IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(104+219)
(1) **CWP-19563-2020 (O&M)**

Mayfair Fabrics Ltd.
....Petitioner
Versus
Union of India & others .... Respondents

(2) **CWP-24000-2021 (O&M)**

Mayfair Fabrics Ltd.
....Petitioner
Versus
Hero Fincorp Ltd. & others .... Respondents

Decided on: 19.05.2023

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

Present: None for the petitioner(s) in both cases.

Ms.Parul, Advocate, for
Mr.Arvind Seth, Advocate, for respondent-UOI.

Mr.Jatin Bansal, Advocate
and Ms.Keerti Sandhu, Advocate
for respondent No.1 in CWP-24000-2021.

Mr.Mayur Kanwar, Advocate
for respondent No.3 in CWP-19563-2020
and for respondent No.2 in CWP-24000-2021.

Mr.Ramesh Chand Sharma, Advocate
for respondent No.3 in CWP-24000-2021.

*****

G.S. Sandhawalia, J.

The present judgment shall dispose of CWP-19563-2020 & CWP-24000-2021 since the loanee is the same and the only distinction is that in the second case, Hero Fincorp Ltd. was impleaded as respondent No.1 and an interim order dated 26.11.2021 came to be passed that Rs.5 lakhs be deposited with the said respondent and dispossession shall remain stayed from the subject asset.

2. The resultant effect was that respondent No.2-Bank who is also arrayed as respondent in the first writ petition was also estopped from recovering its outstandings which was to the tune of Rs.6,97,89,723/- as per the foreclosure amount as on 23.07.2021 and as per the notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'Act') of the even date placed on record as (Annexure P-8). Even applications came to be filed by the Financial Institution on the ground of maintainability and concealment regarding this aspect that the stay was not operative against the respondent-bank in CM-9063 & 9065-CWP-2023 in CWP-24000-2021.

3. Two separate counsels for the petitioner have not put in appearance for the petitioner. On the impression which was created with the authorities below was that this Court had granted stay on 26.11.2021 against the HDFC Bank, since the order under Section 14 of the Act had already been passed on 09.11.2022 for handing over possession of the secured assets, which without challenge by the borrowers was set aside by filing an application before the Tehsildar. Resultantly, the Addl.District Magistrate, Ludhiana on 27.02.2023 withdrew his earlier order due to the fact that COCP-306-2022 was filed against HDFC Bank. The concealment is at the highest level which needs to be deprecated, since this practice on account of the fact that the borrowers on a very regular basis make efforts to get stay order from various judicial forums, whether it is a Civil Court, though there is a bar to the said jurisdiction. By drafting the plaint in a very crafty manner, the proceedings which are initiated by an off-beat distant relative or family member of the borrower taking various pleas that the person is a divorcee or separated or having a matrimonial problem or

having share in the family property on account of succession having opened up or the Bank organizing dharnas to take over the property and injunction against the Bank organizing any such demonstration which though is only the Bank seeking to recover the symbolic possession on account of the order under Section 13(4) of the Act being passed.

4. In cases of failure to get a favourable order, the Tribunal or this Court is approached by another set of persons and on failing another set of persons file another petition in an effort to derail the recovery or auction proceedings. In order to get to the bottom of the methodology which is used herein, would be that the challenge as in the first writ petition was on the ground that the company's loan had become bad due to Covid-19 pandemic and therefore, there were bank schemes (Annexures P-2 & P-4) which were sought to be enforced. The consequential relief was that coercive steps not be taken. Resultantly, notice of motion was issued on 18.11.2020.

5. The stand of the respondent-Bank in the reply filed was that the loan account of the petitioner had started showing early signs of weakness as there were delays in repayment of loan installments and 16 cheques had bounced from 07.07.2017 to 07.02.2020 and the account had remained in over 60 Days Past Due (DPD) from 07.09.2019 to 07.02.2020. Thereafter, 7 more cheques had bounced from 07.09.2020 to 07.03.2021 and thus, there was default of 83 DPD and these facts had all been concealed while approaching this Court. A sum of Rs.29,99,900/- was due as on 29.02.2020 even prior to Covid-19 onset. Notice under Section 13(2) was thereafter issued on 23.07.2021 (Annexure P-8) wherein on account of the default, the account was classified as NPA on 07.09.2020 and the outstandings were Rs.6,97,89,723/- as per the foreclosure account.

