* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1466/2023 & CM APPLs. 5477/2023, 5478/2023**

Date of Decision: 06.02.2023

IN THE MATTER OF:

DAKSHESH I. SHROFF
AGE 62 YEARS, OCCUPATION: BUSINESS,
INDIAN INHABITANT,
RESIDENT OF 4 SILVER SAND
JUHU TARA ROAD, JUHU
MUMBAI 400 049 ..... Petitioner

Through: Mr. Diwakar Singh, Mr. Saurabh Jain & Mr. Prayag Jain, Advocates.

versus

1. STATE BANK Of INDIA
(ERSTWHILE STATE BANK OF TRAVANCORE
NOW MERGED WITH STATE BANK OF INDIA)
HAVING OFFICE AT:
JEEVAN TARA BLDG, GATE NO - 4A
5 PARLIAMENT STREET
NEW DELHI - 110001 …. Respondent No.1

2. M/S SATMAN AUTOMOBILES PVT. LTD.
F-1/9, OKHLA PHASE -1
NEW DELHI - 110020
THROUGH ITS CHAIRMAN/MANAGING DIRECTOR
AUTHORISED SIGNATORY .... Respondent No. 2

3. SH. KUNAL RAMCHANDANI
E-1/82, GREATER KAILASH
PART - II, NEW DELHI - 110048 …. Respondent No.3

4. SH. MEGHNA H. CHOKSEY
E - 1/82, GREATER KAI.LASH
PART - II, NEW DELHI - 110048 …. Respondent No.4

5. SH. KONARK NANDA
FLAT NO. 4266, SECTOR - B
POCKET - 5 & 6, GATE NO. 2
VASANT KUNJ, NEW DELHI ….. Respondent No.5

6. M/S. FAHRENHEIT AUTOMOBILES PVT. LTD.
68/3, NAJAFGARH ROAD
MOTI NAGAR, NEW DELHI - 110015
THROUGH ITS CHAIRMAN/MANAGING DIRECTOR
AUTHORISED SIGNATORY …. Respondent No.6

7. MS. MANISHA HAREN CHOKSEY
R/O 4, SILVER SAND DARAYALAL,
CHS, JUHU TARA ROAD,
MUMBAI …. Respondent No.7

Through: Mr. Siddharth Sangal, Ms. Nilanjani Tandon, Mr. Lalit Ahlawat, Mr. Chirg Sharma & Ms. Richa Mishra, Advocates for R-1/ SBI.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner has filed this petition against a show cause notice dated 02.06.2020 and subsequent notice pertaining to hearing for wilful defaulter dated 07.12.2022, issued by respondent No.1.

2. The facts of the case are that on 06.10.2009, the petitioner had executed a General Power of Attorney (GPA) in favour of respondent No.7. Respondent No.7 appears to have stood as a guarantor, mortgaging petitioner's property. According to the petitioner, on 23.11.2013, a credit facility to the tune of Rs.15 crores was sanctioned by respondent No.1 to respondent No.2. On 25.11.2013, the respondent No.1-Bank confirmed

that the liability of the petitioner will be to the extent of value of the flat bearing No.A-1/303 at Safdarjung Enclave.

3. It is seen that on 25.08.2015, an adhoc limit of Rs.2 crores was sanctioned by respondent No.1-Bank to the principal borrower i.e. respondent No.2. Accordingly on 25.08.2015, loan documents were executed by the principal borrower i.e. respondent No.2 for the adhoc limit.

4. It appears that the respondent No.1-Bank thereafter, sent a 'demand and recall notice' to the principal borrower as well as the petitioner.

5. On 28.06.2016, the account in question was declared as Non-Performing Asset (NPA). It is seen that on 02.07.2016, the respondent No.1 served upon the petitioner a notice under Section 13(2) of the SARFAESI Act. In addition, the notice was also served upon all the concerned.

6. On 17.10.2016, an original application was filed by respondent No.1 before DRT II as OA No.823 of 2016. On 22.11.2016, respondent No.7 filed a police complaint against respondent No.1-Bank at Police Station Parliamentary Street, New Delhi. On 19.01.2017, the auction notice was issued by respondent No.1-Bank. The petitioner challenged the auction notice issued by respondent No.1-Bank by way of SA No. 25/2017, which is stated to be pending before the DRT.

7. The case of the petitioner is that one of his properties i.e. A-1/303, Safdarjung Enclave, New Delhi came to be auctioned without intimation to him. A written complaint was made by the DGM, State Bank of Travancore (now merged with Respondent No. 1 - State Bank of India) to the CBI against respondent No. 2-borrower, petitioner and other

respondents herein. Accordingly, FIR No. RC 219 2017 E 0018 dated 09.08.2017 was registered against the petitioner and other concerned.

8. The CBI filed its final report before the Court of Chief Metropolitan Magistrate, Rouse Avenue Court, New Delhi.

9. After issuance of the show cause notice dated 02.06.2020, the petitioner made a complaint to the Banking Ombudsman dated 05.02.2021, regarding the *mala fide* actions of the respondent No.1-Bank bearing Complaint No.202021013022044.

