IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

216 **CWP-29772-2022 (O&M)**
Date of Decision: 06.11.2023

M/S SETIA FABRICATORS AND ANR.

... Petitioners

VERSUS

AUTHORIZED OFFICER, PUNJAB NATIONAL BANK

....Respondent

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

Present: Mr. Parunjeet Singh, Advocate
for the petitioners.

Mr. Himanshu Sharma, Advocate
for respondent No.1.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing notice dated 19.10.2018 (Annexure P-1) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act); notice dated 06.02.2019 (Annexure P-2) under Section 13(4) of SARFAESI Act, as well as order dated 16.05.2019 and notice dated 31.10.2022 (Annexure P-5 and P-10 respectively) under Section 14 and 14(1-A) of SARFAESI Act.

2. Petitioners, it is submitted had availed of loan facility from respondent-Bank in 2018. Due to financial indiscipline account of petitioners was declared Non Performing Asset (NPA) on 12.10.2018.

Proceedings under the SARFAESI Act were initiated with issuance of notice under Section 13(2) of SARFAESI Act on 19.10.2018 (Annexure P-1) and under Section 13(4) of SARFAESI Act on 06.02.2019 (Annexure P-2). It is submitted that petitioners in consonance with RBI Master Circular deposited a sum of Rs.6,50,000/- at the asking of respondent-Bank to reduce the limit available leading to reduction of the amount. It is also submitted that in an illegal manner order dated 16.05.2019 was passed under Section 14 of SARFAESI Act by Additional District Magistrate, Ludhiana with the observation that no substantial repayment had been made by petitioners in spite of service whereas petitioners it is submitted had deposited various amounts in the loan/OD account. It is further submitted that petitioners had managed to bring the outstanding amount below the drawing limit as on 01.01.2020 but necessary action was not taken by respondent-bank and petitioners surprisingly received intimation letter dated 16.01.2020 for rectification of OD limit wherein date of declaration of petitioners' account as NPA is peculiarly mentioned as 06.04.2019. As on said date petitioners' account is alleged to be below the sanctioned limit as is clear from para 2.2 of Master Circular-Prudential Norms on Income Recognition, Asset classification and provisioning pertaining to advances. Petitioners' account, it is alleged could not be declared NPA since it did not remain out of order for 90 days.

3. Respondent-bank, it is submitted, in an illegal manner tried to auction mortgaged property pursuant to auction notice(s) dated 06.05.2022, 27.06.2022 and 22.08.2022 which were allegedly issued in violation of Rule 9(1) of the Security Interest (enforcement) Rules 2002.

However, auctions were not successful as no bids were received pursuant to above said sale notice(s). Learned counsel for petitioners submits that petitioners had always been ready and willing to deposit the amount due and regularize its account but respondent-bank is not coming forward in an absolutely illegal and arbitrary manner. It is submitted that in the given facts and circumstances, petitioners have no other efficacious alternate remedy, therefore, present writ petition should be allowed.

4. Learned counsel for respondent-bank while raising preliminary objection about entertainability of this writ petition itself with petitioners having efficacious remedy provided under the SARFAESI Act submits that petitioners have not revealed all material facts. It is incorrectly stated in the writ petition that OD facility was availed of by petitioners in the year 2018. In fact OD facility against immovable property was sanctioned in favour of petitioners on 16.12.2017 on reducing Drawing Power basis, repayable in 120 monthly installments along with interest to be served on monthly basis. Sanctioned letter dated 16.12.2017 is annexed as Annexure R-1 with the written statement filed on behalf of the bank.

5. It is submitted that keeping in view nature of facility afforded to petitioners, it was incumbent upon it to deposit not just interest component but the principle component as well. Sum total of principle and interest was not deposited by petitioners therefore, account remained out of order. Details of amount due on various dates is narrated in the written statement. It is submitted that as petitioners' account remained out of order it did not fall within the ambit of clause

4.2.5 of the master circular for consideration for upgradation. Entire action taken by respondent bank under SARFAESI Act it is contended is in strict consonance with provisions thereof. Dismissal of the writ petition is sought.

6. Heard learned counsel for the parties. File has been perused with their assistance.

7. Keeping in view facts and circumstances of the case, no ground is made out for interference in exercise of jurisdiction under Article 226 of the Constitution of India. Petitioners admittedly have an efficacious remedy under the SARFAESI Act for redressal of their grievances. Allegation of date of declaration of petitioners' account as NPA being mentioned as 06.04.2019 in communication dated 16.01.2020 does not constitute an exceptional circumstance calling for interference under Article 226 of Constitution of India, as has been sought to be argued. Pleas and arguments has raised before us by learned counsel for petitioners do not in any manner constitute exceptional or extraordinary circumstances which call for interference. All available pleas can very well be taken up by petitioners before the appropriate forum. Gainful reference in this regard 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, 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) while reiterating its earlier judgments held that where alternate efficacious remedy is available to the litigant before a Forum constituted under a statute, interference by the High Court in

exercise of jurisdiction under Article 226 of Constitution of India should be restricted to exceptional cases. It was held as under:-

> "*15. The object and reasons behind the Act 54 of 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 of 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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> *X X X*
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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.*"

8. We have also considered argument raised on behalf of petitioners that a direction should be issued to respondent-bank to enter into a one time settlement with petitioners. Said argument is also devoid of any merit as it is a settled position that a borrower/guarantor does not have a vested right for one time settlement. Therefore, there can be no direction to the respondent bank to enter into a particular OTS with the

petitioners. Useful reference in this regard can be made to judgment of Hon'ble the Supreme Court in the case of **The Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others, 2022 AIR (SC) 56,** wherein it has been held as under:-

> "9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.
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> 10. If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person

which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.

11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove."

9. Keeping in view facts and circumstances of the matter, writ petition is dismissed with liberty to petitioners to avail statutory remedy(ies) available to them in accordance with law. Needless to say it is always open to the parties to arrive at a mutually acceptable settlement. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

06.11.2023
Rimpal

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