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

**(213)** **Neutral Citation No.2023:PHHC:062465-DB**

**CWP-19348-2022 (O&M)**
**Decided on: 02.05.2023**

M/s Suresh Kumar Gaba and another

....Petitioner(s)

Versus

Bank of Baroda and others

.... Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA**
**HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Rohit Suri, Advocate for the petitioner(s).

Mr. Yuvraj Shanoilya, AAG, Haryana.

Mr. C.S. Pasricha, Advocate and
Mr. Sushil K. Bhardwaj, Advocate, for the respondent-Bank.

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**G.S. Sandhawalia, J.**

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the various notices and proceedings initiated under the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '2002 Act').

2. The demand notice dated 03.01.2019 (Annexure P-3) which has been appended with the writ petition would go on to show that the respondent-Bank put forth a demand of `16,99,110/- for the housing loan bearing account No.29700600002699. Similarly another demand of `25,43,762/- against the housing loan bearing account No. 29700600002736 had been made, thus, taking the outstandings to `42,42,872/- The property which was mortgaged was a residential property bearing House No.228, Sector-7, Urban Estate, Kurukshetra

measuring 388.5 square yards in the name of Neelam Gaba wife of Suresh Kumar Gaba, who are the petitioners No.1 and 2, respectively herein. The said notice was apparently followed up by a notice dated 25.03.2019 issued under Section 13 (4) of the 2002 Act, which has been placed on as Annexure A-1 alongwith the reply filed on behalf of the petitioners to the application bearing CM-19929-CWP-2022 for vacation of stay dated 31.08.2022. The same has also been placed on record by the respondent-Bank as Annexure R-8.

3. In the reply to the application for vacation of stay the case of the petitioners was that the respondent-Bank was proceeding without issuance of the possession notice and resorting to proceedings under Section 14 of the 2002 Act and resultantly the order of the District Magistrate dated 30.10.2019 (Annexure P-4) has been challenged. A perusal of the order passed by the said authority would go on to show that there was reference to notice issued under Section 13 (2) of the 2002 Act also. It was, accordingly, pleaded in the reply to the said application that the loan accounts were classified as 'Non-Performing Asset' (NPA) on 09.11.2018 and without issuing any possession notice, the orders had been obtained from the District Magistrate.

4. It was further pleaded that the daughter-in-law of the petitioners had filed a civil suit against the petitioners as well as the respondent-Bank that the said property be restored in her favour. Apparently, the application under Order 7 Rule 11 CPC filed on behalf of the Bank was allowed and the plaint was rejected and the appeal also before the first Appellate Court met the same fate. Resultantly, **RSA No.1175 of 2022** was filed before this Court wherein directions were

issued for depositing a sum of `10 lakhs on 30.05.2022 and the remaining by 15.07.2022 to cover the outstandings of `42,42,872/-. Resultantly, the appeal was withdrawn on 02.08.2022 (Annexure P-6). Since these facts were mentioned in the order dated 30.05.2022 passed in the regular second appeal, which has been appended as Annexure P-6, accordingly, an impression was given before the Coordinate Bench by referring to the account statement that `19,85,641.30 and `22,57,230.70 stood deposited and therefore proceedings under the 2002 Act could not be resorted to and the interim order came to be passed on 21.08.2022, which reads as under:-

> "Notice of motion for 07.02.2023.
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> Since respondent No.1 had received towards payment of the loan dues `22,57,230.70 on 03.08.2022 and a further sum of `19,85,641.30 on the same day towards the other loan dues and practically the entire amount claimed in the notice under Section 13(2) of the SARFAESI Act, 2002 thus, stood recovered, it is not permissible for respondent No.1 to take over physical possession of the secured asset without reviewing the status of the loans as per the RBI circulars. Therefore, there shall be stay of dispossession of the petitioner from the secured asset by the respondents until further orders."

5. The specific pleadings in the writ petition are that the full amount already stands paid and nothing is due and outstanding while referring to the two loan accounts mentioned above. The factum of other loan accounts were categorically not mentioned. The said pleadings are reproduced as under:-

> "14.That the statement of account would also show that the amount has been deposited and credited to the account of the petitioner and thus the full amount towards the loan facility already stands paid, consequentially nothing remains due and outstanding against the petitioner. Copy of the statement of account

> bearing Housing Loan A/c No. 29700600002699 and Housing AAA Loan A/c No. 29700600002736 are attached herewith as Annexure P-7 & P-8. The statement of account shows the full amount deposited with the bank as follows:
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> --Housing Loan Account bearing no. 29700600002699
> 03.08.2022 Rs. 22,57,230.70/-
> -Housing AAA Loan Account No. 2970060000736
> 03.08.2022 Rs.19,85,641.30/-.
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> 15. That petitioner being aggrieved by the action of the bank in intiation of action for physical possession despite receipt of the full amount is challenged before this Hon'ble Court on following amongst other grounds."

