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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22647-2023
Date of Decision: October 09, 2023

MS JARNAIL SINGH CONTRACTOR AND ANR ...... Petitioners

Versus

PUNJAB NATIONAL BANK AND OTHERS ..... Respondents

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

Present: Mr. Vivek Goyal, Advocate for the petitioners.

Mr. Sandeep Jain, Addl.AG, Punjab.

Mr. Tarlok, Advocate for
Mr. Gaurav Goel, Advocate for the respondent – Bank.

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LISA GILL, J.

1. Petitioners being aggrieved of sale notice dated 11.09.2023 (Annexure P8) seek quashing thereof. It is further prayed that communication dated 24.07.2023 (Annexure P6) issued by the respondent – Bank stating that One Time Settlement (OTS) sanctioned on 26.12.2022 stands failed, is absolutely illegal and arbitrary, keeping in view the fact that petitioners had been regularly seeking extension for deposit of the remaining OTS amount.

2. Learned counsel for the petitioners submits that loan facility (Overdraft and Term Loan) was availed of by the petitioners from the

respondent – Bank, though the date etc. on which this facility was availed of is not available. Property as described in para 2 of the writ petition was mortgaged. It is submitted that due to the petitioners not receiving payment from some of the government entities including Bharat Sanchar Nigam Limited (BSNL), there was default in deposit of amount due towards respondent – Bank. Petitioners' account was declared NPA and notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') was issued on 25.03.2021 and notice under Section 13(4) of SARFAESI Act on 27.07.2023. However, OTS was arrived at between the petitioners and respondent – Bank for a sum of Rs.33,51,522/-. Same was sanctioned on 26.12.2022 by the respondent - Bank. Petitioner deposited sum of Rs.12,03,000/-, however, rest of the amount could not be deposited within the stipulated period of three months. Bank guarantee for a sum of Rs.9.38 lakhs, it is stated, is already with the respondent – Bank. It is submitted that petitioners sought extension for deposit of the remaining amount in terms of OTS itself, which provides that for any OTS amount paid beyond three months, simple interest at the rate of MCLR for one year (as applicable on the date of sanction) plus 1% on reducing balance basis would be charged. It is to be noted at this stage that no detail about petitioner ever seeking extension is on record neither is there any document to indicate the same.

3. Ultimately, sale notice dated 11.09.2023 has been issued by the respondent – Bank. It is contended by learned counsel for the petitioner that said sale notice is absolutely illegal and arbitrary. First and foremost, property valued by the bank itself at Rs.1.80 crore is sought to be auctioned for Rs.98 lakhs only. Moreover, date of auction as reflected in notice dated

11.09.2023 is 18.10.2023 whereas in its publication in Hindustan Times and Jag Bani, the date of auction is mentioned to be 19.10.2023. Furthermore, respondent – Bank should accept remaining amount as per OTS with the prescribed interest.

4. Having heard learned counsel for the petitioners, we do not find any ground whatsoever to interfere in this writ petition, keeping in view the fact that efficacious remedy is available to the petitioners for redressal of their grievance(s) qua proceedings initiated under the SARFAESI Act. All the pleas as have been raised before us can very well be raised before learned DRT which is well-equipped to deal with the said contentions and pass appropriate order after consideration thereof. No exceptional or extra-ordinary circumstance has been pointed out by learned counsel for the petitioner, which calls for interference in exercise of jurisdiction under Article 226 of Constitution of India. It has been held by Hon'ble the Supreme Court in a catena of cases that interference in such like matters should be minimum. Gainful reference can be made to the 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 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."

5. There is also no merit in the argument that a direction should be issued for extension of period for deposit of the amount as per OTS. Stipulation regarding levy of interest in sanction dated 26.12.2022 is clearly in respect to extension as may have been granted as per Bank's guidelines.

The same does not vest the petitioners with any right to deposit of the settlement amount beyond the stipulated period albeit with the said interest. Hon'ble Supreme Court in the case of **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540**, has held that a borrower having no vested right to an OTS, cannot claim extension of time period for deposit of amount thereunder.

6. No other argument was addressed.

7. Keeping in view the facts and circumstances as above, writ petition is dismissed with liberty to the petitioners to avail statutory remedy/remedies available to them in accordance with law.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 09, 2023
Rts

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