in this regard. It has been held by Hon'ble the Supreme Court in numerous cases that the High Court should refrain from interference in such like matters of commercial nature where efficacious statutory remedy is available to the litigant.

12. Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others**, ***2010(8) SCC 110*** held that when a Tribunal is constituted under the Act, it is expected to consider the issues of law and fact(s) involved. Interference in matters under the SARFAESI Act, except under extraordinary and exceptional circumstances has been frowned upon and deprecated. It was 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.
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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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.
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> 15. The object and reasons behind the Act 54 of 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 of 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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> 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."

13. This view has been reiterated consistently by Hon'ble the Supreme Court in subsequent cases including in **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***.

14. Another argument raised by learned counsel for the petitioners was that proceedings under SARFAESI Act could not have been initiated against the property which is agricultural in nature, thus being a jurisdictional issue intervention by this Court is called for, is also devoid of any merit, hence rejected. It is a settled position that mere reference to property as 'agricultural' as per revenue records is not sufficient to accept the same as such for purpose of SARFESI Act. This aspect would be a question of fact to be determined before

the appropriate forum. Moreover, this is a plea which has already been taken before learned DRT-III, Chandigarh which is competent to adjudicate upon the same.

15. Learned counsel for petitioners was unable to point out any exceptional or extra-ordinary circumstance which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India for setting aside proceedings initiated by respondent-Bank under the SARFAESI Act.

16. Writ petition is, accordingly, dismissed with liberty to the petitioners to pursue their SA No.4 of 2022 and avail remedy/remedies as may be available to them in accordance with law qua any grievance which they may have in respect to orders passed by learned DRT-III, Chandigarh.

17. It is made clear that there is no expression of opinion on merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December *22* , 2023.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No