2024:PHHC:024259-DB

119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3300-2024
Date of Decision: February 15, 2024

M/S BABBAR TRADING COMPANY AND OTHERS ..... Petitioners

Versus

AUTHORIZED OFFICER, CANARA BANK AND ANOTHER
..... Respondents

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

Present: Mr. Gourave Bhayyia Gilhotra, Advocate for the petitioners.

****

LISA GILL, J.

1. Prayer in this writ petition is for setting aside proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') initiated against petitioners on the ground that action taken against petitioners by respondent – bank is illegal and arbitrary being in violation of applicable provisions of law, RBI guidelines and also on account of pending proposal for One Time Settlement (OTS) submitted by petitioners. It is further prayed that respondent – Bank be directed to consider and settle petitioners' account in view of OTS proposal for a sum of Rs.1.40 crores submitted by petitioners.

CWP-3300-2024

2. Availing of financial credit from respondent – Bank, subsequent financial indiscipline for reasons as may be and initiation of proceedings under SARFAESI Act by the respondent – bank against petitioners is a matter of record. As per the two notices of even date i.e. 20.12.2022 under Section 13(2) of SARFAESI Act, liability of petitioners in its two accounts is Rs.65,06,509.49 and Rs.1,70,52,830.03 as on 14.10.2022.

3. Learned counsel for petitioners vehemently argues that declaration of petitioners' account Non Performing Asset (NPA) on 14.10.2022 itself is illegal and incorrect. Notice(s) under Sections 13(2) and 13(4) of SARFAESI Act has been issued in violation of applicable provisions and regulations. One of the various properties has been sold of by respondent – bank in auction conducted after taking symbolic possession in the year 2023. Petitioners, it is submitted, wish to settle the matter and in this endeavour had submitted OTS for Rs.1.40 crores alongwith deposit of Rs.14 lakhs, however, respondent – Bank is adamant in going ahead with proceedings under SARFAESI Act. Once petitioners wish to settle the matter, it is incumbent upon respondent to consider and settle the same. It is, thus, prayed that present writ petition be allowed.

3. We have heard learned counsel for petitioners and have perused the file with his assistance, however, we do not find any ground for interference in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. It is a settled position that SARFAESI Act is a complete code in itself providing for specific remedies for any grievances 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.

CWP-3300-2024

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; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34,M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.** Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) held as under:-

> “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.
>
> xxx xxx xxx
>
> 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.
>
> xxx xxx xxx xxx
>
> 15. The object and reasons behind the Act 54of 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.
>
> xxx xxx xxx
>
> 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.”

4. Insofar as a direction to respondent – Bank in respect to entering into OTS with petitioners is concerned, it is again a settled position that a borrower/guarantor does not have a vested right to One Time Settlement. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56** wherein it has been held 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 installments, 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 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

CWP-3300-2024

> 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."

5. Therefore, argument raised by learned counsel for petitioners in this respect is devoid of any merit, hence rejected.

6. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance, which calls for intervention by this Court, at this stage.

7. Keeping in view the facts and circumstances of the matter, this writ petition is dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law.

8. It is clarified that there is no expression of opinion on the merits of the matter and that parties are always at liberty to arrive at a mutually acceptable settlement.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
February 15, 2024 **JUDGE**
rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No