IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-25692-2022 (O&M)
Date of decision:02.02.2023.

M/s Durga Bhatta Co. & another ... Petitioners

Vs.

Canara Bank & others ... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE SANJIV BERRY.

Present: Mr. S.K. Jindal, Advocate for the petitioners.

Ms. Rahish Pahwa, Advocate for respondents No.1 & 2.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

As per pleadings on record, petitioner/firm had availed a term loan of Rs.100 lakhs and working capital loan of Rs.20 lakhs from the respondent/Canara Bank in the year 2020. At that stage, the petitioner/firm mortgaged/hypothecated its stock, plant and machinery towards primary security as also mortgaged the vacant plot admeasuring 400 square yards as collateral security. In the year 2021, petitioner availed a fresh working capital term loan of Rs.20 lakhs under the Guaranteed Emergency Credit Line Scheme vide sanction letter dated 27.12.2021 (Annexure P-2).

On account of default in servicing the debt amount, petitioner No.1 was declared Non Performing Asset (NPA) on 09.06.2022 and a notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, was also served. Thereafter, a sale notice was issued on 23.08.2022 for conducting e-auction as regards vacant mortgaged plot on 26.09.2022. However, such auction did not fructify and failed.

Thus far there is no dispute *inter se* the counsel for the parties as regards the factual premise afore noticed.

Instant writ petition was filed seeking quashing of a subsequent sale notice dated 12.10.2022 (Annexure P-5) as also the e-auction that was conducted on 31.10.2022.

The precise ground of challenge was that the sale notice dated 12.10.2022 was dispatched by the respondent/Bank on 19.10.2022 and was received by the petitioners on 22.10.2022 and thereby since there was no clear 15 days gap between the date of service of notice of sale and the date of sale, there has been a clear violation of Rule 9 of the Security Interest (Enforcement) Rules, 2002.

Instant petition had come up for preliminary hearing on 11.11.2022 and while issuing notice of motion, interim directions were issued that the sale certificate shall not be issued to the successful bidder by the Bank till the next date of hearing.

Ms. Rahish Pahwa, Advocate, who has entered appearance on behalf of the respondent/Bank upon instructions from Mr. Kunal Vashisht, Authorized Officer, Canara Bank, Panipat, concedes that the mandatory requirement of 15 days clear gap between the date of service of notice of sale and the date of sale had been violated. She, however, informs the Court that even the earnest money that had been deposited by the bidder in the auction conducted on 31.10.2022 has been returned and now the bank has taken a decision in principal to withdraw the proceedings emanating from the impugned sale notice dated 12.10.2022 (Annexure P-5) and would take further recourse in accordance with law.

In the light of such categoric stand taken on behalf of the respondent/creditor/Bank, the sale notice dated 12.10.2022 (Annexure P-5) as also the e-auction proceedings conducted on 31.10.2022 do not survive.

Ordered accordingly.

Writ petition, accordingly, is disposed of as having been rendered infructuous.

It is, however, made clear that it would be open for the respondent/creditor/Bank to proceed further in the matter but upon strict compliance of the provisions of the SARFAESI Act as also Rules framed thereunder.

(TEJINDER SINGH DHINDSA)
JUDGE

(SANJIV BERRY)
JUDGE

02.02.2023
harjeet

(i) Whether speaking/reasoned? Yes/No

(ii) Whether reportable? Yes/No