IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-6572-CWP-2023 IN/AND
CWP-28862-2022 (O&M)
DATE OF DECISION: 18.04.2023

M/S VISHAL JEWELLERS PVT. LTD. AND ANOTHER
......PETITIONERS

Vs.
RESERVE BANK OF INDIA AND OTHERS
.........RESPONDENTS

CM-6584-CWP-2023 IN/AND
CWP-20782-2021 (O&M)

M/S VISHAL JEWELLERS LTD. AND OTHERS
...PETITIONERS

VS.
HERO FINCORP LTD. AND ANOTHER
..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. C.S. Pasricha, Advocate,
for the petitioners (in CWP-28862-2022).

None for the petitioners (in CWP-20782-2021).

Mr. Jatin Bansal, Advocate,
for respondent No. 1 (in CWP-20782-2021) and
for respondent No. 2 (in CWP-28862-2022).

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G.S.SANDHAWALIA, J. (ORAL)

1. The present writ petitions filed by the petitioners are liable to be dismissed on the ground of the concealment of the facts. It is not disputed that on an earlier occasion the petitioner M/s Vishal Jewellers Pvt. Ltd. along with four others who are the family members of the Ranjit

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Kapoor (the Director), filed CWP-20782-2021 for restructuring of the loan account as there were outstanding of ₹8,09,10,248/-. Challenge was also raised of the notice under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), dated 30.09.2021 (Annexure P-25 with CWP-20782-2021).

2. Notice of motion was issued on 11.10.2021 (in CWP-20782-2021) by noting the following contentions:-

> *"Inter alia submits that vide notice dated 22.06.2021 (Annexure P-23), the respondent recalled the financial facility which was granted to the petitioner and held it liable to pay a sum of Rs.8,01,25,981.97/- along with applicable interest and other charges. Counsel submits that the mortgaged property leased was part of a Mall in Patiala and it had been leased out to Reliance Trends Retail. The payment was being made from the rental/leased amount. On account of Covid-19 pandemic, the Mall had been shut down and therefore, the amount not forthcoming with. The lease has now been terminated and petitioner is in the process of setting up a new business.*
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> *It has further been pointed out from notice dated 23.07.2021 (Annexure P-24) that the overdue EMIs regarding the two loans are Rs.21,61,900/- and Rs.5,27,860/- only. Counsel submits that symbolic possession has been taken under Section 13(4) read with Rule 8 on 30.09.2021 (Annexure P-25). Reference is made to the payments made as per the Ledger Account (Annexure P-26) that almost a sum of Rs.5 Lakh was paid in July, 2021 and a sum of Rs.20 Lakh has been*

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paid between 01.04.2021 to 31.07.2021. It is submitted that the restructuring is thus sought for in view of the peculiar facts and circumstances.

Notice of motion for 16.11.2021."

3. Thereafter, the 2nd writ petition bearing No. CWP-28862-2022 had been filed wherein categorical averment was made in paragraph 25 of the petition that no such similar petition has been filed by the petitioner before this Court or the Hon'ble Apex Court.

4. The challenge in the second writ petition was for rehabilitation of the loan account on account of being medium and small enterprise (MSME) as per the circulars of the Reserve Bank of India and also from restraining the Bank financial institution from taking over the possession, in view of the notice dated 02.12.2022 (Annexure P-8) which is intimation of the possession proceedings in view of the order passed by the Additional Deputy Commissioner, Patiala under Section 14 of the Act. Apparently, even the possession notice dated 30.09.2021 was earlier subject matter of challenge in the first writ petition was also appended as Annexure P-7 and which is again also subject matter of challenge.

5. The co-ordinate Bench then dealing with the said matter accepting the statement made on affidavit granted the benefit on 15.12.2022 by noting the following contentions:-

"Notice of motion for 27.02.2023.

Counsel for the petitioners inter alia contends that the loan account of the petitioners has been declared as NPA on 06.06.2021 and such action has been done without referring the case of the

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petitioners, which is an MSME, to respondent No.3, which is a committee constituted under RBI circular dt.17.03.2016, for framing of a corrective action plan before such declaration of the account as an NPA.

Prima facie we find force in the said contention.

Therefore, till the next date of hearing, petitioners shall not be dispossessed from the secured asset by the respondents."

6. It is pertinent to notice that the affidavit of Hemant Kapoor son of Ranjit Singh has been filed in the second round of litigation, whereas in the earlier writ petition the affidavit was of Vishal Kapoor son of Ranjit Kapoor.

7. In such circumstances, we feel that there is an effort as such to mislead the Court. The petitioners have been successful to get an interim order without disclosing the fact that the earlier writ petition was pending and recovery of huge outstanding as noticed earlier of over ₹8,00,00,000/- has been successfully delayed.

8. It is a settled principle of law that once there is concealment of facts then the Writ Court will not go into the issues on merits. In this regard, reliance can be placed upon the judgment of the Apex Court in **M/s Prestige Lights Ltd. vs. State Bank of India** 2007 (4) RCR (Civil) 46. The relevant paragraph reads as under"-

"34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is

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invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondentBank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

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> *36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court.*
>
> *37. The appeal, therefore, deserves to be dismissed and is accordingly dismissed with costs."*

8-A Even otherwise the petitioners had an alternate remedy of challenging the Section 13 (4) notice before the Tribunal under Section 17 of the Act and therefore should have sought the relief therein.

9. Keeping in view the observations made hereinabove, both these petitions are dismissed.

10 Pending miscellaneous application (s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

April 18, 2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No

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