10. The respondent No.1-Bank however, sent reply to the said complaint on 05.02.2021. The RBI also responded to the said complaint, stating therein that the complaint was found to be incomplete. On 07.12.2022, respondent No.1-Bank, once again, sent a notice to the petitioner to appear for personal hearing before declaring the petitioner as a wilful defaulter.

11. Learned counsel appearing on behalf of the petitioner submits that the entire action of the respondent Bank suffers with *mala fide* intent and the same is without jurisdiction. According to him, the petitioner agreed to be a guarantor to the extent limited to the value of the mortgaged property situated at A-1/303, Safdarjung Enclave, New Delhi and nothing more. He further states that once the said property was auctioned by respondent No.1-Bank, violating the rules and regulations, the instant show cause notice to declare the petitioner as a wilful defaulter is the mockery of the rule of law. He further states that even the guidelines of RBI issued in terms of master circular dated 01.07.2015, are also violated. According to him, even in the CBI case, when the chargesheet was filed, the name of the petitioner was not included in the list of the accused.

12. Learned counsel appearing on behalf of the petitioner specifically emphasized that his client had only executed a GPA in favour of respondent No.7 to look after the property in question. According to him, respondent No.7 had no authority to either mortgage the property or execute the deed of guarantee. Under such circumstances, he states that the impugned action initiated by the respondent No.1- Bank suffers with the jurisdictional error and this court in exercise of power under Article 226 of the Constitution of India, shall set aside the show cause notice.

13. I have heard learned counsel appearing on behalf of the petitioner and perused the record.

14. The impugned show cause notice dated 07.12.2022, reads as under:-

> *" xxxxx*
>
> *.....*
>
> ***"2nd PERSONAL HEARING BEFORE THE WILFUL DEFAULTER IDENTIFICATION COMMITTEE***
>
> *We refer to the notice dated 24.06.2020 issued to you to show cause, subsequent personal hearing notice dated 03.09.2020, 19.12.2020, 29.07.2021, 30.08.2021 & 06.09.2021 and make submission as to why your name should not be included in the list of Willful Defaulters as per RBI guidelines.*
>
> *2. The Wilful Defaulter Identification Committee of the Bank is pleased to offer you an opportunity for personal hearing to make your submissions before the Committee. Accordingly, if you would like to avail the said opportunity, you may remain present in person at the venue State Bank of India, Stressed Assets Management Branch II, 11th Floor, STC Building, 1 -Tolstoy Marg, Janpath,, New Delhi, New Delhi 110001 for your submissions through video conferencing arranged on 28.12.2022 at 11.00 A.M.*

> *3. Please note that the above opportunity is for making your personal submission if any in the matter and the Lawyers/ Chartered Accountants/ Consultants who are not Partners/ Directors/ Officers/ Employees of the Firm/ Company will not be allowed, in substitution of your personal presence and submission before the Committee.*
>
> *4. Please bring your PAN card and other documents to prove your identity and position in the Firm/Company.*
>
> *5. If you fail to avail the opportunity of personal hearing on the above-mentioned date and time, it will be presumed that you have nothing to submit before the Committee by availing personal hearing. If you are declared as willful defaulter by the Committee the Bank reserves the right to publish your photograph in newspapers informing the public that the bank has declared, you as willful defaulter as per RBI guidelines.*
>
> *6. This communication is issued as per the approval and directions of the Committee.*
> *Yours faithfully,"*
> *....*
> *xxxxx*

15. A perusal of the impugned show cause notice clearly indicates that the respondent No.1-Bank had earlier also issued various notices of personal hearing to the petitioner to make his submissions, as to why his name should not be included in the list of wilful defaulters, as per RBI guidelines. It further states that the committee of Wilful Defaulter Identification decided to offer further opportunity of personal hearing before taking any final decision and, therefore, the petitioner has been called upon to explain the circumstances as to why, further legal action should not be taken against him.

16. It is, thus, seen that no action has yet been taken against the petitioner. The fact that the name of the petitioner does not find place in the final chargesheet or the petitioner has never executed any document

in favour of respondent No.7, are all such facts, which relate to the question of facts. On the basis of such factual averments, it cannot be said that the impugned show cause notice is without jurisdiction, neither the same can be termed to be with pre-meditated mind. The impugned show cause notice nowhere reflects that the respondent No.1-Bank is not open to consider the submissions to be made by the petitioner. There is no reason to pre-empt that the respondent No.1-Bank would not consider any reasonable submission on the basis of the facts and circumstances in the instant case. The Hon'ble Supreme Court in the case of ***Siemens Ltd. Vs. State of Maharashtra***[1] has held that ordinarily, a writ court should not entertain petition against a show cause notice except a show cause notice which suffers from jurisdictional error or the same has been issued with pre-meditated mind. Neither of the aforesaid situations exist in the instant case.

17. Accordingly, this court is not inclined to entertain the instant petition. The same is therefore, dismissed.

18. The petitioner is, however, at liberty to attend the personal hearing or to file reply to the show cause notice. Needless to state that if the petitioner explains any circumstances or files any reply to the show cause notice, the respondent No.1-Bank would consider it appropriately and decide the same in accordance with law.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 06, 2023/MJ

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[1] (2006) 12 SCC 33