Same was got sought to be stayed by filing CM-13444-CWP-2021 in CWP-19563-2020 in which notice was issued on 20.09.2021 for 06.12.2021 but no stay was granted. The said order reads as under:

> "Prayer in the present application under Section 151 CPC moved by the applicant-petitioner is for staying the operation of the Notice dated 23.07.2021 (Annexure P-8 / annexed with the application) issued by the respondent – Bank under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
>
> The main case is stated to be listed for hearing on 06.12.2021.
>
> Counsel for the applicant-petitioner heard.
>
> Notice of the application to the counsel for non-applicants / respondents be issued for 06.12.2021, the date already fixed in the main case.
>
> Mr. Manish Jain, Advocate, appears and waives off notice on behalf of non-applicants / respondent Nos. 3 & 4 – HDFC Bank.
>
> Counsel for the applicant-petitioner undertakes to supply requisite copies of the paper-book to the counsel opposite during the course of day."

6. The second writ petition thus came to be filed thereafter on 22.11.2021 wherein, respondent No.1, Hero Fincorp Ltd. was arrayed as respondent No.1 whereas HDFC Bank was pushed down to respondent No.2. Primarily it was projected over the Co-ordinate Bench that respondent No.1, Hero Fincorp Ltd. who had issued the possession notice for the dues of Rs.41,04,978.85 was in error while rejecting the request of the petitioner vide correspondence dated 02.09.2021 (Annexure P-9) declaring the said loan as NPA on an 24.03.2021, the following order was passed in CWP-24000-2021 on 26.11.2021:

> "Notice of motion for 29.03.2022.
>
> Mr.Ramesh Chand Sharma, Advocate appears and accepts notice for respondent No.3.

> Subject to petitioner paying a sum of Rs.5 lakhs to the first respondent within 2 weeks from today, the petitioner shall not be dispossessed from the subject asset. In default of compliance with this order, it shall stand vacated."

7. In the writ petition, the factum of filing of earlier writ petition bearing CWP-19563-2020 was concealed and specific averment was made that they had not filed any other writ petition on the same cause of action. Apparently, the HDFC Bank had already gotten an order dated 09.11.2022 under Section 14 of the Act in its favour to take over the possession of the property which factor was never brought to the notice of this Court by appending the said order in any manner. However, taking the strength of the above-said interim order. The order under Section 14 was got withdrawn from the Addl.District Magistrate, vide order dated 27.02.2023, that possession shall not be handed over to the Bank. The said order reads as under:

> "Office of Additional District Magistrate, Ludhiana
>
> To
>
> Tehsildar,
> Ludhiana (East).
> No.1337/PESHI/ADC Dated 27-02-2023
>
> Subject: COCP No.306 of 2022 Mayfair Fabrics Ltd. vs Hero Fincorp and Ors.
>
> Petitioner Mayfair Fabrics Ltd. Vide its Application dated 03.03.2023 has brought to the notice of this office that Hon'ble Punjab and Haryana High Court in Writ Petition No.24000 of 2021 on date 26.11.2021 has passed the following order:
>
> "Notice of motion for 29.03.2022.
>
> Mr.Ramesh Chand Sharma, Advocate appears and accepts notice for respondent No.3.
>
> Subject to petitioner paying a sum of Rs.5 lakhs to the first respondent within 2 weeks from today, the petitioner shall not be dispossessed from the subject asset. In default of compliance with this order, it shall stand vacated."

And as directed by the Hon'ble High Court the determined amount has been deposited on 30.11.2021 through Shri Johney Verma (ACM-Punjab, Haryana & Chandigarh) (SMA Finance) to Hero Fincorp Ltd. and the abovementioned order of the Hon'ble High Court has been complied with. Despite of this, your office has passed a notice dated 06.03.2023 to deliver the possession of the property to HDFC Bank, because of which, the contempt petition No.306 of 2022 against HDFC Bank has been filed, the hearing of which is listed on 09.03.2023.

In this regard copy of the petitioner's application is sent, and it is written that in compliance of the stay order dated 26.11.2021 passed by the Hon'ble High Court in the captioned cases, the proceedings in respect of delivery of possession of the property mortgaged by the Petitioner with Hero Fincorp Ltd. and HDFC Bank not be started, so that the order of the Hon'ble High Court is not violated and unnecessarily proceedings are not faced.

