2024:PHHC:047027-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 270 of 2024 (O&M)
Date of Decision:05.04.2024

Dr. Harshbir Singh Pannu and another

......Petitioners

Versus

Union of India and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. M.S.Khaira, Sr. Advocate
with Mr. Ripudaman Singh Sidhu, Advocate
for the petitioners.

Mr. Gaurav Goel, Advocate
for respondent-Bank.

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LISA GILL, J(Oral).

1. Prayer in this writ petition is for quashing order dated 17.10.2023, Annexure P-13 and order dated 02.12.2023, Annexure P-19, passed in Securitization Application (SA) No. 207/2023 and Review Application (RA) No. 10/2023 by the learned Debts Recovery Tribunal-I, Chandigarh.

2. Learned counsel for petitioner stated that petitioner no. 1 is a highly qualified cardiac surgeon, who set up a hospital in the name and style of ‘Holy Heart Hospital’ at Amritsar besides Implants Pharmacy under the name and Style of ‘M/s Amritsar Cardiac and Implants Pharmacy’. Credit facility in the form of Cash Credit Limit (CCL) to the tune of Rs.50 Lakhs was availed of by petitioner no. 1 from respondent-Bank. Implants, medical equipments, and medicines of approximately Rs. 1.50 Crores were hypothecated for securing the CCL, which was being regularly serviced by

petitioner no. 1 as per mutually agreed terms and conditions. Some dispute arose between the lessor of property on which the hospital has been constructed and petitioner no.1. The lessor (not a party to the present petition), it is stated took over forcible possession of the OPD area of hospital on 20.02.20020 with the help of 50-60 unscrupulous elements (goons). Subsequently on 06.03.2020, the lessor again came to the premises of the hospital and took over possession of rest of the hospital building as well along with medical equipment etc., and put his locks on the entire hospital building including the main gate of the hospital. Complaint was lodged by petitioner no.1 with police authorities, but no FIR was registered. Account of petitioner no.1 was declared NPA on 11.08.2020 statedly without adhering to prescribed norms and guidelines set-forth by the RBI. No intimation in this regard was ever given to petitioner no.1, who came to know about this fact only when he visited the branch of respondent-Bank on 29.08.2020. Overdue amount of Rs.1.5 Lakhs was immediately deposited by petitioner no.1 on the asking of bank officials. Thus, no occasion arose for continuing the petitioners account as NPA. It is stated in the writ petition that petitioners apprised the bank officials vide e-mail dated 31.08.2020 about the whole position as well as deposit of entire overdue amount on directions of bank officials. However, petitioners account was not regularized and on 30.05.2023, petitioners were shocked to receive a message to the effect that 'account of petitioner no.1 was credited with a sum of Rs. 19.40 lakhs'. Petitioners shot of e-mail dated 30.05.2023 to the bank seeking details about source of the amount, but to no avail. Details were sought under Right to Information Act (RTI) 2005, by petitioners on 03.06.2023, but no information was provided. Subsequently, petitioners received a caveat petition on 10.06.2023 on behalf of respondents no.2 and

3, who claimed to have purchased the mortgaged property on 24.05.2023. RTI application submitted by petitioners was rejected by respondent no.3 on a flimsy ground on 17.06.2023 (stated to be received on 24.06.2023) on the pernicious ground that Adhar Card was not attached. Request, under RTI was again submitted by petitioners. As the details were not being furnished, petitioners approached the office of District Magistrate, Solan, where they came to know that an application under Section 14 of SARFAESI Act has been filed by respondent no.3.

3. Learned counsel for petitioners submitted that absolutely false and incorrect facts about service of notice under Section 13(2) and 13(4) of SARFAESI Act are mentioned in this application. No such notice was ever received by petitioners. Property in question, it is stated was sold at a throwaway price by respondent no.3. The subject property is not only a chunk of land, but an upscale building comprising 7 flats having all modern day facilities having a value of approximately Rs. 3,44,19,000/-, whereas it has been sold at a meagre amount of 1.28/- Crores. Even as per Bank's own valuation, the amount is Rs.1,62,64,000/-, whereas reserved price for e-auction was fixed as Rs.1.26 Crores, which shows mala fide intention on the part of respondent-Bank. Petitioners, it is submitted filed CWP No. 4612 of 2023 before High Court of Himachal Pradesh. Said writ petition was permitted to be withdrawn on 26.07.2023 with liberty to petitioners to avail their alternate remedy while observing that time spent in the said litigation with effect from the date of filing and up-till date of decision would not come in the way of petitioners, in case, they chose to avail of alternate remedy within a period of 15 days from 26.07.2023.

4. SA No. 207 of 2023 was filed by petitioners, which was dismissed on the ground of limitation by learned DRT-I, Chandigarh on

17.10.2023. Petitioners filed RA No. 10 of 2023, seeking review of order dated 17.10.2023, which was ultimately dismissed on 02.12.2023. Petitioners have filed this writ petition for setting aside order dated 17.10.2023 as well as order dated 02.12.2023, whereby review application has also been dismissed.

5. Learned counsel for petitioners vehemently argues that learned DRT-I, Chandigarh has passed the impugned orders in gross violation of settled principles of law. There was no question of dismissing the SA filed by petitioners merely on the ground of limitation inasmuch as High Court of Himachal Pradesh while permitting petitioners to withdraw the writ petition filed by them had specifically allowed a period of 15 days for filing the SA. After passing of order dated 26.07.2023, SA was filed by petitioners on 10.08.2023, therefore it was well within the period of 15 days afforded by High Court of Himachal Pradesh. Moreover, question of limitation is a mixed question of fact and law and can be decided only after taking evidence to ascertain as to when the period of limitation would commence. Therefore, dismissal of SA filed by petitioners at the very threshold is illegal and arbitrary. When faced with question of entertainability of the writ petition and the declaration in para 23 of the writ petition that petitioners do not have any remedy of appeal or revision etc., learned counsel for petitioners submitted that present is a case which calls for intervention by this Court in exercise of jurisdiction under Article 226 of the Constitution of India, because impugned orders have been passed without application of mind and under influence of respondent-Bank as wife of the Presiding Officer is an employee of the respondent-Bank. Therefore, it was not open for the Presiding Officer to have even heard this case.

