2024:PHHC:025334-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4219 of 2024(O&M)
Date of Decision:23.02.2024

Rajesh Singh

......Petitioner

Versus

Union Bank of India and others

...... Respondents

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

Present: Mr.Hemant Yadav, Advocate
for the petitioner (through video conferencing).

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LISA GILL, J(Oral).

1. Prayer in this writ petition is for setting aside notice(s) dated 15.07.2023, Annexure P-5, under Section 13 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and notice dated 19.01.2024, Annexure P-6, issued by the respondent-Bank.

2. Learned counsel for petitioner submits that petitioner had in-fact deposited a sum of Rs. 12,21,089.35/- till 28.09.2017 i.e., before filing of OA No. 5388 of 2017. Subsequently, a sum of Rs. 14,83,341.85/- was also deposited by petitioner after filing of OA and before passing of judgment dated 06.01.2020. Learned counsel for petitioner argues that initiation of proceedings under SARFAESI Act with issuance of notice under Section 13(2) of SARFAESI Act and sale notice dated 19.01.2024 are absolutely illegal and arbitrary in the given facts and circumstances where proceedings for recovery are also pending before learned Debt Recovery Tribunal-II, Chandigarh. Reference is made to order dated 08.11.2023, Annexure P-4. It is submitted that petitioner served legal notice upon the

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respondent-Bank, but without deciding the same respondent-Bank is proceeding to sell property in question. When faced with question of entertainability of this writ petition in the given facts and circumstances, learned counsel for petitioner submits that multiplicity of proceedings should be avoided in the interest of justice and in any case, petitioner in a bona fide manner wants to deposit the amount due. He only wants that amount already deposited by him should be adjusted.

4. We have heard learned counsel for the petitioner and have gone through the file with his able assistance.

5. Availing of credit facility by petitioner from the respondent-Bank in October 2014 is a matter of record. Subsequent financial indiscipline on the part of petitioner and classification of loan account Non Performing Asset (NPA) on 31.01.2017 is also undeniable. OA No. 5388 of 2017 filed by respondent-Bank was allowed ex parte on 06.01.2020 holding petitioner and other co-borrowers liable to deposit a sum of Rs. 26,29,746.40/-. Recovery proceedings are also stated to be pending. SARFAESI Act is admittedly a complete Code in itself providing for remedies *qua* grievance, if any, in respect to proceedings initiated thereunder. Moreover, present case clearly presents disputed questions of fact which cannot be subject to adjudication in present proceedings. Arguments as raised do not constitute extraordinary or exceptional circumstances, which call for interference by this Court. Gainful reference can be made to judgment of Hon'ble Supreme Court in **Union Bank of India Vs. Satyawati Tandon and others, 2010(8) SCC 110**, wherein it is held as under:-

> "17. ……*Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18*

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and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

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

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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."

6. Hon'ble the Supreme Court in **M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(1) RCR (Civil) 771** while reiterating its earlier decisions 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.

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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

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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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.

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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 of 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."

7. Learned counsel for the petitioner is unable to point out any exceptional or extraordinary circumstance, which calls for interference by this Court at this stage.

8. In the given facts and circumstances, there is also no merit in the argument raised by learned counsel for petitioner regarding adjustment of the amount already deposited by him which is allegedly not taken note of and into account by learned DRT while passing decision dated 06.01.2020.

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Same is not a ground for interference in present writ petition. Petitioner is at liberty to avail appropriate remedy in this regard.

9. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail statutory remedy(ies) available to him in accordance with law. There is no expression of opinion on the merits of the matter. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

February 23, 2024.
s.khan

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

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