6. In the reply filed by the respondent-Bank, it has been specifically mentioned that the true facts were deliberately concealed by giving an impression that the entire liability had been discharged in respect of the housing loan accounts. It was mentioned that there was a Cash Credit Account of M/s Suresh Kumar Brothers, which is the proprietorship concern of Suresh Kumar Gaba, wherein `13 crores was the limit. It was also mentioned that a term loan of `1.08 crore and term loan of `12.88 lakhs were the other facilities and there was equitable mortgage also in respect of the said house against those accounts. The dues against the CC Limit was `12,77,04,107.50 as on 31.12.2018. Against the first term loan the dues were of `34,54,692.57, whereas against the second term loan the dues were of `12,88,000/- as on 31.12.2018, taking the grand total to `13,66,89,672.07.

7. In the reply filed there was also mention regarding the track record of the petitioners and their family as there were as many as 14 litigations initiated in the form of civil suits and miscellaneous

applications either through daughter-in-law or through the other proprietorship concern or through Ankit Gaba, Neelam Rani and Suresh Kumar Gaba, details of which is annexed as Annexure R-5. The observations made by the learned Additional District Judge regarding the conduct of the petitioners while upholding the order rejecting the plaint, vide order dated 21.05.2022 (Annexure R-6), out of which the regular second appeal had arisen, read as under:-

> "11.Prima-facie, the appellant/plaintiff by one way or the other is instituting different litigations to install the further action for recovery being taken by the respondent No.4. She is not the borrower and the borrowers are the respondents No.1 and 2. It is open for the borrower to file an appeal under section 17 of the Act before Debt Recovery Tribunal (DRT) against the measures being taken under section 13(4) of the SARFAESI Act and thus, the borrower cannot file suit for injunction in view of the bar provided in section 34 of the Act but in the given facts and circumstances of the case, it is clear that the appellant/plaintiff is acting at the behest of her husband and the respondents No.1 and 2 i.e. the borrower(s) and guarantor(s) who are her parents-in-laws, to seek the remedy of injunction which is otherwise barred under the SARFAESI Act. The alleged plea of matrimonial dispute is not substantiated with any documentary evidence and even otherwise, the appellant/plaintiff and the respondents No.1 to 3 are stated to be residing under the same roof in the same house. At this stage, this Court does not deem appropriate to go into the merits of the proceedings/orders being passed by the District Magistrate, Kurukshetra."

8. The respondent-Bank has also appended the notice issued under Section 13 (2) of the 2002 Act to M/s Suresh Kumar & Brothers through the proprietor Suresh Kumar Gaba of even date 03.01.2019 (Annexure R-2), wherein the demand of `13,24,46,800.07 was made, as

mentioned in the written statement now, which was also regarding the mortgaged properties including House No.288, Sector-7, Urban Estate, Kurukshetra. Consequently, notice dated 25.03.2019 (Annexure R-7) had also been issued under Section 13 (4) of the 2002 Act, wherein demand of `42,42,872/- was made, but apparently was not referred to in the writ petition. An impression was given that there was only `42 lakhs outstanding, which had been duly paid, as per the bank statements and the civil litigation initiated by the daughter-in-law. Resultantly, the Coordinate Bench was persuaded to grant stay of dispossession.

9. The dishonesty and the concealment is apparent in as much as now in the reply filed to the application for vacation of stay also notice issued under Section 13 (4) for `13 crores etc. has come on record as Annexure A-1 colly. Had these facts been known to the Coordinate Bench, stringent conditions would have been put as such to pay some of the outstandings at least. An effort was made to conceal the factum of other loans taken against which there are huge outstandings. In such circumstances, we are constrained to observe that the writ petitioners are not entitled for the benefit of any further hearing in view of the settled law.

10. The Apex Court has time and again laid down the principles that the Writ Court while exercising its extra-ordinary jurisdiction would not hear a person on merits, if there is suppression of material facts. It was held that disclosure of true, complete and correct facts was a very basis of the writ jurisdiction. Relevant observations made in the judgment passed in **Prestige Lights Ltd. Vs. State Bank of India, (2007) 8 SCC 449,** read as under:-

> "32. It is thus clear that though the appellant- Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.
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> xxxxxxxxxxxxxxxx
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> 34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

11. The said view was, thereafter, followed in **Dalip Singh Vs. State of Uttar Pradesh and others, (2010) 2 SCC 114** wherein also the writ petitioner had not stated the correct facts before the High Court and delayed the benefit of the surplus land which was to go to the landless poor persons. It was, accordingly, held that the case belongs to category of persons who not only attempt, but have succeeded in polluting the course of justice and mislead the Court, no case for interference would be made

out. It was also held that a misleading fact was put forward before the High Court and the appellant had succeeded in persuading the Court to pass an order which had resulted in frustrating the efforts made by the concerned authority regarding the distribution of the surplus land.

12. Resultantly, the present writ petition is dismissed with costs of ` 1 lakh to be deposited with the PGI Poor Patient Welfare Fund within a period of 4 weeks from today. In case the needful is not done, the District Magistrate, Kurukshetra shall recover the amount from the petitioners by taking steps under the Punjab Land Recovery Act. The report be submitted by the District Magistrate, Kurukshetra after the amount has been recovered and duly deposited. All pending civil miscellaneous applications also stand disposed of.

**(G.S. SANDHAWALIA)**
**JUDGE**

**(HARPREET KAUR JEEWAN)**
**JUDGE**

**02.05.2023**
*Naveen*

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| Whether speaking/reasoned : | Yes | |
| Whether Reportable : | Yes | |