

CWP-1080-2020 (O&M)

2024:PHHC:058738-DB
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1080-2020 (O&M)
Date of Decision: April 29, 2024

Jagtar Singh Petitioner

Versus

Punjab National Bank Respondent

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

Present: Mr. Ajit Singh, Advocate for
Mr. Harsh Chopra, Advocate for the petitioner.

Mr. Alankar Narula, Advocate for respondent - Bank.

LISA GILL, J.

1. Petitioner in this writ petition has challenged proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) initiated against him.
2. Learned counsel for petitioner submits that term loan of Rs.30 lakhs and Cash Credit Limit of Rs.10 lakhs was sanctioned in favour of M/s Guru Nanak Industry and property as is detailed in para 3 of writ petition was mortgaged. Petitioner stood guarantor for term loan facility and mortgaged his residential house as detailed in para 4 of writ petition. It is submitted that loan facility was serviced regularly till 2013 when one of the partners of Firm committed fraud and stopped re-payment of loan. Notice(s) were issued by the Bank for regularization of Cash Credit Limit as well as term loan but this fact was not to the knowledge of petitioner, who was working at Delhi. Proceedings

CWP-1080-2020 (O&M)

under SARFAESI Act were initiated by respondent – Bank in the year 2016 with notice under Section 13(2) of SARFAESI Act and notice under Section 13(4) of SARFAESI Act also being issued on 10.08.2017. Order dated 12.08.2016 under Section 14 of SARFAESI Act was passed by learned District Magistrate, Bathinda. Petitioner, on notice under Section 13(4) being pasted upon his residential house, visited the respondent – Bank for account details on which it was found that an amount of Rs.30 lakhs had already been recovered by selling machinery as well as Rice Mill and certain amount had been deposited by a partner of Guru Nanak Rice Industry. Learned counsel for petitioner submits that nothing was pending against term loan, therefore, any action qua petitioner, who had stood guarantee for term loan facility, is illegal and arbitrary. Proper procedure as envisaged under SARFAESI Act, it is further submitted, was not followed. It is, thus, prayed that this petition be allowed.

3. Learned counsel for respondent – Bank has opposed the writ petition. Preliminary objection qua entertainability of writ petition itself is raised. It is further submitted that petitioner had earlier filed SA-733-2017 titled Jagtar Singh versus Punjab National Bank, which was dismissed vide order dated 08.03.2018 (Annexure R1). Prayer raised in the present writ petition and SA-733-2017 (Annexure R2) are stated to be identical. Petitioner did not challenge order dated 08.03.2018 passed by learned DRT-III Chandigarh. It is submitted that action under SARFAESI Act was carried out in complete consonance with applicable provisions. Learned counsel for respondent further submits that petitioner has secured property not only against term loan but also qua Cash Credit limit granted to borrower Firm. Reference is made to communication dated 26.08.2013 (Annexure R3) by petitioner whereby property was duly

CWP-1080-2020 (O&M)

mortgaged qua term loan facility as well as Cash Credit limit. Allegation that bank has recovered the entire dues is denied being incorrect. It is submitted that recovery proceedings are still pending before Recovery Officer DRT-III, Chandigarh in RC No. 903 of 2018. Petitioner, it is submitted has concealed material facts, therefore, this writ petition deserves to be dismissed on this account itself.

4. Heard learned counsel for parties and have perused the file. Availing of financial credit by the borrower Firm which is not the party to the writ petition and subsequent financial indiscipline leading to proceedings under SARFAESI Act being initiated is a matter of record.

5. Notice of motion was issued in this writ petition on 16.01.2020. Vide order dated 15.09.2022 it was directed that sale scheduled to be held on 16.09.2022 would continue though sale certificate would not be issued till next date hearing. It was further directed that it is open to petitioner to request for One Time Settlement (OTS) with proposal to be considered sympathetically in case of receipt of such request.

6. In the given factual matrix where petitioner has challenged proceedings under SARFAESI Act seeking recovery of amount due, we do not find any ground for interference especially in view of the fact that SARFAESI Act is a complete code in itself providing for specific remedies for any grievance which may arise in respect to proceedings taken thereunder. Interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters has to be minimal and actuated only in extra-ordinary and exceptional circumstances as has been detailed by Hon'ble the Supreme Court in

CWP-1080-2020 (O&M)

Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110 as under:-

“18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in **Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107** and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

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25. In **Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another (2010) 4 SCC 772**, the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed:

"31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory

CWP-1080-2020 (O&M)

dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction.

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7. Said decision has been reiterated by Hon’ble the Supreme Court in the case of **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**, wherein it was held that:-

“13. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.

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14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.

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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 or 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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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. Learned counsel for the petitioner is unable to point out any extraordinary or exceptional circumstances which call for interference in exercise of jurisdiction under Article 226 of the Constitution of India.

CWP-1080-2020 (O&M)

9. Another aspect to be noticed is that petitioner admittedly filed SA-733-2017 with the same prayer which was dismissed by DRT-III, Chandigarh vide order dated 08.03.2018 though abovesaid SA was dismissed on the ground that Bank had not taken physical possession of property at that stage, therefore, SA was not maintainable and liberty was afforded to petitioner to file afresh in the eventuality of possession being taken. This order, which though may be in the teeth of settled law now, does not even find mention in the writ petition and was never challenged.
10. Be that as it may, all arguments as raised in the writ petition are very well within the realm of consideration by appropriate authority/Tribunal as provided under SARFAESI Act.
11. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail remedy(ies) as may be available to him in accordance with law.
12. There is no expression of opinion on the merits of matter.
13. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 29, 2024
rts

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