2024:PHHC:002736-DB

203 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5051-2020 (O&M)
Date of Decision: January 08, 2024

Rajesh Bhambri (since deceased) through LRs ..... Petitioner

Versus

District Magistrate, Faridabad and another ..... Respondents

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

Present: Mr. Aalok Jagga, Advocate for the petitioner.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

Mr. Gaurav Goel, Advocate for the respondent – Bank.

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LISA GILL, J.

1. This writ petition has been filed for setting aside notice dated 05.02.2020 (Annexure P12) issued pursuant to orders dated 06.08.2014 and 10.02.2015 under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') and sale notice dated 14.02.2020 (Annexure P14) with further direction to respondent No. 2 to grant extension for deposit of balance payment in terms of One Time Settlement (OTS) sanctioned on 12.12.2018 (Annexure P7).

2. It is submitted that petitioner, who had set up small manufacturing unit at Badshahpur, availed credit cash limit of Rs.8 crores

from respondent No. 2 i.e. respondent – Bank and properties, as detailed in para 3 of writ petition (house and factory shed), were mortgaged. However, due to unfortunate circumstances beyond control of petitioner, including ill-health of petitioner (now represented by his LRs), there was financial indiscipline due to which loan account was declared Non Performing Asset (NPA) on 31.08.2013. Notice under Section 13(2) of SARFAESI Act was issued on 30.09.2013 claiming deposit of Rs.8 crores as outstanding on 31.08.2013. Petitioner is stated to have submitted his objections under Section 13(3A) of SARFAESI Act but purportedly without any decision thereon, notice dated 24.12.2013/01.02.2014 under Section 13(4) of SARFAESI Act issued on was issued. It is submitted that in the interregnum, One Time Settlement (OTS) for a sum of Rs.7.40 crores was accepted by respondent – bank on 14.08.2015. Sum of Rs.1.34 crores was deposited pursuant to said OTS but remaining amount could not be deposited.

3. SA-71-2014 was filed by petitioner before learned DRT, Chandigarh, which was dismissed as premature on 01.04.2017 on the premise that possession of property had not yet been taken.

4. Proposal for OTS was again submitted by petitioner after dismissal of SA-71-2014 and matter was yet again settled for a sum of Rs.4.75 crores with sanction being afforded on 12.12.2018 (Annexure P7). Petitioner, however, could not arrange the amount in terms of said OTS constraining petitioner to seek extension. However, sale of properties was fixed by respondent – bank with issuance of sale notice (Annexure P8).

5. Petition was filed by petitioner before learned DRT, Delhi challenging said sale notice. Simultaneously, petitioner requested for extension of time for deposit of balance amount in terms of OTS. Sum of

Rs.10 lakhs was further deposited on 07.10.2019. Petitioner received communication dated 12.12.2019 from respondent – bank informing that revival of OTS was approved with the condition that remaining amount should be paid on or before 31.12.2019. E-mail in this respect is stated to have been received by petitioner on 26.12.2019 leaving hardly any days with petitioner to deposit such a huge amount.

6. Learned counsel for petitioner submits that time and again effort has been made by petitioner to settle the matter with respondent – bank but in an illegal manner, the bank is not granting extension to petitioner and neither is it coming forward to indicate the minimum acceptable amount. It is contended that even as on 11.12.2023, petitioner set forth proposal of Rs.4.10 crores but to no avail. It is, thus, submitted that no action under SARFAESI Act should be undertaken against petitioner till the proposal for OTS submitted by petitioner is finally decided. It is, thus, prayed that this writ petition be allowed.

7. This writ petition has been opposed by learned counsel for respondent – Bank while firstly raising objection qua entertainability of this writ petition in view of alternate remedy available to petitioner for redressal of grievances in respect to any proceedings undertaken under SARFAESI Act. It is further submitted that One Time Settlement had been sanctioned in favour of petitioner firstly in August 2015 and thereafter on 12.12.2018 but on both occasions, petitioner had failed to comply with terms and conditions thereof. It is only on such failure that respondent – bank proceeded for sale of mortgaged property. Moreover, in view of pendency of SA-186-2019 (TSA-304-2022) before learned DRT-II, Delhi, no ground whatsoever is

made out for interference in this writ petition. It is, thus, prayed that this writ petition be dismissed.

8. Heard learned counsel for parties and have gone through the file with their able assistance.

9. Availing of credit facility by petitioner from respondent – bank is a matter of record as is subsequent financial indiscipline for reasons as may be. Question for consideration as raised in this writ petition is as to whether petitioner is entitled for extension of OTS period and whether properties in question can be sold by bank without finally deciding subsequent request(s)/proposal for OTS submitted by petitioner. Further issue raised is regarding legality of proceedings under SARFAESI Act undertaken against petitioner. Insofar as question of challenge to proceedings under SARFAESI Act is concerned, 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. 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** and **Authorized Officer, State Bank of Travancore and another versus Mathew K.C. 2018(3) SCC 85.** 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.

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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 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.

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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.

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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."

10. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance, which calls for interference by this Court in respect to proceedings taken under SARFAESI Act by respondent – bank against petitioner. In respect to arguments that extension of period should be provided to petitioner for deposit of balance amount in terms of OTS earlier entered between parties, it is to be noted 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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> 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."

11. Thereafter, it has been held by Hon'ble the Supreme Court in **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540** that directing the Bank to reschedule payment under OTS would tantamount to modification of contract, thus, borrower cannot claim such extension as a matter of right.

12. It is pertinent to note at this stage that learned counsel for petitioner had submitted that proposal for OTS for a sum of Rs.3.76 crores was submitted by petitioner on 20.10.2023. Said proposal was rejected by respondent – bank on the ground that it is on lower side against total outstanding of Rs.19.76 crores. Learned counsel for petitioner at this juncture stated that subsequent proposal for a sum of Rs.4.10 crores had been submitted by petitioner on 11.12.2023 but the same has still not been decided till date. Therefore, pending consideration of this proposal, this writ petition should be kept pending and no coercive action should be taken against petitioner till then.

13. Be that as it may, we do not consider the above to be a ground for continuance of present proceedings. Sufficient opportunity had been afforded to parties to settle the matter but nothing fruitful has come forth. There is no merit in argument that till latest proposal dated 11.12.2023 submitted by petitioner is not decided, the matter should be kept pending with interim order to continue. We find merit in the argument raised by learned counsel for respondent – Bank, that Bank cannot be held hostage by such kind of periodic offers by petitioner, which are clearly far from acceptable, keeping in view the total outstanding against petitioner and that submission of proposals of meagre amounts, a few days prior to hearing of the matter, cannot entitle petitioner to any relief, as the petitioner is very

well aware that its proposal is firstly dealt with at the Head Office, thereafter Zonal Sastra and ultimately by Circle Sastra.

14. Keeping in view the facts and circumstances as above, we do not find any ground which calls for interference in exercise of jurisdiction under Article 226 of Constitution of India.

15. Writ petition is, accordingly, dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law. Needless to say, there is no impediment for parties to arrive at any mutually acceptable settlement.

16. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

January 08, 2024
rts

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