

CWP-22992-2023

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2023:PHHC:132730-DB

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

135

CWP-22992-2023

Date of Decision: 11.10.2023

NITIN SHARMA

... Petitioner

VERSUS

STATE BANK OF INDIA AND ANOTHER

....Respondents

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

Present: Mohd. Jameel, Advocate
for the petitioner.

Mr. Rajiv Joshi, Advocate
for the respondent.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside sale notice dated 18.09.2023 (Annexure P-7) issued by the respondent-Bank for sale of the secured asset.

2. It is submitted that petitioner's mother had availed of credit facility from the respondent-Bank. Properties as detailed in para 4 of the writ petition were mortgaged. Due to financial indiscipline, account of petitioner's mother was declared Non-Performing Asset (NPA) on 23.08.2011. Proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 were initiated in the year 2014. Symbolic possession of the property was taken on 19.03.2015. One Time Settlement (OTS) was sanctioned in favour of petitioner's mother on 30.11.2020 (Annexure P-

1). Settled amount of Rs.1,59,29,826.44/- was to be deposited in five installments till 30.07.2021. However, said amount could not be deposited and petitioner's mother unfortunately passed away due to Covid-19 on 02.03.2021. Petitioner, it is submitted was not in India and was unable to travel due to restrictions in place on account of outbreak of the Pandemic Covid-19. It is submitted that petitioner thereafter approached the respondent-Bank expressing his willingness to pay the outstanding debt. When no reply was received, petitioner approached the High Court of Himachal Pradesh at Shimla by way of CWP-4314 of 2021 seeking quashing of the auction proceedings as well as an opportunity to deposit the balance debt amount. However, petitioner could not deposit the amount within the stipulated time and CWP-4414-2021 was dismissed on 18.11.2021. SLP(C)-10853-2022 filed by the petitioner was dismissed on 24.06.2022 (Annexure P-4).

3. Petitioner, in the meanwhile, filed CWP-13722-2022 before this High Court challenging the auction proceedings. Notice of motion was issued therein on 12.07.2022. During pendency of the said writ petition, compromise/settlement was arrived at between the petitioner and respondent-Bank. As per sanction letter dated 29.12.2022, petitioner was to deposit a sum of Rs.1 crore 15 lakhs with the upfront amount of Rs.16.73 lakhs with the total amount being deposited within six months from the date of sanction. Moreover, only a sum of Rs.22.49 lakhs was deposited by the petitioner. Thereafter, said OTS was cancelled on 03.07.2023 due to non-adherence to the terms and conditions of OTS sanctioned on 29.12.2022. Subsequently, impugned sale notice dated 18.09.2023 has been issued by the respondent-Bank.

4. Learned counsel for the petitioner submits that petitioner restricts the prayer in this writ petition for some more time being afforded to the petitioner to deposit the OTS amount in terms of sanction dated 29.12.2022. It is submitted that petitioner is ready and willing to deposit the amount due in terms of said settlement along with interest but he requires another four months to do the needful.

5. We have heard learned counsel for the parties but do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of the Constitution of India. Petitioner had admittedly approached the High Court of Himachal Pradesh on earlier occasion. The said writ petition had been dismissed with the same being upheld by the Hon'ble Supreme Court on 24.06.2022. Relevant portion of order dated 24.06.2022 passed by Hon'ble Supreme Court in SLP (C)-10853-2022, reads as under:-

“Taking note of the reasoning given by the petitioner, the High Court observed that the Writ Petition was filed by the petitioner through Power of Attorney viz. Sham Lal and even otherwise the presence of neither the petitioner nor his father was required, rather in terms of the undertaking as furnished by the petitioner, he was only to produce a demand draft of Rs.1.25 crores in favour of the Bank by 10.11.2021. The reason assigned by him was therefore held as unpalatable. We find no reason to disagree with the said conclusion. It is to be noted that the said explanation given by the petitioner was declined and the impugned order was passed on 18.11.2021. Still the petitioner has chosen to file the captioned Special Leave Petition only on 08.06.2022. This again shows lack of bonafides.”

6. At this stage, learned counsel for the petitioner urged that

petitioner merely seeks more time to deposit the amount in terms of the 2nd OTS which has been afforded by the respondent Bank.

7. We do not find any ground whatsoever to interfere for issuance of such a direction and in fact even to entertain this writ petition before this High Court in the given facts and circumstances despite the vehement arguments of learned counsel for the petitioner that one of the properties now involved is at Dugri, Tehsil and District Ludhiana. The said property is duly found mentioned in CWP-4314-2021, filed before High Court of Himachal Pradesh at Shimla. We had the occasion to peruse the same as copy thereof was produced before us during the course of hearing today. In any case, it is a settled position that there can be no direction to the bank for extension of the period for deposit of the amount in terms of OTS. Gainful reference in this regard, can be made to the judgment of Hon'ble the Supreme Court in State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2022 AIR (SC) 5517.

8. Keeping in view the facts and circumstances of this case, writ petition is dismissed being devoid of any merits while leaving the petitioner at liberty to avail statutory remedy(ies) available to him in accordance with law. We refrain from imposing cost upon the petitioner while still taking a lenient view.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

11.10.2023
Rimpal

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