2024:PHHC:059929-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-6413-2022 (O&M)
Date of Decision: April 29, 2024

Sanjeev Kumar Bindal ..... Petitioner

Versus

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

2. CWP-5131-2022

Sanjeev Kumar Bindal ..... Petitioner

Versus

Union Bank of India ..... Respondent

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

Present: Mr. Ankush Verma, Advocate for
Mr. N.K. Verma, Advocate for the petitioner.

Mr. C.S. Pasricha, Advocate for the respondents.

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LISA GILL, J.

1. This order shall dispose of both abovesaid writ petitions, which have been taken up together at request and with consent of learned counsel for parties due to overlap in the prayer therein.

2. Prayer in CWP- 5131-2022 reads as under:-

> "Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for seeking quashing of the unjust and unwarranted proceedings initiated by the

respondent bank against residential property of the petitioner in utter violation of the provisions of the SARFAESI Act and Rules, 2002 and the action of the respondent bank of proceeding against the petitioner, who has no concern with the partnership firm loan account and the respondent bank is proceeding against the petitioner in violation to the guidelines of the RBI.

AND

Writ of Mandamus seeking direction to the respondent bank to not to club the housing loans of the petitioner with partnership firm loan account with which the petitioner has no concern.

AND

Writ of Mandamus seeking direction to the respondent bank to not to proceed against the residential house of the petitioner for any default in partnership firm loan account as he is not the partner in the firm.

AND

For staying the Securitization proceedings initiated by the respondent bank initiated against the petitioner during the pendency of present writ petition.

AND

For seeking issuance of any other writ, order or direction which this Hon'ble Court may deem fit, just and proper in view of the facts and circumstances of the case."

3. Prayer in CWP-6413-2022 reads as under:-

"Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for seeking quashing of the unjust and unwarranted proceedings initiated by the respondent bank against petitioner in utter violation of the provisions of the SARFAESI Act and Rules, 2002 and has issued the notice under Section 13(2) (Annexure P11) dated 28.04.2021 of the Securitization Act, as the account of the petitioner defaulted due to non-grant of the relief package of announced by the Govt. of India during COVID-19, whereas he was fully eligible for benefit of package and was also eligible for restructure/reschedule of the account as per guidelines.

AND

Writ of Mandamus seeking direction to the respondent bank to restructure/regularize the account of petitioner in view of restructure policies announced by the RBI and to set aside the Securitization proceedings initiated by respondent Bank against the petitioner and further seeking direction to respondent bank to not to club the housing loan of the petitioner with the other loans of the partnership firm with which petitioner is having no concern and in which the residential house of the petitioner was not mortgaged.

AND

For staying the Securitization proceedings initiated by the respondent bank initiated against the petitioner during the pendency of present writ petition.

AND

For seeking issuance of any other writ, order or direction which this Hon'ble Court may deem fit, just and proper in view of the facts and circumstances of the case."

4. Learned counsel for petitioner submitted that petitioner availed of two housing loans from respondent - Bank on 25.01.2019 i.e. term loan of Rs.1.92 crores and another term loan of Rs. 62 lakhs. Installments were being deposited regularly till March, 2020. On account of outbreak of pandemic COVID-19, financial indiscipline did occur. RBI, it is stated, had granted moratorium to all borrowers and a restructuring policy was floated by RBI on 06.08.2020. Petitioner requested respondent – Bank for re-scheduling/ restructuring of his housing loan by affording moratorium for two years but his

request was not acceded to. Petitioner's account was declared Non Performing Asset (NPA) on 31.03.2021. Notice dated 28.04.2021 under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') was issued in respect to both loan accounts for deposit of Rs.205,36,026.88 and Rs.67,26,753. 66. Objections were filed by petitioner on 23.06.2021, which were incorrectly rejected by respondent - bank on 13.07.2021. Possession notice under Section 13(4) of SARFAESI Act was issued on 09.03.2022. It is submitted that at one stage, partnership firm namely M/s Amba Ploy Plast and M/s Krishna Industries were created with the name of petitioner as one of the inactive partners. Other partners in the said Firms, it is further submitted are clever kind of people, always on the look out to cheat people. They had tried to get a loan from Bank in the name of said Firms but as per information received by petitioner, respondent – Bank had refused to provide loan to these Firms. Petitioner was never informed by the bank in this regard but when he requested restructuring of his housing loan it came to light that loan facility had been sanctioned to said partnership Firms whereas petitioner at no point of time had ever mortgaged his residential property qua loan accounts of partnership Firms. Moreover, petitioner had left the partnership Firm M/s Krishna Industries on 22.02.2019. GST certificate was secured by said Firm on 08.03.2019. Thereafter, it is evident that there are only three partners of Firm. Petitioner also filed a complaint before police authorities against the persons as named above. He also filed a Civil Suit. Thus, petitioner cannot be held liable for responsibilities and liabilities of said Firm. CWP-5131-2022 was, thus, filed with prayers as detailed in foregoing paras. CWP-6413-2022, it is submitted, was thereafter filed for setting aside proceeding under

SARFAESI Act against him, release of benefits due with further direction to respondent – Bank for rescheduling/regularization of his account and not to club his account with that of the partnership concern(s) in question.

