IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:066860-DB

(211) **CWP-29159-2022**

M/s VSW International and another

……Petitioner(s)

Versus

Authorized Officer, State Bank of India and another

……Respondent(s)

(2) **CWP-761-2023**

M/s VSW International and another

……Petitioner(s)

Versus

Authorized Officer, State Bank of India and others

……Respondent(s)

Decided on :09.05.2023

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH

Present: Ms. Parmeet Kaur, Advocate for the petitioner.

Mr. Rakshit Gupta, Advocate for the respondents.

*****

G.S. Sandhawalia, J. (Oral)

Present order shall dispose of two writ petitions i.e. CWP No.29159 of 2022 and CWP No.761 of 2023, since common question of fact and law are involved. With the consent of counsels for the parties, hearing of the second petition i.e. CWP No.761 of 2023 is preponed from 26.07.2023 to today itself.

2. The first writ petition i.e. CWP No.29159 of 2022 has been filed under Articles 226/227 of the Constitution of India for seeking directions against the respondent to settle the loan account by way of OTS proposal dated 07.04.2022 (Annexure P-4). Resultantly, challenge has also been raised to the possession notice dated 27.03.2017 (Annexure P-3) issued under Section 13 (4) of the Securitization and Re-construction of Financial Assets

and Enforcement of Security Interest Act, 2002, by which physical possession had also been taken on 05.11.2022 being arbitrary.

3. A perusal of the possession notice (Annexure P-3) would go on to show that a sum of Rs.32,05,626.55 was due as per demand notice dated 23.01.2017 (Annexure P-2). The petitioner did not get any stay in the present petition and directions were issued to consider the OTS within four weeks, vide order dated 20.12.2022. It is also pertinent to notice that OA No.953 of 2019 filed for recovery of Rs.29,99802/- alongwith interest was also decreed in favour of the Bank by the Debts Recovery Tribunal on 29.08.2019. Copy of said order has been placed on record in the second petition i.e. CWP No.761 of 2023.

4. During the course of hearing we were informed that in the said connected petition bearing CWP No.761 of 2023 interim order dated 17.01.2023 was passed, which reads as under:-

> "Pursuant to the order dated 13.01.2023 passed by this Court, counsel has furnished a demand draft for a sum of Rs.10,00,000/- in favour of the respondent-State Bank of India. Such draft has been handed over to Mr. Rakesh Gupta, Advocate appearing for the bank.
>
> Further undertaking of the counsel representing the petitioners is recorded to the effect that a sum of Rs.20,00,000/- would be deposited on or before 01.03.2023.
>
> Notice of motion returnable for 01.05.2023.
>
> Dispossession of the mortgaged property which is in the nature of shop-cum-residence shall remain stayed in the meanwhile.
>
> The E-auction proceedings pertaining to the mortgaged property may proceed in the meanwhile but the same be not finalized without leave of the Court.
>
> It is, however, made clear that in case the petitioners default in making the deposit of Rs.20,00,000/- within the stipulated time frame, the interim directions passed today, shall stand automatically vacated."

5. Apparently, Rs.20 lakhs has not been deposited, as per the said order.

6. In the reply filed in the second petition, the stand taken by the respondent-Bank is that as per the order of the Tribunal and the recovery certificate (Annexure R-2), Rs.42,86,789.13 were payable and the petitioners had been asked to deposit the same. It has further been averred that the OTS as such was for Rs.25 lakhs only, whereas now more than Rs.60 lakhs is due and the valuation report of the property which was being put to sale is more than Rs.45 lakhs, apart from other personal guarantees of the borrower and the guarantors.

7. Keeping in view the cumulative background and the facts and the law laid down by the Apex Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others, 2022 (2) PLR 408,** we are of the considered opinion that the stand of the respondent-Bank to take financial hit to the extent the petitioner is asking for cannot as such be acted upon by accepting the writ of mandamus. It is for the respondent-Bank to take a call and since the offer does not seem to be that fair, we do not wish to entertain the present writ petitions by issuing writ of mandamus to enforce the OTS.

8. The Apex Court in **Civil Appeal Nos.3152-3153 of 2023 'G. Vikram Kumar Vs. State Bank of Hyderabad & others'** decided on 02.05.2023 held that where e-auction takes place under the 2002 Act, then it is not for the Writ Court to take on the challenge to the said procedure which has been followed and the Tribunal would examine whether the requirements under the procedure prescribed had been complied with by the secured creditor or not. Relevant portion of the said judgment reads as under:-

> "8. At the outset, it is required to be noted that what was challenged before the High Court by respondent no.1 in a writ petition under Article 226 of the Constitution of India was the e-

auction notice which was pursuant to the action initiated by the Bank in exercise of powers under Section 13(4) of the SARFAESI Act. At this stage it is required to be noted that e-auction was held/conducted on 31.08.2016 in which the appellant participated and was declared as a successful bidder and he made a payment of 25% of the bid amount on the very day i.e., on 31.08.2016.However, thereafter the respondent no.1 filed the writ petition before the High Court challenging the e-auction notice dated 28.07.2016 on 14.09.2016 that is after conducting of the auction. It is required to be noted that against any steps taken by the Bank under Section 13(4) of the SARFAESI Act the aggrieved party has a remedy under the SARFAESI Act by way of appeal under Section 17 of the SARFAESI Act to approach the DRT. Therefore, in view of the availability of the alternative statutory remedy available by way of proceedings/appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India in which the e-auction notice was under challenge. Therefore, the High Court has committed a very serious error in entertaining the writ petition under Article 226 of the Constitution of India challenging the e-auction notice issued by the Bank in exercise of power under Section 13(4) of the SARFAESI Act."

9. Resultantly, there is no merit in the present writ petitions and same are dismissed.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
JUDGE

09.05.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No