6. Learned senior counsel further submitted that review application of petitioners was dismissed on 02.12.2023, but order was not uploaded even till 19.12.2023 when this writ petition was filed. Copy of the order was prepared on 28.12.2023 and supplied to petitioners on 29.12.2023, which has been placed on record along with CM No. 4208-CWP of 2024 dated 29.02.2024. Learned senior counsel for petitioners submitted that present case carves out an exceptional and extraordinary circumstance which calls for interference by this Court, at this stage, itself. It is thus prayed that this writ petition be allowed.

7. Learned counsel for respondent-Bank (on advance notice) raises a preliminary objection regarding entertainability of this writ petition. It is denied that notice under Section 13(2) and 13(4) of SARFAESI Act were never served upon petitioners. It was submitted that notice was duly served upon petitioners, which was sent through registered post and duly published in two newspapers as well, in accordance with specific provisions of law. Secured asset had been put to auction on 15.02.2022, 15.03.2022 and 28.03.2023 in accordance with law, but said auctions were not successful. Thereafter, on 06.05.2023, sale notice was again issued for the auction to be held on 24.05.2023 with the reserved price of Rs.1.26 Crores. This notice it is submitted was also sent by registered post on 08.05.2023 and published in two newspapers on 06.05.2023 and property ultimately sold for a sum of Rs. 1.28 Crores. Sale certificate was issued on 22.06.2023. Learned tribunal, it is submitted even after excluding the time period taken by petitioners for litigation before the High Court of Himachal Pradesh found the SA to be time barred and accordingly dismissed it in accordance with law. Review application has also been correctly dismissed being devoid of any merit. It is submitted that all allegations of mala fide are denied while pointing out that

no such ground about any bias on the part of the Presiding Officer has ever been raised at any earlier point of time and such allegations are unsubstantiated and devoid of any merit. Therefore, it is prayed that this writ petition should be dismissed.

8. We have heard learned counsel for the parties and have gone through the file with their able assistance.

9. Availing of loan facilities by petitioner no.1 is a matter of record. It is also not in dispute that respondent-Bank undertook proceedings under SARFAESI Act seeking recovery of the amount in question, though said proceedings are stated to be illegal and in contravention of the applicable provisions of law. It is further not in dispute that petitioner after having approached the High Court of Himachal Pradesh on withdrawal of its writ petition filed SA No. 207, which was dismissed on 17.10.2023 with the review application being filed by petitioners and 'M/s Amritsar Cardiac and Implants Pharmacy' also being dismissed.

10. It is to be noted at this stage that petitioners indeed have an efficacious remedy of appeal under Section 18 of SARFAESI Act for challenging the impugned orders dated 17.10.2023 and 02.12.2023. It has been held by Hon'ble the Supreme Court in **Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34**, as under:-

> "34. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of predeposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application

> by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the Act 2002."

11. Hon'ble the Supreme Court in a number of cases has categorically held that interference by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India in the wake of specific provisions of SARFAESI Act, should be minimal and limited to exceptional or extraordinary circumstances.

12. Learned counsel for petitioners vehemently argued that present case presents exceptional and extraordinary circumstances which calls for intervention by this Court. It was contended that Presiding Officer of learned DRT-I, Chandigarh, was biased and has passed the impugned orders under influence of respondent-Bank as his wife is an employee of the respondent-Bank. It is pertinent to note at this stage that Presiding Officer has not been impleaded as party by name despite serious allegations being raised. It was categorically put to learned counsel for petitioners that in the memo of parties, name of Presiding Officer has first being printed and thereafter, apparently removed. No explanation was forthcoming. We would also note at this stage that it is not the case of petitioners that spouse of Presiding Officer was dealing with this particular case. It has been verified from learned counsel for respondent-Bank that she had nothing to do with the account in question.

13. Be that as it may, in the given facts and circumstances of the case and without entering adjudication upon this point as well, we do not find the abovesaid to be an exceptional or extraordinary circumstance, which

calls for interference by this Court. All the averments and arguments as have been raised before us are very well within the realm of consideration by the appropriate forum/appellate authority. Gainful reference in this respect can also be made to judgments of Hon'ble the Supreme Court in **Union Bank of India Vs. Satyawati Tandon and others, 2010(8) SCC 110** and **M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(1) RCR (Civil) 771.**

14. Reference by learned counsel for petitioners to judgment of Hon'ble the Supreme Court in **G. Veerappa Pillai, Proprietor, Sathi Vilas Bus Service, Porayar, Tanjore District, Madras Vs. Raman and Raman Limited, Kumbaonam, Tanjore District and others, (1952) 1 SCC 334** is of no avail to the petitioners. Hon'ble the Supreme Court in the abvoesaid case was seized of a matter under the Motor Vehicles Act. It has in-fact been held by Hon'ble the Supreme Court as under:-

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. **However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.**"

Emphasis added

15. Therefore, keeping in view the facts and circumstances as above, we do not found any ground whatsoever to interfere in the present

writ petition which is accordingly dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law. There is no expression of opinion on the merits of the matter. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 05, 2024.
s.khan

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