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

CWP-3711-2024
Date of Decision:- 21.05.2024

DIANA PRODUCTS PVT LIMITED & ANR ...Petitioners

Vs.

IDFC FIRST BANK LIMITED ...Respondent

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

Present:- Mr. Sushant Kareer, Advocate for petitioners.
(through V.C.)

Mr. Aditya Grover and Ms. Diksha Kakkar, Advocates
for respondent – Bank.

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<u>LISA GILL, J.</u>

1. Prayer in this writ petition is for quashing notice (s) dated 26.04.2023 and 25.01.2024 issued under Sections 13 (2) and 13 (4) respectively of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. Learned counsel for petitioners submits that loans against property to the tune of Rs.1.47 crores and Rs.1.96 crores were availed of by petitioners in April, 2019. However, due to financial indiscipline and

difficulty faced by petitioners especially on account of outbreak of pandemic COVID-19, installments could not be deposited within time, even though, GECL limits were sanctioned to the tune of Rs.28.77 lacs and Rs.38.36 lacs on 24.07.2020. It is averred that petitioners had been depositing installments regularly upto 02.03.2020 when due to outbreak of pandemic COVID-19 their business came to standstill. It is contended that petitioners had been depositing the installments of GECL loans that commenced as on 02.09.2020 upto April, 2023 with two installments not being paid in the interregnum. Restructuring of loans against property had been sanctioned on 16.08.2021. Financial indiscipline admittedly did take place.

3. Proceedings under SARFAESI Act were initiated with notice under Section 13 (2) of SARFAESI Act being issued on 26.04.2023. It is submitted that petitioners gathered some funds and sought restructuring of loan accounts. They received email dated 05.05.2023 from respondent – Bank that since restructuring of loan accounts was underway, notice dated 26.04.2023 under Section 13 (2) of SARFAESI Act was being kept on hold till further communication. In the meantime, meetings were held between official of respondent – Bank and petitioners but when no response was received, petitioners vide email dated 28.10.2023 expressed their intention to close the loan account within stipulated period and submitted One Time Settlement ('OTS') for a sum of Rs.2.23 crores. Number of parleys were again held with Bank officials and the amount in question was revised to Rs.2.26 crores and even higher amount subsequently. Surprisingly, without considering the proposal for OTS, notice dated 25.01.2024 under Section

13 (4) SARFAESI Act was issued by respondent – Bank, without withdrawing email dated 05.05.2023 wherein it was stated that the matter is kept on hold. Aggrieved therefrom present writ petition has been filed.

4. Learned counsel for petitioners vehemently argued that once respondent Bank had kept notice under Section 13 (2) in abeyance it was not open to them to initiate/revive proceedings and issue notice under Section 13 (4). Proposal for OTS was eventually revised to Rs.2.35 crores and the matter was still pending with respondent Bank, though, proposal was rejected during pendency of this writ petition on 14.05.2024. Principal amount due as per petitioners is Rs.2.77 crores and petitioners have offered a sum of Rs.2.35 crores which is stated to be an extremely reasonable amount which entitles petitioners to OTS.

5. Learned counsel for respondent – Bank has opposed this writ petition while submitting the same is not entertainable, in any manner, with petitioners having alternate efficacious remedy under SARFAESI Act. Moreover, total outstanding against petitioners as on date is over Rs.4.54 crores. Proposal for OTS has been considered and rejected by respondent – Bank and there is no question of the matter being kept in abeyance pursuant to email dated 05.05.2023 endlessly. Moreover, petitioners were aware of the facts as they were regularly in touch with the Bank official (s). Restructuring was not done thereafter, petitioners' proposals for OTS were duly considered and not found satisfactory. In this scenario, once the proposal as mentioned in email dated 05.05.2023 was not accepted, there is no question of proceedings continuing in abeyance. Furthermore, an incorrect declaration has been made by petitioners in para No.6 of the writ

petition to the effect that no other effective remedy of appeal or revision is available to petitioners except to approach this Court. Dismissal of writ petition is sought.

6. We have heard learned counsel for the parties and have perused the file with their assistance.

7. In the given factual matrix, we do not find any ground for interference in this writ petition. It is pertinent to note that SARFAESI Act is a complete code in itself wherein specific remedy (ies) for any grievance (s) which any person may have in respect to proceedings undertaken therein are clearly provided. Interference in the said matters by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India has to be minimal and actuated only in exceptional and extraordinary circumstances. Gainful 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*** 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 f 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 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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> 26. In Modern Industries v. Steel Authority of India Limited (2010) 5 SCC 44, the Court held that where the remedy was available under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, the High Court was not justified in entertaining a petition under Article 226 of the Constitution."

8. In the present case, learned counsel for petitioners has laid much stress on email dated 05.05.2023 issued by Bank. There is, however, no jurisdictional issue or any exceptional circumstance which has been pointed out by learned counsel for petitioners which calls for interference by this Court. Argument that until and unless there is a formal withdrawal of email dated 05.05.2023 no action can be taken by respondent – Bank is devoid of any merit in the given factual matrix as above, hence rejected. Furthermore, it is to be noted that no borrower or guarantor has a vested right for OTS as held by **Hon'ble Supreme Court in *Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56*** as under:-

> "9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards instalments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the

mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

10. If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/instalment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.

11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

9. Learned counsel for petitioners is unable to point out any ground which calls for interference.

10. This writ petition is, accordingly, dismissed with liberty to the petitioners to avail statutory remedy (ies) available to them in accordance with law for redressal of their grievance (s), as well as pursue the matter with respondent - Bank for any mutually acceptable settlement. There is no expression of opinion on the merits of matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

21.05.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No