



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

Civil Writ Petition No.3826 of 2024

Date of Decision: July 1, 2024.

Varinder Pal Singh Walia

..... PETITIONER (s)

Versus

The Debts Recovery Tribunal-III, Chandigarh and others

..... RESPONDENT (s)

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

Argued by: Mr. Vivek Goyal, Advocate
for the petitioner (through VC).

Mr. Gaurav Goel, Advocate (through VC) and
Mr. Sourav Goyal, Advocate
for respondent – Bank.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

1. Prayer in this writ petition is for setting aside order 22.05.2023 (Annexure P14) passed by learned Debt Recovery Tribunal-III, Chandigarh vide which Original Application No.4589 of 2017 filed by respondent-Bank has been allowed holding the defendants therein, i.e. respondent No.4 (borrower) and the petitioner liable to deposit a sum of Rs.26,54,726/- jointly and severally with costs, current and future simple interest at the rate of 10% per annum, in the loan account from the date of filing of OA till realization of amount.

2. At this stage, it is to be noticed that respondent-Allahabad Bank

filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'RDBFI Act') with the averments that Jagdeep Singh i.e., defendant No.1 in O.A. and respondent No.4 in the present Writ Petition, was sanctioned loan for sum of Rs.19,00,000/- on 25.09.2009. Equitable mortgage of the plot as detailed in the O.A. was executed by the borrower. Third party guarantee of present petitioner was also given. It was averred in the O.A. that on account of financial indiscipline on the part of the borrower, proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI' Act) were initiated with notice under Section 13(2) being issued on 03.10.2011 with the account having been declared NPA on 26.08.2011. O.A. No.4589 of 2017 was then filed against borrower as well as petitioner seeking recovery of the amount of Rs.26,54,726/- alongwith interest. None appeared on behalf of borrower, who was proceeded against *ex-parte* on 15.05.2015. Present petitioner appeared and filed written statement taking a specific plea that O.A. was not maintainable against him as there was no document on record to indicate that present petitioner had ever stood guarantor to the loan availed of by the borrower in question. Various other pleas were raised including ones that O.A. had not been filed by an authorized person and that affidavit filed by the Chief Manager was not valid. It was further stated that present petitioner had one loan account with the bank, in question, in the name of M/s GK Contractor in respect to which O.A. No.364 of 2013 had been filed by the Bank and an apprehension was raised that the Bank may illegally use blank signed documents executed in the other loan account. O.A. No.4589 of 2017 was allowed vide impugned order dated 22.05.2023 (Annexure P14).

3. Learned counsel for petitioner vehemently argued that learned DRT-III, Chandigarh has grossly erred in law and on fact in allowing O.A. No.4589 of 2017 filed by respondent-Bank inasmuch as relevant facts have not been taken into consideration. It has not been considered by learned DRT-III, Chandigarh that there was no documents on record, whatsoever, to indicate that petitioner executed any document as guarantor to the loan availed of by respondent No.4. It was further submitted that in respect to loan account of M/s GK Contractor, settlement had taken place and said loan account was closed as is evident from the No Due Certificate issued on 03.11.2016 (Annexure P15). It was the contention of learned counsel for petitioner that in case there was any liability of the petitioner towards the loan account, in question in the present proceedings, No Due Certificate could not have been issued by respondent-Bank. This aspect has not been considered by learned DRT-III, Chandigarh while passing the impugned order. It was, thus, prayed that this writ petition be allowed.

4. Learned counsel for respondent-Bank (on advance notice) raised a preliminary objection that present writ petition is not entertainable as the petitioner had an efficacious remedy of appeal provided under the SARFAESI Act itself, therefore, interference by this Court in the present proceedings is not called for. It was denied that impugned order has been incorrectly passed by the learned DRT-III, Chandigarh. It was, thus, prayed that present writ petition be dismissed.

5. We heard learned counsel for the parties and have carefully perused the file.

6. At the outset, it is to be noted that petitioner undeniably had the remedy of filing an appeal against order dated 22.05.2023 in terms of Section 20

of the RDBFI Act, which reads as under:-

“20. Appeal to the Appellate Tribunal.—(1) Save as provided in subsection (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.”

7. We take note of the fact that in para 12 of writ petition, it is mentioned that, *“the petitioner has no other such speedy remedy of appeal or revision against the impugned action for redressal of its grievances except to file this writ petition under Articles 226/227 of the Constitution of India.”*

8. This is clearly an inaccurate statement. Be that as it may, in the given factual matrix we do not find any ground to interfere in the matter at this stage in this writ petition filed on 12.02.2024. Argument raised by learned counsel for petitioner that in the given facts and circumstances where there is no document on record to indicate liability of the petitioner, he should not be compelled to avail the remedy of appeal, is clearly devoid of merit. Specific finding has been returned by the learned DRT-III, Chandigarh in respect to the liability of the petitioner. In case the same is erroneous or not in consonance

with the documents available on record, the remedy available to the petitioner was to file appeal as provided under the Act itself. Merits or otherwise of the arguments raised in this writ petition cannot be a ground to cause interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India, thereby permitting the petitioner to bypass the remedy of appeal. No such extraordinary or exceptional circumstance has been pointed out by learned counsel for petitioner which would call for such interference.

9. This writ petition is accordingly dismissed with liberty to the petitioner to avail the remedy of appeal as may be available to him in accordance with law.

10. It is clarified that there is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

July 1 , 2024.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No