5. Learned counsel for petitioner vehemently argued that present writ petitions should be allowed as declaration of petitioner's account to be NPA itself is illegal, arbitrary and actuated only because the relief package due to COVID-19 was not released. Furthermore, action under SARFAESI Act has not been undertaken in compliance with provisions thereof. It was also contended that benefits as indicated in communication dated 01.04.2020 from Government of India, Ministry of Finance, Department of Financial Services to Reserve Bank of India (RBI) were not afforded to petitioner which in turn led to petitioner's account(s) being classified NPA, thus, he should not be penalized further. Moreover, petitioner's housing loan accounts should not be clubbed with loan accounts of two different Firms as secured asset in question was never mortgaged for the said loans. It is only fraudulent action on the part of Mr. Rajat Behal, Mr. Dipesh Garg, Mr.Ajay Goyal and Mr. Sawinder Singh, partners of those Firms that petitioner is being victimized unnecessarily. Complaint had also been filed by petitioner before police authorities. Said persons are also involved in GST fraud. It was, thus, prayed that both writ petitions be allowed.

6. Per contra, learned counsel for respondent – Bank opposed both the writ petitions while firstly raising the question of entertainability of said petitions. It was further submitted that petitioner has not revealed all material facts. Property in question has been mortgaged against loan facility availed of by M/s Krishna Industries and others. Cash Credit limit of Rs.3.30 crores and FITL loan of Rs.13,47,979/- was sanctioned in favour of M/s Krishna Industries.

Eleven properties including house belonging to petitioner and his wife were mortgaged. Loan account of M/s Krishna Industries was also declared NPA on 31.03.2021. Learned counsel for respondent – Bank submits that present petitioner and his wife stood guarantors in loan account of M/s Krishna Industries. Loan documents were duly signed by petitioner and other partners.

7. Learned counsel for respondent – Bank further points out that there are three partners of M/s Krishna Industries i.e. present petitioner, Ms. Rajni Goyal wife of Mr. Ajay Goyal and one Mr. Rajat Behal son of Mr. Rajesh Behal. It is submitted that Ms. Rajni Goyal is none other but sister of present petitioner. Reference has been made to sanction letter dated 09.08.2019 (Annexure R1) wherein details of sister concerns, where present petitioner is a partner, is given. It was further submitted that as property in question also stood mortgaged qua other loan accounts of various Firm(s) where petitioner is a partner/guarantor, said property cannot be released. It was further submitted that property in question has been auctioned and sale certificate in favour of auction purchaser Smt. Sudha Gupta issued on 07.09.2022. Petitioner while giving up possession of property in question had illegally demolished number of fixtures of the property. It was, thus, prayed that present writ petitions being devoid of any merit should be dismissed with costs.

8. Heard learned counsel for parties and have perused both the petitions.

9. Relief claimed in both writ petitions is overlapping inasmuch petitioner seeks setting aside of proceedings under SARFAESI Act against petitioner qua the housing loans/term loan availed by him personally and divorcing the said loans from the ones which may have been taken by the

Firm(s) aforesaid, on the ground that he had never mortgaged his property qua any loans which may have been taken and that he was a victim of fraud as detailed in foregoing paras. Availing of financial credit by petitioner qua two housing loans etc. in his individual capacity, as mentioned in writ petitions in any case, are a matter of record as is subsequent financial indiscipline. It is the case of petitioner that he has no concern with partnership Firms including that of M/s Krishna Industries as he is no longer a partner of said Firm. Respondent – Bank has taken a specific stand that property belonging to petitioner was mortgaged qua loan facility availed of by M/s Krishna Industries. Admittedly, these are disputed question of fact and cannot be adjudicated upon in the present proceedings. It is further to be noted 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.** 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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> xxx xxx xxx xxx
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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 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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> xxx xxx xxx
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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. Arguments raised before us including that of incorrect declaration of petitioner's account as NPA or clubbing of accounts or alleged illegalities in the procedure adopted by authorities are matters, which are very well within the realm of consideration by prescribed authority/Tribunal under SARFAESI Act itself. Possession of property has since admittedly been taken over by respondent – Bank and property auctioned successfully with sale certificate being issued on 07.09.2022.

11. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance, which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India.

12. Keeping in view the facts and circumstances as above, these writ petitions are dismissed with liberty to petitioner to avail statutory remedy(ies) as may be available to it in accordance with law.

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

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 29, 2024
rts

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