119 2023:PHHC:149199-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21715 of 2023
Date of decision : November 23, 2023

Narinder Kumar

..... Petitioner

Versus

State Bank of India and others

..... Respondents

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

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Present :-Mr. G. S. Jagpal, Advocate
for the petitioner.

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LISA GILL, J. (ORAL)

1. Prayer in this petition is for quashing possession notice dated 28.08.2023 (Annexure P-11) issued under Section 13 (4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act).

2. It is submitted that possession of property in question has been taken forcibly in violation of provisions of law as well as order dated 18.07.2022 passed by learned Civil Judge, (Junior Division), Khanna. Petitioner along with his real brother Raman Sharma, their father-Kapoor Chand and respondent No.3-Parveen Kumar were joint in mess during life time of Kapoor Chand. At the asking of petitioner's real brother Raman Sharma petitioner's father separated Raman Sharma from his estate while giving his share whereas remaining share remained joint between petitioner, respondent No.3 and petitioner's father. Learned counsel submits that loan in question was taken by respondent No.3 namely Parveen Kumar who is the adopted son of petitioner's father.

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2023.12.15 10:59
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3. Learned counsel for petitioner has referred to death of the petitioner's father on 28.11.2016 leaving behind Class-I legal heirs as mentioned in paragraph 3 of the petition. It is claimed that respondent No.3 in a fraudulent manner has managed a transfer deed from petitioner's father in his favour. Civil suit in this regard is pending and interim order under Order 39 Rule 1 and 2 CPC was granted in favour of the petitioner on 18.07.2022 by learned Civil Judge (Jr. Division), Khanna. Petitioner has filed suit for declaration to the effect that transfer deed dated 10.03.2007 executed by petitioner's father in favour of respondent No.3 is illegal null and void. An application for cancellation of mutuation of the property in question was also submitted by the petitioner.

4. Petitioner, it is stated, came to know about loan facility availed of by respondent No.3 in June, 2022 when some bank officials visited the house with regard to auction of property. Representation dated 07.07.2022 was submitted by petitioner before the respondent-Bank stating therein entire facts including the factum of petitioner being in possession of first floor of the house along with his family. Legal notice dated 16.07.2022 was also submitted. However, respondent-Bank has continued with the proceedings under SARFAESI Act initiated against the borrower on account of financial indiscipline. It is submitted that order under Section 14 of SARFAESI Act was passed on 19.07.2022 pursuant to which notice dated 03.08.2023 (Annexure P-9) was issued. Possesion notice dated 28.08.2023 was also issued.

5. Learned counsel for the petitioner vehemently argues that it is in a fraudulent manner that respondent No.3 has availed of the loan facility and mortgaged the property to which he has no title and in regard to which a civil

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litigation is pending with interim order being granted in favour of the petitioner who was in possession of the first floor of the property. Thus, the writ petition should be allowed.

6. Heard learned counsel for the parties and perused the file with their assistance.

7. In the given factual matrix, intervention by this Court in exercise of jurisdiction under Article 226 of Constitution of India is not made out. It is a settled position of law that SARFAESI Act is a complete code in itself wherein remedy(ies) for any grievance on account of proceedings undertaken therein are specifically provided. Intervention by this Court under Article 226 of the Constitution of India has to be minimal and restricted to extraordinary and exceptional circumstances. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance, which calls for interference. Gainful reference can be made to judgments of Hon'ble the 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** and **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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> 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

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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 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 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."

8. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail remedy/remedies available to him in accordance with law.

9. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 23, 2023
archana **Whether speaking/reasoned** **Yes/No**
Whether Reportable : **Yes/No**

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