SD/-
Additional District Magistrate
Ludhiana"

8. Thereafter, an application was filed by the petitioner that there was a stay order in its favour and therefore, no proceedings could be initiated against it and possession could not be handed over before the Tehsildar. The said application reads as under:

"To
The Tehsildar (East),
Ludhiana.

Sub:- Application for staying the proceedings of the Chaspa bearing No.156 of SARFAESI Act dated 17.02.2023, fixed for taking possession on 06.03.2023 titled as "HDFC Bank Limited Versus M/s Mayfair Fabrics Limited."

The applicant respectfully submitted as under:-

1.That the applicant has received Chaspa bearing No.156 of SARFAESI Act dated 17.02.2023. (Copy of the Chaspa is attached with for your kind perusal).

2.That in the said Chaspa, it is written that your goodself will visit to take the possession of One Building No. B-XXIII-2072/633 Cum Plot No.H-11, measuring 3496-1/2 square yards, Khasra No.19//11/1, 20//15/2, 19//10/1, 20//6/2, Khata No.147/178, 229/273, Situated at Sherpur Khurd, Textile Colony, Ludhiana on dated 06.03.2023 as per the orders of the Hon'ble Additional District Magistrate, Ludhiana vide order bearing endorsement No.6944-47/PESHI/ADC dated 09.11.2022 of SARFAESI Act dated, 2002 titled as "HDFC Bank Limited Versus M/s Mayfair Fabrics Limited".

3.That as a matter of fact, Hon'ble Additional District Magistrate has stayed the proceedings of the case "HDFC Bank Limited Versus M/s Mayfair Fabrics Limited" in which earlier order was passed bearing endorsement No.6944-47/PESHI/ADC dated 09.11.2022 of SARFAESI Act dated, 2002 vide order bearing endorsement No.1337/PESHI/ADC dated 27.02.2023. (COPY OF ORDER IS ATTACHED HEREWITH).

As such, when already proceedings has been stayed by Hon'ble Additional District Magistrate, no proceedings can be initiated whatsoever in the Chaspa bearing No.156 of SARFAESI Act dated 17.02.2023, fixed for 06.03.2023 titled as "HDFC Bank Limited Versus M/s Mayfair Fabrics Limited".

Dated.03.03.2023 Applicant

Mayfair Fabrics Limtied

For MAYFAIR FABRICS LTD.

Sd/-

Director

Rajesh Bansal Director"

9. A reading of the above application would go on to show that it is clear that the respondent-Bank had got an order under Section 14 of the Act in its favour and there was never any stay against the Bank. Apparently, petitioner has also filed COCP-306-2022 that the order of this Court had been violated and thus putting the secured creditor on the back foot.

10. Thus, the above sequence of events would go on to show that there was never any stay against HDFC Bank and the petitioner who had huge outstandings had taken a stay against respondent No.1-Hero Fincorp Ltd. which is a private financial institution which is not amenable to writ jurisdiction as per the law laid down in **Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir & others, 2022 (5) SCC 345**. By depositing Rs.5 lakhs, the petitioner continued to hold on the possession of the secured assets and without even challenging the order under Section 17 of the Act in the present set of litigation which only goes on to reaffirm and reiterate what we have already discussed above regarding the corrupt litigant misusing and polluting the system of justice and holding up genuine cases. Reliance can also be placed upon the observations of the Apex Court in **M/s Prestige Lights Vs. State Bank of India, (2007) 8 SCC 449**. Relevant observations 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.
>
> xxx xxx xxx
>
> 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 followed in **Dalip Singh Vs. State of Uttar Pradesh and others, (2010) 2 SCC 114**.

12. Keeping in view the above facts and circumstances, we are of the considered opinion that the present writ petitions deserve to be dismissed. We further exercise our powers under Article 226/227 of the Constitution of India and direct that District Magistrate, Ludhiana shall enforce its order dated 09.11.2022 on receipt of the certified copy of this order and hand-over the possession of the secured assets to the secured creditor-HDFC Bank which already has an order in its favour. Since counsels for the petitioner have not put in appearance, we do not impose any compensatory costs upon the petitioner.

13 With the above directions, the present writ petitions stand dismissed. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

19.05.2023
sailesh

Whether speaking/reasoned : Yes
Whether Reportable : Yes