2023:PHHC:134023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18477-2020 (O&M)
Date of Decision : 13.10.2023

Kiran Sharda ....Petitioner

VERSUS

UCO Bank Ludhiana ....Respondents

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

Present: Mr. Vishal Sharma, Advocate for
Mr. Ravi Chadda, Advocate for the petitioner.

Mr. Gaurav Goel, Advocate for the respondent – Bank.

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LISA GILL, J. (Oral)

1. Prayer in this writ petition is for setting aside notice dated 10.05.2013 (Annexure P-5) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and notice dated 09.10.2020 (Annexure P-9) issued by Tehsildar Ludhiana (South)-cum-Executive Magistrate, Ludhiana. There is a further prayer for issuance of directions to respondent – Bank to settle the account of the petitioner.

2. It is submitted that husband of the petitioner (since deceased) as well as petitioner availed of loan facility from the respondent-Bank on 11.05.2007. Taking advice of officials of respondent – Bank, an application dated 10.09.2007 was submitted by the petitioner and her husband (since deceased) for membership of UCO Griha Lakshmi Yojana Scheme from the Bank for the purpose of insuring loan amount in the event of demise of

either of the applicants. Unfortunately, the husband of the petitioner passed away on 21.04.2013 on account of which there was financial indiscipline and account was declared Non-Performing Asset (NPA) on 10.05.2013. Proceedings under SARFAESI Act were initiated against the petitioners. An application was filed by son of the petitioner bringing to notice that loan in question was covered under the UCO Griha Lakshmi Yojana Scheme, therefore, necessary action should be taken by respondent-Bank for settlement of the account. It is submitted that in an absolutely illegal manner respondent - Bank took a stand that the scheme is not applicable to the present loan account for reasons as have been detailed in para No.5 of the written statement.

3. Learned counsel for the petitioner vehemently argues that proceedings under SARFAESI Act initiated against the petitioner are absolutely illegal, arbitrary and totally unjustified in view of the fact that loan in question was insured and it was the duty of the Bank to settle the account.

4. Learned counsel for the respondent while raising an objection of entertainability of this writ petition submitted that action taken by the respondent – Bank is in accordance with law and that benefit under the said Scheme was not made out. Dismissal of the writ petition is sought.

5. We have heard learned counsel for the parties.

6. It is settled position of law that SARFAESI Act is a complete code in itself. Interference by the High Court in exercise of jurisdiction of

Article 226 of the Constitution of India is minimal and has to be exercised only in exceptional and extra-ordinary circumstances.

7. It has been held by Hon'ble the Supreme Court in **Union Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110** as under :-

> 18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the

nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

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25. In Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another (2010) 4 SCC 772, the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed:

"31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction."

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26. In Modern Industries v. Steel Authority of India Limited (2010) 5 SCC 44, the Court held that where the remedy was available under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, the High Court was not justified in entertaining a petition under Article 226 of the Constitution."

8. Above said judgment has been reiterated by Hon'ble the Supreme Court in various judgments, including **Varimadgugu Obi Reddy vs. B. Sreenivasulu and others, 2023 (1) R.C.R. (Civil) 34,** and **M/s South Indian Bank Ltd. and others vs. Naveen Mathew Philip and others, 2023 (2) R.C.R. (Civil) 771.**

9. Specific objection qua entertainability of this writ petition has been raised. A specific objection has been taken by learned counsel for the respondent – Bank that the remedy of the petitioner was before the learned DRT. It is undeniable that the petitioner is entitled to efficacious remedy for redressal of grievance in terms of the provisions of the SARFAESI Act. No exceptional or extraordinary has been pointed out before us, which would call for interference or any such circumstances, which cannot be looked into by the learned Tribunal.

10. Keeping in view the facts and circumstances as afore-stated, the petitioner is relegated to its remedy before the learned DRT

11. With the afore-said observations, the present petition is disposed of.

12. Pending miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

October 13, 2023 **(RITU TAGORE)**
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NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO