2023:PHHC:121704-DB

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

CWP-20161-2023
Date of Decision: September 13, 2023

M/s Sahyog International and others ...... Petitioners

Versus

Union of India and others ..... Respondents

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

Present: Mr. Himmat Singh, Advocate for the petitioners.

Mr. Pankaj Gupta, Senior Panel Counsel for UOI.

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LISA GILL, J.

1. Prayer in this petition is for:-

(i) declaration of account(s) of petitioners No. 1 and 2 Non Performing Asset (NPA) on 07.07.2021 being illegal, in violation of notification dated 29.05.2015 by the Government of India and various other RBI circulars and policy of the Bank as detailed in the writ petition, consequently, declaring petitioners' accounts to be standard;

(ii) directing respondents No. 5 and 6 (Punjab National Bank) to refrain from all actions as contemplated against the petitioners including and not limited to taking possession of moveable and immoveable properties of the petitioners and/or selling/auctioning the same, pursuant to notice dated 07.07.2021 under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') notice dated 06.06.2023, notice dated 20.06.2023 under Section

13(4) of SARFAESI Act as well as auction notice dated 24.08.2023 amongst others;

(iii) to direct respondents No. 5 and 6 to constitute a Committee for stressed Micro, Small and Medium Enterprises in terms of various notifications and RBI guidelines as detailed in the writ petition and forward accounts of the petitioners to the designated Committee for restructuring the same after re-classifying the accounts as standard;

(iv) to direct respondents No. 1 to 4 to take strict action against respondents No. 5 and 6 for violation of various RBI circulars as mentioned and notification dated 29.05.2015;

(v) for setting aside valuation reports dated 26.06.2023 and a direction to respondents No. 5 and 6 to carry out fresh valuation and submit report;

(vi) to set aside order dated 02.09.2023 passed by learned DRT-3, Chandigarh whereby petitioners' application for preponement of date of hearing in SA-75-2022 filed by them from 04.11.2023 to any date before 05.09.2023 has been dismissed;

(vii) to direct respondents No. 2 and 3 to comply with judgment of Hon'ble the Supreme Court as mentioned in the writ petition;

(viii) to direct respondents No. 5 and 6 not to take any coercive action pursuant to SARFAESI proceedings initiated by them against petitioners during pendency of this writ petition.

2. Brief facts as pleaded in the writ petition are that petitioner No.1 is a sole proprietorship and is classified as MSME with petitioner No. 2 being its sole proprietor. Petitioner No. 3 – wife of second petitioner is the personal guarantor to a loan availed of by petitioner No.1 on 26.07.2017. Another term loan was taken by the petitioner with property as detailed in the writ petition being mortgaged. It is stated that all instalments were being deposited till February, 2020 but due to outbreak of pandemic COVID-19, there was default on the part of the petitioners and their accounts were

classified NPA on 25.06.2020. Notice under Section 13(2) of SARFAESI Act was issued on 01.09.2020, which was withdrawn and accounts re-classified as standard. It is further stated that petitioners had requested the respondent – Bank for restructuring of their account/s post standardization thereof. Necessary action was not taken and accounts of petitioners No. 1 and 2 were again classified as NPA on 01.07.2021. Notice under Section 13(2) of the SARFAESI Act was issued on 07.07.2021 claiming an amount of ₹2,55,03,240.89 in an illegal manner. Respondent – Bank, it is stated, issued four notices under section 13(4) of SARFAESI Act, all of them dated 20.11.2021.

3. CWP-1521-2022 was filed by petitioner No.1 challenging the said proceedings. Notice of motion was issued in the said writ petition on 31.01.2022. It was directed that subject to the petitioner depositing 10% of the dues owed to the respondent – Bank on or before 10.02.2022 and further 40% of the dues by 01.03.2022, coercive action against the petitioner would be stayed and that in default of compliance, order would stand vacated.

4. Amount in question was not deposited and petitioner No. 1 filed a miscellaneous application in the said writ petition for extension of time up to six months to deposit the amount in terms of order dated 31.01.2022. Application was dismissed and writ petition was disposed of on 11.03.2022 with liberty to the petitioner to avail its remedy before learned Debt Recovery Tribunal (DRT) under Section 17 of SARFAESI Act.

5. E-auction/sale notice dated 29.04.2022 was issued with valuation as are mentioned in para 10 of the writ petition. Petitioners filed SA-75-2022 in May, 2022 challenging proceedings under the SARFAESI Act while raising various pleas including violation of various guidelines by

the RBI and Gazette notifications. Notice was issued in the SA filed by petitioners. Advocate of the petitioners, it is submitted, gave a vague update of status of the case and was not pursuing the matter and in the interregnum notice dated 06.06.2023, pursuant to order dated 13.09.2022 passed under Section 14 of SARFAESI Act by the District Magistrate, Ludhiana was issued. Petitioners, it is stated, engaged another counsel and filed IA-564-2023 on 28.06.2023 seeking ad-interim relief for restraining the respondent – Bank from taking any coercive action against the petitioners with respect to their house and school during pendency of their SA. An application seeking preponement of hearing of the matter was filed.

