

2024:PHHC:060662-DB
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6365-2024

Date of Decision: May 02, 2024

GURWINDER SINGH

..... Petitioner

Versus

STATE BANK OF INDIA AND ANOTHER

..... Respondents

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

Present: Mr. Naveen Sheokand, Advocate for the petitioner.

Ms. Madhu Dayal, Advocate for respondent – Bank.

LISA GILL, J.

1. Petitioner seeks setting aside of notice dated 19.02.2024 (Annexure P9) vide which property in question was sought to be auctioned on 19.03.2024. There is a further prayer for directing respondents to accept pending amount in terms of One Time Settlement (OTS) sanctioned on 23.06.2022 (Annexure P3). Petitioner had failed to pay requisite amount within stipulated date by 31.07.2023. Settlement was cancelled on 05.08.2023 (Annexure P6). Petitioner seeks extension of period of OTS.

2. Learned counsel for respondent points out that auction held on 19.03.2024 was not successful, therefore, prayer in this regard is rendered infructuous. Furthermore, petitioner is always at liberty to avail statutory remedies as may be available to him to challenge proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) initiated against him, with present writ petition not being entertainable. Gainful 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** and **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.

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.”

3. Insofar as directions sought by petitioner for extension of period of OTS is concerned, same cannot be accepted, keeping in view judgment of

Hon’ble the Supreme Court in **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540** wherein Hon’ble the Supreme Court has categorically held that guarantor/borrower is not entitled to seek extension of period of OTS as a matter of right.

4. Writ petition is, accordingly, disposed of with liberty to petitioner to avail remedy(ies) available to him to challenge proceedings under SARFAESI Act, if so advised. It is always open to parties to arrive at any mutually acceptable settlement

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

(LISA GILL)
JUDGE

May 02, 2024
rts

(AMARJOT BHATTI)
JUDGE

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