

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

276

2023:PHHC:057654-DB

CWP-22499-2022

Date of Decision: 24.04.2023

M/s. Fairy Paradise Carrying

.....Petitioner(s)

Versus

Yes Bank Ltd.

.....Respondent(s)

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

Present: Ms. Ginnijeet Malhotra, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the securitization proceedings and the symbolic possession notices dated 08.11.2021 (Annexures P-3 and P-4) issued under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act'), which would go on to show that a sum of Rs.23,11,740.41/- was due as on 13.07.2021.

2. On 28.09.2022, the following order was passed:-

“Notice of motion for 19.01.2023.

Subject to the petitioner paying Rs.20 Lakhs to the respondent-Bank within a period of two weeks, no coercive action shall be taken by the respondent-Bank against the petitioner.

In default of compliance of this order, the same shall stand vacated.”

3. Admittedly, the said order has not been complied with. The order itself was conditional that the stay shall stand vacated in case of default.

4. Resultantly, we are not inclined to exercise our extra ordinary writ jurisdiction any further as the petitioner has shown no *bonafides* to settle the matter. Even otherwise, the petitioner has an alternative remedy, if it wishes to avail, under Section 17 of the Act against the notice issued under Section 13(4) of the Act, which has been time and again laid down by the Apex Court and recently reiterated in ***SLP No. 22021-22022 of 2022, M/s. South India Bank Ltd. and others vs. Naveen Mathew Philip and another*** decided on 17.04.2023 wherein, it has been held that only in exceptional cases, the resort as such is to be taken to Articles 226 and 227 of the Constitution of India in financial matters. Since the counsel has shown no inclination to furnish a bank draft of even 25% of the amount to show his *bona fides*, we are not inclined to exercise our extra ordinary writ jurisdiction.. The prayer for OTS can also be looked into by the Tribunal if the petitioner shows some genuineness by depositing some amount. Reliance can be placed upon judgment of the Apex Court in ***M/s. Sardar Associates and others vs. Punjab & Sind Bank and others, (2009) 8 SCC 257*** wherein, it has been held as under:-

“29. It may be that no specific prayer was made but the same, in our opinion, keeping in view the provisions of the 2002 Act, did not preclude the Appellate Tribunal to consider the offer of the appellants. The Appellate Tribunal in terms of the provisions of the Act like the original Tribunal is interested only in recovery of the amount. While doing so, it, in our considered opinion, has the requisite jurisdiction to consider the prayer made by a debtor for one time settlement particularly in view of the fact that the same is within the purview of One Time Settlement

Scheme of the Reserve Bank of India. If a public sector bank is otherwise bound by any guidelines issued by the Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act by the Tribunal and consequently by the Appellate Tribunal. It is not a case where the appellants had prayed for quashing of a policy decision taken by the respondent - Bank. The question which arose for consideration before the Appellate Tribunal as also before the High Court was as to whether offer having been made by the bank to the appellants herein, it could have turned around and contend that only because the appellants had furnished security to the extent of Rs. 11 crores, the same by itself would entitle it to take recourse to a discriminatory treatment. The answer to the said question must be rendered in the negative.”

5. Accordingly, the writ petition is disposed of with liberty to the petitioner to avail its alternative remedy on accordance with law.

(G.S. SANDHAWALIA)
JUDGE

24.04.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No