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

235 **CWP-36421-2019**
Date of Decision: 05.09.2023

M/S JAGAT SINGH AND CO.

... Petitioner

VERSUS

DEPUTY COMMISSIONER-CUM-DISTRICT MAGISTRATE, MOGA AND OTHERS

....Respondents

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

Present: Mr. B. S. Bhalla, Advocate
for the petitioner.

Mr. Sandeep Jain, Additional A.G. Punjab.

Mr. Arunjeet Singh Kakkar, Advocate
for respondent No.3.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside possession notice dated 23.10.2019 (Annexure P-2) issued by respondent-Bank under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 as well as stay of the communication dated 21.11.2019 to the Tehsildar, Nihal Singh Wala from District Magistrate, Moga to ensure service upon the petitioner for ensuring its presence before the Court of Additional Deputy Commissioner (ADC), Moga.

2. Notice of motion was issued in this writ petition on 09.01.2020 by co-ordinate Bench. Operation of notice dated 23.10.2019 and communication dated 21.11.2019 was stayed subject to deposit of

Rs.7 lakhs by the petitioner within three weeks thereof.

3. Petitioner's firm, it is submitted was constituted by Gurmeet Singh Garcha and his mother-Gian Kaur who unfortunately passed away in the year 2016. Presently, Gurmeet Singh Garcha is the sole proprietor of the firm. It is submitted that loan facility was availed of by the petitioner-firm for the purpose of commission agent business in the year 2010. Cash credit limit of Rs.35 lakhs was afforded to the petitioner. Property as described in the writ petition was mortgaged with the respondent-Bank. However, there was financial indiscipline on the part of the petitioner due to certain unavoidable circumstances. Petitioner approached the respondent-Bank with an offer to firstly deposit Rs.5 lakhs and another Rs.1 lakh thereafter. Petitioner also sought rescheduling of its loan. However, account of the petitioner was declared Non-Performing Asset (NPA) and proceedings under the SARFAESI Act were initiated against it with notice under Section 13(2) of the SARFAESI Act being issued on 02.08.2019 for paying a sum of Rs.34,98,898.85/- as upto 13.03.2019 with future interest. It is submitted that petitioner submitted a representation that petitioner be permitted to deposit a lump sum amount of Rs.5 lakh and then an installment of Rs.1 lakh. However, the same was not accepted by the respondent-Bank. Notice under Section 13(4) of the SARFAESI Act was issued on 23.10.2019.

4. Learned counsel for the petitioner submits that it was due to genuine difficulties faced by the petitioner that the amount in question could not be deposited apart from the unjustified and excessive rate of interest levied by the respondent-Bank. Moreover, during pendency of

petitioner's representation dated 07.12.2019 (Annexure P-4), with the Bank, proceedings under the SARFAESI Act could not have been initiated. The petitioner should be afforded more time to deposit the amount in question.

5. Learned counsel for the respondent-Bank submits that apart from the fact that present writ petition is not entertainable in view of the efficacious alternate remedy available to the petitioner, there was huge outstanding of Rs.33,87,378.82/- even as on 30.11.2022. The petitioner has not deposited any amount apart from a sum of Rs.7 lakhs deposited in compliance of order dated 09.01.2020 passed in this writ petition. Thus this writ petition should be dismissed.

6. Heard learned counsel for the parties and have gone through the file.

7. Keeping in view the factual matrix of the case, we do not find any exceptional circumstance or extraordinary ground which calls for interference in exercise of jurisdiction under Article 226 of the Constitution of India.

8. Learned counsel for the petitioner is unable to deny that petitioner has an efficacious remedy for redressal of the grievance in respect to proceedings initiated by respondent-Bank against it under the SARFAESI Act. No exceptional or extra ordinary circumstance has been pointed out by learned counsel which calls for interference by this Court. Inability of the petitioner to deposit the amount in question or the perceived excessiveness of the interest as levied cannot be termed to be an extraordinary ground calling for interference. Interference in exercise of jurisdiction under Article 226 of the Constitution of India in such like

matters has been frowned upon and deprecated by Hon'ble the Supreme Court. Useful reference in this regard can be made to 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**.

9. Furthermore, prayer for directing the respondent-Bank to enter into a One Time Settlement (OTS) with the petitioner as has been addressed does not call for any interference in view of the judgment of Hon'ble the Supreme Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others, 2022 AIR (SC) 56.**

10. Keeping in view the facts and circumstances of the case, petition is dismissed with liberty to the petitioner to avail the remedy/remedies as may be available to it in accordance with law. There is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

05.09.2023
Rimpal

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