2023:PHHC:116012-DB

119 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19462-2023
Date of Decision: September 04, 2023

M/S C GEMS AND JEWELS PVT LTD .... Petitioner

Versus

PUNJAB AND SIND BANK AND ANR .... Respondents

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

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate for the petitioner.

Mr. Arpit Chawla, Advocate for the caveator-respondent.

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LISA GILL, J.

1. Prayer in this petition is for quashing auction notice dated 08.08.2023 (Annexure P21) as well as letters dated 04.05.2021 (Annexure P16) and 10.08.2023 (Annexure P26) whereby proposals for One Time Settlement (OTS) submitted by the petitioner have been rejected.

2. Learned counsel for the petitioner vehemently argues that proceedings under the SARFAESI Act have been illegally initiated against the petitioner. While challenging auction notice dated 08.08.2023 (Annexure P21), it is submitted that valuation of the property in question i.e. 82 kanals 8 marla of the land has been done incorrectly. Learned counsel for the petitioner firstly refers to valuation of land, which was carried out in the year 2018 (Annexure P1) where its accepted value is reflected as ₹65.13 crores

and then submits that surprisingly value of the property is now assessed as ₹47.85 crores in an illegal manner. Reference is made to report dated 31.07.2023 (Annexure P22) by registered and Government approved valuers to say that the property as of now is valued at ₹77,94,64,080/-. It is submitted that there is clear cut violation of Rule 8(5) of Security Interest (Enforcement) Rules, 2002. It is further contended that there is violation by the respondent – Bank of its own policy dated 09.05.2022 (Annexure P23). Insofar as valuation of property is concerned, respondent – Bank has grossly under valued the property while seeking to put it on auction. It is contended that proposal for OTS dated 27.07.2023 (Annexure P25) for a sum of ₹22 crores was incorrectly rejected by the respondent – bank. It is, thus, prayed that this writ petition should be allowed.

3. Learned counsel for the respondent – caveator submits that this writ petition should not even be entertained, in view of various judgments of the Hon'ble Supreme Court and that action taken by the respondent – Bank is in accordance with law, applicable regulations and policy. It is submitted that as per notice under Section 13 (4) of SARFAESI Act, outstanding qua the petitioner is Rs.3,37,73,688.55 (Term Loan of Rs.3.83 Crore) and Rs.1,77,83,407.28 (Term Loan of Rs.2.14 crore), Rs.10,24,79,177.44 (ODP Limit Rs.10 crore), Rs.10,02,18,017.56 (Term Loan of Rs.10 crore) and Rs.19,15,099 (Term Loan of Rs.10 crore) as on 31.05.2019 alongwith future interest and costs etc.

4. Heard learned counsel for the parties and have gone through the file with their able assistance.

5. It is undeniable that petitioner does have an efficacious remedy for redressal of the grievance/s as raised in this writ petition. It is a settled

position of law that as a general rule, there would be no interference by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India in the wake of availability of efficacious alternate remedy to the litigant, except in exceptional circumstances. Gainful reference in this regard can be made to the judgment of the Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34; M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**. Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) held as under:-

> "13. ...... We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.
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> xxx xxx xxx
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> 14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.
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> 15. The object and reasons behind the Act 54of 2002 are very clear as observed by this Court in **Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311**. While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range or powers to set aside an

illegal order and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression "any person", who could approach the Tribunal.

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18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal."

6. Though learned counsel for the petitioner has vehemently argued that under valuation of the property is in violation of statutory provisions specifically Rule 8 of the Security Interest (Enforcement) Rules, 2002 and that an exceptional circumstance is carved out because of this reason itself, we do not find any merit in the said argument, keeping in view the factual matrix of the case where the grounds and arguments, as raised before us, are very well within the purview of consideration of learned DRT. No jurisdictional issue has been raised in this matter and neither has any exceptional or extraordinary circumstance pointed out which calls for interference by this Court.

7. Furthermore, there can be no direction to the respondent – Bank to enter into a particular OTS as has been held by the Hon'ble Supreme Court in ***the Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56***. The issues/questions for consideration by the Hon'ble Supreme Court were as under:-

> *i) Whether benefit under the OTS Scheme can be prayed as a matter of right?;*
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> *ii) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a writ of mandamus directing the Bank to positively consider the grant of benefit under the OTS Scheme and that too de hors the eligibility criteria mentioned under the OTS Scheme?*

8. The Hon'ble Supreme Court in the above said case held that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. It was held that:-

> "9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs.100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the Bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the Bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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> 11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of

> powers under Article 226 of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the Bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the Bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/Bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

9. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail the statutory remedy/remedies as available to it in accordance with law. We are sanguine that in case, necessary application is moved, the same would be considered and heard in accordance with law preferably before the date of auction.

10. It is clarified that there is no expression of opinion on the merits of the case.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 04, 2023
rts

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