6. Application for preponement was allowed and IA-564-2023 was ultimately dismissed on 17.08.2023 (Annexure P32) after hearing learned counsel for the parties and on consideration of the matter. Notice dated 10.08.2023 (Annexure P33) was affixed by the respondent – Bank for taking physical possession of the house on 05.09.2023. It is submitted that petitioners did not challenge order dated 17.08.2023 dismissing their application seeking interim relief as they did not have the necessary wherewithal for the statutory pre-deposit, therefore, application seeking preponement of hearing of the main case (SA) from 04.11.2023 a to date before 05.09.2023 was filed. Said application was dismissed by learned DRT-3, Chandigarh vide order dated 02.09.2023 while noting that application seeking stay of dispossession and taking coercive action against petitioners was dismissed on merits on 17.08.2023 after hearing both the parties. There is also an observation that there is non-availability of Stenographers and efficient Typists in the Tribunal.

7. In the meanwhile, e-auction/sale notice dated 25.08.2023, it is submitted, has also been issued in complete violation of provisions of law and on the basis of valuation report, which is absolutely illegal, arbitrary on the face of it because valuation of the petitioners' property has been decreased without any justification. Value of the property in 2019 was assessed to be higher.

8. In the said factual matrix, present writ petition has been filed.

9. When faced with the factum of petitioners earlier writ petition i.e. CWP-1521-2022 being disposed of with liberty to petitioner No. 1 to approach learned DRT besides pendency of SA before learned DRT as well as the fact that impugned order passed by learned DRT is an appealable order, learned counsel for the petitioners vehemently argued that pendency of the dispute before learned DRT is irrelevant in the given factual matrix, for the reason that valuation on the basis of which property is sought to be auctioned, cannot be a subject matter of challenge before learned DRT. It is also submitted that fresh cause of action has arisen to the petitioners and that learned DRT has dismissed the application filed by the petitioners in an absolutely unjustified and perverse manner without application of mind merely on the ground of non-availability of Stenographers and efficient Typists in the Tribunal. Petitioners, it is submitted, cannot be put to prejudice because of necessary staff not being available with the Tribunal. It is in this scenario that petitioners also seek a direction to the Union of India to provide necessary infrastructure. Moreover, petitioners it is asserted, do not have necessary wherewithal to make statutory pre-deposit while availing the remedy of appeal before learned DRAT in terms of Section 18 of SARFAESI Act, therefore, present writ petition should be allowed.

10. We have heard learned counsel and have gone through the file.

11. It is a matter of record that CWP-1521-2022 filed by petitioner No. 1 challenging SARFAESI proceedings against it, was disposed of on 11.03.2022 while granting liberty to the petitioner to avail its remedy under Section 17 of SARFAESI Act. Petitioners subsequently did file SA-75-2022 which is pending adjudication. Application filed by the petitioners seeking interim relief was admittedly dismissed on 17.08.2023. This order dated 17.08.2023 has not been challenged by the petitioners before the learned DRAT. Application seeking preponement of hearing of SA from 04.11.2023 was dismissed by learned DRT on 25.08.2023. Said order is also admittedly an appealable one.

12. We do not find any merit in the argument raised by learned counsel for the petitioners that present writ petition should be entertained for setting aside order dated 25.08.2023 notwithstanding the remedy of appeal available to the petitioners merely on the ground that it is not possible for the petitioners to deposit statutory amount at the time of filing of appeal. Apart from the fact that such an argument is not substantiated in any manner, the same cannot be countenanced. It is a settled position of law that SARFAESI Act is a complete code in itself. Once specific remedy is provided thereunder, interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India is not called for. It is not permissible for the petitioners to by-pass the remedy of appeal provided under the SARFAESI Act on the ground as urged before us. 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,** wherein it has been held as under:-

"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.

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25. **In Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another (2010) 4 SCC 772**, the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed:

"31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction.

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13. The same has been affirmed and reiterated by Hon'ble the Supreme Court in its later judgments including **Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34** wherein after referring to its previous judgment in **Satyawati Tandon** (supra), it was held as under :-

"34. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the Act 2002."

14. In the case of **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**, it was held that:-

"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.

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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."

15. We also do not find any merit in the argument raised by learned counsel for the petitioners that valuation of property on the basis of which sale/auction notice has been issued, cannot be challenged before learned DRT. This argument is not tenable, hence rejected. Learned DRT is always at liberty and has jurisdiction to examine such ground/issue which would render proceedings under the SARFAESI Act to be invalid. Therefore, in the given circumstances where CWP-1521-2022 filed by petitioner No. 1 was disposed of and proceedings before the learned DRT are pending and order dated 17.08.2023 not challenged, we do not find any ground to interfere in this writ petition.

16. Last but not the least, we take note of the argument raised by learned counsel for the petitioners that its application seeking preponement has been dismissed on the sole ground of non-availability of experienced Typists and Stenographers. Apart from the fact that due notice has been taken by learned DRT of the relevant facts of the case, reference to paucity of staff by learned DRT is clearly an incidental mention. By no stretch of

imagination can the same by itself be a ground for interference in this writ petition. Learned DRAT under Section 17(A) of Recovery of Debts and Bankruptcy Act is otherwise entitled to look into this matter as well. However, at this stage, we do take note of fact that the issue of non-availability of staff with DRT's has been flagged in CWP-9733-2023 as well. The said writ petition is pending adjudication. Respondents No. 1 to 3 are directed to look into the matter and take necessary steps, as may be required.

17. Keeping in view the facts and circumstances as detailed above, this writ petition is, accordingly, dismissed with the above direction to respondents No. 1 to 3, besides liberty to the petitioners to avail remedy/remedies as available to them in accordance with law.

18. It is clarified that there is no expression of opinion on the merits of the case and observations therein are limited for purpose of adjudication of this writ petition only.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 13, 2023
rts

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