IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 27361 of 2019(O&M)

Date of Decision: December 21 , 2023.

M/s Om Cotton Ginning & Pressing Factory and another

...... PETITIONER (s)

Versus

Oriental Bank of Commerce and others ...... RESPONDENT (s)

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

Present: Mr. Arun Kumar Vasudeva, Advocate
for the petitioners.

Mr. Gaurav Goel, Advocate
for the respondents.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

1. Prayer in this writ is for quashing of notice dated 02.11.2018 and 01.05.2019 under Section 13(2) and notice dated 10.01.2019 under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'SARFAESI' Act) as well as subsequent sale notice dated 05.04.2019 issued by respondent-Bank.

2. It is submitted that petitioner-firm was engaged in the business of purchasing of raw cotton seeds, processing the same and selling it in the open market. Petitioner No.1, it is submitted, is a partnership firm initially having five partners with equal shares. In the year 2017, three of the partners voluntary retired and transferred their share in favour of one Rohtash Kumar. Financial facility to the tune of ₹2.5 Crores against mortage of assets in question was taken

by petitioner-firm from respondent-Bank. However, in the year 2017-18 due to demonetization and implementation of GST Act, petitioner's business was adversely affected. Due to financial indiscipline, its account was declared NPA (Non-Performing Asset) on 31.10.2018.

3. Learned counsel for petitioners submits that notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI' Act) was purported to have been issued 02.11.2018 but the same was never received by petitioner and he only came to know about the same with issuance of notice dated 10.01.2019 under Section 13(4) of SARFAESI Act. Possession notice dated 05.04.2019 was issued and secured assets of petitioners were stated to be put up for e-auction in an illegal manner on 09.05.2019. It is strenuously urged that notice under Section 13(2) of SARFAESI Act was not served upon them, thereby depriving petitioners from their right of filing reply and submissions under Section 3-A of SARFAESI Act. Learned counsel for petitioners submits that in case notice under Section 13(2) of SARFAESI Act was issued on 02.11.2018 then where was the requirement of issuing another notice under Section 13(2) of SARFAESI Act on 01.05.2019. All proceedings under SARFAESI Act against petitioners are alleged to be illegal, arbitrary and in violation of provisions of the statute and applicable laws as well as guidelines of Reserve Bank of India titled as 'Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs)' issued on 17.03.2016. It is, thus, prayed that present writ petition be allowed.

4. Learned counsel for respondents has opposed this writ petition while raising an objection qua entertainability of this writ petition itself in the wake of efficacious alternate remedy being available to petitioners under SARFAESI Act.

Averments on merit are also denied. It is submitted that huge amount of over ₹3,48,00,000/- was outstanding in the CC limit and term loan account of petitioners as on 31.10.2019 and as of now the amount has necessarily increased. In regard to notice dated 01.05.2019 issued under Section 13(2) of SARFAESI Act, learned counsel for respondent-Bank explains that alongwith four properties as are duly mentioned in notice dated 02.11.2018, plant and machinery of the asset was also mortgaged. However, the same did not find mention in earlier notice issued in November 2018. It is due to this reason that notice under Section 13(2) was issued subsequently on 01.05.2019 in respect to plant and machinery. Reference is made to said notice attached as Annexure R4 with the written statement. Learned counsel for respondents submits that sale notice issued pursuant to notice dated 02.11.2018 was only in respect to four properties and not in respect to plant and machinery qua which notice dated 01.05.2019 (Annexure R4) had been issued. Learned counsel for respondents further urged that all these aspects can very well be considered and adjudicated upon by the learned Tribunal which is the appropriate forum provided under the statute. It is, thus, prayed that present writ petition be dismissed.

5. We have heard learned counsel for the parties and have carefully perused the file.

6. Availing of loan facility by petitioners, subsequent financial indiscipline and petitioners' account being declared NPA on 31.10.2018, is a matter of record. At this juncture, it is to be noted that SARFAESI Act is a complete code itself. Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others**, ***2010(8) SCC 110*** held that when a Tribunal is constituted under the Act, it is expected to consider the issues of law and fact(s) involved. Interference in matters under the SARFAESI Act, except under

extraordinary and exceptional circumstances has been frowned upon and deprecated. It was 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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> 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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.
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> 15. The object and reasons behind the Act 54 of 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 of 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."

7. This view has been reiterated consistently by the Hon'ble Supreme Court in subsequent cases including in **Varimadugu Obi Reddy v. B. Sreenivasulu and others**, ***2023(1) R.C.R. (Civil) 34*** and **M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another**, ***2023(2) RCR (Civil) 771***.

8. Insofar as the question of interference by this Court at this stage on account of violation of circular dated 17.03.2016 issued by Reserve Bank of India is concerned, same is squarely covered against petitioners in view of decision dated 18.12.2023 in CWP No.21657 of 2022 titled 'M/s Technico Strips and Tubes Pvt. Ltd. and another v. Deutsche Bank AG and another' and connected matters.

9. In the given factual matrix, we do not find any ground for intervention in this case. Learned counsel for petitioners is unable to point out any exceptional or extra-ordinary circumstance which calls for interference by this Court at this stage in exercise of jurisdiction under Article 226 of Constitution of India for setting aside the proceedings initiated by respondent-Bank under SARFAESI Act. All arguments as have been raised before us are very well within the realm of consideration by the learned Tribunal. There is no pure question of law or jurisdictional issue which has been raised for consideration in this writ petition.

10. At this stage, learned counsel for petitioners submits that interim order in favour of petitioners be directed to continue till final decision by concerned Tribunal where petitioners may file/initiate appropriate proceedings.

11. Keeping in view the fact that this writ petition has remained pending before this Court since long with interim order being granted by Coordinate

Bench on 02.06.2022, period of fifteen working days from the date of receipt of certified copy of order is afforded to petitioners to file appropriate petition/application before the concerned Tribunal alongwith requisite application(s) seeking exclusion of period of delay/for interim relief. It is made clear that this interim order shall not enure beyond the period of fifteen working days in the absence of any order being passed by appropriate Forum/Tribunal.

12. Needless to say, question of grant/continuance of interim order or exclusion of period of delay would be entirely in the realm of consideration of concerned Forum/Tribunal, which would decide the same in accordance with law without being influenced in any manner by any order(s) passed in this writ petition.

13. Writ petition is, accordingly, dismissed with liberty to petitioners to avail the remedy(ies) as may be available to them in accordance with law.

14. It is made clear that there is no expression of opinion on the merits of the controversy.

15. Pending application(s), if any, shall also stand disposed of, accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 21 , 2023.
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No