Neutral Citation No. 2023:PHHC:074111-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(121) **CWP-22903-2022 (O&M)**
Decided on :22.05.2023

Naresh Devgan @ Naresh Kumar Devgan ......Petitioner(s)

Versus

Reserve Bank of India & others ......Respondent(s)

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

Present: Mr.Vipul Dharmani, Advocate, for the petitioner.

Mr.Sumeet Sharma, Advocate, for
Mr.Kamal Satija, Advocate, for respondent Nos.2 & 3.

Mr.Sunil Chadha, Sr.Advocate
with Mr.Akshay Chadha, Advocate
Mr.Tara Dutt, Advocate for the applicant-respondent No.4.

Mr.Puneet Gupta, Advocate
Mr.Anil Rana, Advocate, for respondent No.5.

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G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/226 of the Constitution of India is to the auction notice dated 01.07.2022 (Annexure P-8) whereby the property of M/s Devgan Rice & General Mills and M/s Devgan Solvex Pvt. Ltd. had been put to sale. The petitioner is a partner in the first firm and director in the second.

2. It is not disputed that as on 31.12.2022, the outstandings in the 6 accounts of M/s Devgan Rice & General Mills and M/s Devgan Solvex Pvt. Ltd. are to the tune of Rs.57.41 crores as per photocopy of the certificate placed on record by counsel for respondent No.2-Union Bank of India. The Bank, in an effort to recover its dues had resorted to the issuance of notices dated 18.07.2016 (Annexure P-1) and 15.01.2018 (Annexure P-2) issued under Section 13(2) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'Act'). Thereafter, it resorted to issue possession notices dated 01.02.2018 (Annexure P-3) and 04.04.2018 (Annexure P-4). It had also filed OA-3146-2017 and OA-764-2019 before the DRT which are appended as (Annexures P-5 & P-6), respectively.

3. CM-8948-CWP-2023 has been filed by respondent No.5 wherein it has been mentioned that he had participated in the e-auction process and had deposited Rs.7,62,80,000/- and had taken a term loan for the purpose of purchasing the property put to auction. Reliance is placed upon the certificate dated 11.05.2023 (Annexure R-5/17) issued by the PNB, showing that the loan was taken an the interest element paid was Rs.37,29,206/-. It is also pointed out that sale certificate dated 29.09.2022 had also been issued in favour of respondent No.5, M/s R.S.Rice Mills regarding the property in question for the above-said amount. Petitioner had however approached this Court and got an interim order on the next day, i.e. 30.09.2022.

4. The sale certificate has thus already given a vested right to respondent No.5 before the stay order was passed. In such circumstances, we are of the considered opinion that if the petitioner has any grievance against the sale transaction which has been done for the above-said amount, it is open for him to agitate for the same before the Tribunal in view of the law laid down by the Apex Court in SLP(Civil) Nos.5973-5974-2018 titled *G.Vikram Kumar Vs. State Bank of Hyderabad & others,* decided on 02.05.2023, wherein it has been held that against any steps taken by the Bank under Section 13(4) of the Act for the auction of the property, the remedy against the same would lie before the Tribunal under Section 17 of the Act and not before the High Court. Relevant portion of the judgment reads as under:

> "8. At the outset, it is required to be noted that what was challenged before the High Court by respondent no.1 in a writ petition under Article 226 of the Constitution of India was the e-auction notice which was pursuant to the action initiated by the Bank in exercise of powers under Section 13(4) of the SARFAESI Act. At this stage it is required to be noted that e-auction was held/conducted on 31.08.2016 in which the appellant participated and was declared as a successful bidder and he made a payment of 25% of the bid amount on the very day i.e., on 31.08.2016.
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> However, thereafter the respondent no.1 filed the writ petition before the High Court challenging the e-auction notice dated 28.07.2016 on 14.09.2016 that is after conducting of the auction. It is required to be

noted that against any steps taken by the Bank under Section 13(4) of the SARFAESI Act the aggrieved party has a remedy under the SARFAESI Act by way of appeal under Section 17 of the SARFAESI Act to approach the DRT.

Therefore, in view of the availability of the alternative statutory remedy available by way of proceedings/appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India in which the e-auction notice was under challenge. Therefore, the High Court has committed a very serious error in entertaining the writ petition under Article 226 of the Constitution of India challenging the e-auction notice issued by the Bank in exercise of power under Section 13(4) of the SARFAESI Act."

5. Resultantly, the petitioner is relegated to his remedy before the Tribunal. Keeping in view the fact that the sale certificate was issued prior to the date of the interim order, we do not see any reason to continue with the interim order. Needless to say that if petitioner approaches the Tribunal within a period of 2 weeks, the Tribunal will proceed to hear the securitization application on merits since the petitioner had already approached this Court one day after the issuance of the sale certificate. Similarly, respondent No.4 had purchased the moveable assets and deposited Rs.90,16,100/- and his capital has also got held up on account of the interim order passed and he has filed an application for refund which the Bank shall act upon expeditiously.

6. With the above-said directions, the present writ petition stands disposed of. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

22.05.2023
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Whether speaking/reasoned :	Yes	
Whether Reportable :		No