2024:PHHC:079477-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6554-2021
Date of Decision: May 31, 2024

Kamaljit Kaur ..... Petitioner

Versus

Union Bank of India and another ..... Respondents

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

Present: Mr.Naresh Kumar, Advocate for the petitioner.

Mr. Gaurav Goel, Advocate for the respondents.

****

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.

2. It is case of the petitioner that M/s Harjindra Wood Fuel (not a party in this writ petition), through its sole proprietor Harjindra Kumar availed of credit facility and term loan from respondent – Bank as detailed in para 4 of the writ petition. It is pointed out that 8 marlas out of old khewat No. 1044/1267 (now khewat No. 1205/1415) out of khasra No.1401 min (4-15) was mortgaged.

CWP-6554-2021

Petitioner leased out property measuring 13 marlas in which there are seven rooms, big cattle shed etc. Present petitioner mortgaged property in question as described in para 5 of writ petition as guarantor. Principal borrower defaulted in payment of Rs.10,31,452.65, therefore, its account was declared Non Performing Asset.

3. Learned counsel for petitioner submitted that in an illegal manner, notice under Section 13(2) of SARFAESI Act was issued whereas proceedings under SARFAESI Act cannot be initiated in terms of Section 31(i) of SARFAESI Act as land in question is agricultural land. Security had been offered by the petitioner for carrying out agricultural purposes and allied activities. Therefore, once the land offered for security is used for agricultural and allied activities, provisions of SARFAESI Act are not applicable. It is stated that after passing of order dated 25.06.2019 came to knowledge of petitioner, she further discovered that notice under Section 13(4) of SARFAESI Act had also been issued, though copy thereof was never served upon petitioner. Bank officials are claimed to have visited petitioner's house and warned her that they would enforce the security mortgaged with the bank i.e. dairy farm. Petitioner submitted application dated 09.09.2021 before respondent No. 2 in this respect but to no avail. Petitioner, therefore, apprehending that respondent – bank will take illegal possession of the property, approached this Court by way of present writ petition. It is submitted that proceedings under SARFAESI Act being totally illegal and arbitrary be set aside and this writ petition be allowed as prayed for.

4. This petition was opposed by learned counsel for respondent – Bank while firstly raising a preliminary objection regarding entertainaibility of writ petition itself. Learned counsel for respondent – Bank submitted that loan in question was sanctioned in favour of M/s Harjindra Wood Fuel on 27.12.2012.

As per valuation report carried out at that time, property in question is clearly and specifically described to be residential in nature. Valuation report dated 28.12.2017 and legal opinion dated 15.01.2018 are attached as Annexures R3 and R4 with the written statement. Learned counsel for respondent – Bank further pointed out that as per jamabandi for the year 2015-16 submitted by petitioner herself clearly depicts property in question to be in *Gair Mumkin Abadi*. Petitioner, it is submitted, only wishes to delay recovery proceedings and an absolutely false and incorrect plea has been raised that land in question is agricultural, therefore, proceedings under SARFAESI Act cannot be initiated. It is, thus, prayed that this writ petition be dismissed.

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

6. Basic argument raised in this writ petition is that in terms of Section 31 of SARFAESI Act proceedings thereunder cannot be initiated. Section 31 of SARFAESI Act reads as under:-

> " **31. Provisions of this Act not to apply in certain cases.-** The provisions of this Act shall not apply to
> (a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;
> (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);
> (c)creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934(24 of 1934);
> (d)creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);
> (e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;
> (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);

(g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)] or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon."

7. In the present writ petition, property in question is in the abadi deh, as per inspection report dated 27.12.2012 (Annexure R2), property is described as 'residential – free hold'. It is so mentioned in valuation report as well. As per jamabandi of year 2015-16 land is described as *Gair Mumkin Abadi*. Thus, on the strength of these documents, it cannot be concluded that land/property in question is agricultural. It is further to be noticed that Hon'ble the Supreme Court in **Indian Bank and another vs. K. Pappireddiyar and another 2018 (3) RCR (Civil) 875**, has proceeded to hold that even classification of land in revenue records as agricultural by itself is not dispositive or conclusive of the question whether SARFAESI Act shall apply or not. In the said case, it was held by Hon'ble the Supreme Court as under:-

" 9. The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart.

10. xxx xxx xxx

Both having regard to the two-judge Bench decision in Blue Coast Hotels Limited and as explained above, the question as to whether the land is agricultural has to be determined on the basis

> of the totality of facts and circumstances including the nature and character of the land, the use to which it was put and the purpose and intent of the parties on the date on which the security interest was created.
>
> xxx xxx xxx"

8. Gainful reference can also be made to judgments of Hon'ble the Supreme Court in **Authorized Officer State Bank of India v. C. Natarajan, 2023 (2) Law Herald (SC) 1017, K. Sreedhar v. M/s Raus Constructions Pvt. Ltd. and others, 2023 AIR (SC) 306** and **ITC Limited v. Blue Coast Hotels Limited and others, (2018) 15 SCC 99.** There is, thus, no merit in the argument raised on behalf of petitioner that it is a jurisdictional issue which is involved, therefore, present writ petition should be entertained.

9. It has been consistently held by Hon'ble the Supreme Court in a number of cases that interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India has to be minimal and actuated only in exceptional and extraordinary circumstances. It has been held by 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 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 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.
>
> xxx xxx xxx
>
> 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.
>>
>> xxx xxx xxx"

10. Said decision has been reiterated by Hon'ble the Supreme Court in the case of **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**, wherein it was held that:-

> "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 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 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."

11. The Hon'ble Supreme Court in a recent case i.e. **PHR Invent Educational Society Versus UCO Bank and others, 2024 AIR (SC) 1893** has held as under:-

" 29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
(ii) it has acted in defiance of the fundamental principles of judicial procedure;
(iii) it has resorted to invoke the provisions which are repealed; and
(iv) when an order has been passed in total violation of the principles of natural justice.

30. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

> 31. Undisputedly, the present case would not come under any of the exceptions as carved out by this Court in the case of Chhabil Dass Agarwal (supra).
>
> 32. We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.
>
> 33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of Satyawati Tondon (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:
>
> > "55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

12. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance which calls for interference by this Court. All the arguments as raised in this writ petition are clearly within the realm of consideration by learned Tribunal.

13. In all fairness we take note of the fact that it had also been argued by learned counsel for petitioner that it is incumbent upon respondent – Bank to first take action qua property of borrower rather than straight away take action in respect to the land of petitioner, who is guarantor. This argument is also devoid of merit, keeping in view the clear cut definition of 'borrower' in Section 2(f) of SARFAESI Act. Thus, finding no ground whatsoever which calls for interference in the writ petition, same is dismissed with liberty to petitioner to

avail remedy(ies) available to her in accordance with law while raising all available pleas.

14. However, keeping in view the fact that interim order in favour of petitioner was granted on 25.03.2021 to the extent that proceedings initiated vide notice dated 25.06.2019 would remain stayed, the same shall continue for fifteen (15) days from receipt of certified copy of this order. Question of continuance or otherwise of interim order in petitioner's favour shall necessarily be within the realm of consideration by the appropriate Forum which be considered in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

15. It is clarified that interim protection afforded to petitioner shall automatically stand vacated after expiry of fifteen days as above in the absence of any order by the appropriate authority.

16. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 31, 2024
rts

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