IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

104 **CM-19920-2023 in/and CWP-19652-2022 (O&M)**
Date of Decision: 24.11.2023

KULDEEP SINGH

... Petitioner

VERSUS

RESERVE BANK OF INDIA AND OTHERS

....Respondents

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

Present: Mr. Akhilesh Vyas, Advocate
for the applicant-petitioner.

Mr. Nitin Grover, Advocate
for respondent No.3-Bank.

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LISA GILL, J.(Oral)
CM-19919-CWP-2023

Prayer in CM-19919-CWP-2023 is for preponement of hearing of this writ petition (CWP-19652-2022), which is listed for 15.02.2024. Application is duly supported by an affidavit of the applicant-petitioner.

No objection to the prayer is raised by learned counsel for respondent-Bank.

In view of the above and at request and with consent of learned counsel for parties, hearing of writ petition is pre-poned from 15.02.2024 to today itself.

Application is accordingly disposed of.

<u>CWP-19652-2022</u>

1. Prayer in this writ petition is for quashing notice dated 19.05.2021 (Annexure P-1) issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 and order dated 19.07.2022 (Annexure P-7) issued by respondent No.2 under Section 14 of SARFAESI Act.

2. Learned counsel for petitioner submits that loan facility of Rs.1,08,00,000/- was availed of by the petitioner on 11.01.2018 with a Home Top-up Equity Loan of Rs.7 lakhs on 18.05.2018. Property as detailed in the writ petition was mortgaged with respondent-Bank. There was some deficiency in deposits of the installments as due. However, account of the petitioner was incorrectly and illegally declared None Performing Asset (NPA) on 30.03.2021. Notice(s) under Section 13(2) and 13(4) of SARFAESI Act were issued on 19.05.2021 (Annexure P-1) and 08.02.2022 (Annexure P-3) respectively and ultimately order dated 19.07.2022 (Annexure P-7) was passed by District Magistrate, SAS Nagar under Section 14 of the SARFAESI Act. It is submitted that entire proceedings initiated against the petitioner are in violation of specific provisions of the Act and circulars issued by the Central Government and Reserve Bank of India due to outbreak of the Pandemic Covid-19 and declaration of account as NPA is in teeth of various orders passed by Hon'ble the Supreme Court in ***<u>Writ Petition (C) No.542 of 2020 titled 'Small Scale Industrial Manufactures Association (Regd.) Vs. Union of India and others'</u>***.

3. Notice dated 20.11.2023 has been issued by Tehsildar-cum-Executive Magistate, Kharar pursuant to order dated 19.07.2022 seeking physical possession of the property in question on 24.11.2023. Said notice, it is submitted is absolutely illegal as period of 15 days has not been afforded. It is thus prayed that this writ petition be allowed.

4. Learned counsel for respondent-Bank opposes the writ petition while raising an objection qua entertainability of the writ petition itself in view of efficacious remedy available to the petitioner under SARFAESI Act. It is further submitted that due to non-compliance of order dated 05.09.2022 passed in this writ petition, proceedings were started against the petitioner. Notice for physical possession of the property has been issued on various occasions but possession thereof could not be taken. Proceedings, it is submitted are being taken against petitioner in accordance with the provisions of law. Dismissal of writ petition is sought.

5. Heard learned counsel for the parties.

6. Keeping in view facts and circumstances of the matter, we do not find any ground to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. SARFAESI Act is a complete Code in itself. Interference in such like matters has to be minimal. It has been held by Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110,** as under:-

> *17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have*

availed remedy by filing an application under Section 17(1). The expression `any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

"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."*

7. It is to be noticed that notice of motion was issued in this writ petition on 05.09.2022. It was directed that subject to petitioner depositing a sum of Rs.20 lakhs with respondent-Bank within four weeks, no coercive action be taken against the petitioner and in default of compliance, order would stand vacated. Admittedly, petitioner deposited only a sum of Rs.8.05 lakhs subsequent to passing of order dated 05.09.2022 and said amount was also not deposited within the period of four weeks. It was pointed out by learned counsel for respondents that qua outstanding of nearly about Rs.1 crore 30 lakhs, only a sum of about Rs.19 lakhs has been deposited by the petitioner till date. Learned counsel for petitioner is unable to point out any extraordinary or exceptional circumstance which calls for our interference at this stage

8. We also find no merit in the argument raised by learned counsel for the petitioner at this stage that interim order should be extended to petitioner while he may approach DRT for redressal of his grievance. While it is open to the petitioner to avail his statutory remedy in accordance with law, we find no ground for extending interim protection to petitioner in the given factual matrix.

9. Writ petition is accordingly dismissed with liberty to petitioner to avail remedy(ies) available to him in accordance with law and take up all available pleas before appropriate forum. There is no expression of opinion on merits of the matter.

10. Pending applications, if any, also stand disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

24.11.2023
Rimpal

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