

IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARHVARINDER SINGH
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Date of Decision : 14.02.2024

CWP No. 3106 of 2024 (O&M)

Rajbir

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Pinki Mehla, Advocate, for the petitioner.

SANJEEV PRAKASH SHARMA, J.

By way of this writ petition, the petitioner has prayed for quashing of possession notice dated 06.12.2023 issued under Rule 8 (1) of the Securitization and Reconstruction Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act').

2. Aggrieved of action under the SARFAESI Act, the petition/ objection lies to the concerned DRT. This Court also finds that the financial company had also filed complaint under Section 138 of the Negotiable Instruments Act against the petitioner, wherein the process was issued for 06.02.2024. The bailable warrants issued therein against the present petitioner were received back unserved and his presence was sought to be secured by issuing non-bailable warrants. The petitioner is always free to move appropriate application for conversion of non-bailable warrants to bailable in terms of Section 71 Cr.P.C.

3. In the case of **M/s South Indian Bank Limited and others vs Naveen Mathew Philip and another** 2023 (6) SCALE 224, Hon'ble the Supreme Court has held as under:-

“21. Applying the law laid down by this Court in *State Bank of Travancore v. Mathew K.C.*, [(2018) 3 SCC 85: (2018) 2 SCC (Civ) 41] to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed.”

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4. Keeping in view the above, the prayer for quashing of the possession notice issued under the SARFAESI Act and for directing the respondents to grant some time to the petitioner to pay the agriculture loan or to enter into one time settlement agreement is found to be misuse of process of law. Accordingly, the writ petition is not maintainable. The petitioner is free to approach the DRT concerned. It is observed that if such an application is moved, the DRT shall hear the matter without objecting to the question of limitation. It would also be open for the DRT concerned to pass interim order, if need so arises.

5. With the aforesaid observations, the writ petition is dismissed.
6. All pending applications shall stand disposed of.
7. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

14.02.2024
VS

(SUDEEPTI SHARMA)
JUDGE

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