2024:PHHC:013511-DB

208

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8465-2021
Date of Decision: 31.01.2024

Kailash Rani @ Kailash Kaur

...... Petitioner

Versus

Asset Reconstruction Company (India) Ltd. and others

.... Respondents

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

Present: Ms. Monika Thakur, Advocate
for petitioner.

Mr. Vipul Dharmani, Advocate
for respondents No. 1 and 2.
(through Video Conferencing)

Ms. Shivani Sharma, DAG Punjab
for respondent No. 3.

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LISA GILL, J.

1. Prayer in this writ petition is for protecting immovable property i.e. Plot No. 18 situated at Karol Baag Colony, Jassian Kalan, Tehsil and District Ludhiana from auction by respondents on the basis of order dated 11.05.2020 passed by District Magistrate, Ludhiana under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) and setting aside notice(s) dated 16.02.2021 and

22.02.2021 (Annexure P-3 and P-4) issued under the provisions of SARFAESI Act. There is a further prayer for stay of proceedings under SARFAESI Act initiated by respondents No. 1 and 2.

2. Brief facts necessary for adjudication of the matter are that on 16.04.2003, Ms. Krishna Sukhija wife of Sh. Puran Singh executed agreement to sell in favour of petitioner for a sum of ₹2,30,000/-, out of which petitioner statedly paid a sum of ₹ 1,80,000/- as earnest money. Lateron, Ms. Krishna Sukhija refused to perform her part of agreement and as such, petitioner filed suit for specific performance at Civil Courts, Ludhiana, which was dismissed vide judgment/order dated 31.10.2012. Aggrieved against the said judgment, appeal was preferred by petitioner, which was allowed vide judgment dated 29.10.2013 and sale deed was executed in favour of petitioner.

3. Vide auction notice dated 16.02.2021 issued by respondents No. 1 and 2, symbolic possession of property in question was taken on 07.09.2017. The seller of property i.e. Krishna Sukhija after execution of agreement to sell took a loan from respondents No. 1 and 2 after mortgaging the property in question. On receipt of auction notice(s) dated 16.02.2021 and 22.02.2021, petitioner came to know from respondents that Mrs. Krishna Sukhija and Mr. Puran Singh have defaulted in repaying the loan amount. Due to non-payment of loan amount as well as interest accrued thereto, loan account of petitioner was classified as Non-Performing Assets (NPA).

4. Learned counsel for petitioner submits that proceedings

initiated under SARFAESI Act are illegal, arbitrary and in violation of the provisions of SARFAESI Act. Learned counsel further submits that petitioner is the owner of said property and at no stage the said property was mortgaged by petitioner with respondents. Petitioner has never availed of any loan facility nor signed any documents in this regard. Therefore, present writ petition be allowed and proceedings initiated by respondents under SARFAESI Act, be quashed.

5. Learned counsel for respondent has opposed this writ petition on the question of entertainability itself in view of judgment of the Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tandon and others,** ***2010(8) SCC 110*** and **Phoenix ARC Private Ltd. Vs. Vishwa Bharati Vidya Mandir and others,** ***2022 AIR (SC) 1045***. Petitioner has filed this writ petition claiming rights on the basis of execution of agreement to sell dated 16.04.2023 in her favour and subsequent judgment and decree dated 29.10.2013 by Appellate Court in her favour. It is further submitted that entire action under SARFAESI Act against petitioner has been taken in strict consonance with the provisions thereunder. Learned counsel contends that present writ petition is not entertainable against the private financial institution. Averments on merits are also denied.

6. Heard learned counsel for parties.

7. It has been held by Hon'ble the Supreme Court in a catena of judgments that interference by High Court in exercise of jurisdiction under Article 226 of the Constitution of India should be minimal and actuated only in extra-ordinary and exceptional circumstances in matters involving

recovery of public money, taxes, cess, due of Banks and Financial Institutions etc. In the case of **Union Bank of India Vs. Satyawati Tandon and others (Supra)**, it was held by Hon'ble the Supreme Court as:-

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

8. After having heard learned counsel for the parties and perusing the file, we do not find any ground for interference in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. It is a settled position of law that interference in such like matters is to be actuated only in exceptional or extra ordinary situation. No such extra ordinary circumstance has been pointed out. Disputed questions of fact are involved in this writ petition.

9. Moreover, relief claimed in this writ petition is qua a private non-banking financial institution, therefore, present writ petition in any case is not entertainable. Gainful reference in this respect can be made to judgment of the Hon'ble Supreme Court in ***Phoenix ARC Private Ltd. Vs. Vishwa Bharati Vidya Mandir and others, 2022 AIR (SC) 1045,*** wherein it has been held as under:-

"Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of ***Praga Tools Corporation v. Shri C.A. imanual, (1969) 1 SCC 585*** and ***Ramesh Ahluwalia Vs. State of Punjab, (2012) 12 SCC 331*** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

10. Keeping in view the facts and circumstances of the matter, this writ petition is dismissed with liberty to petitioner to avail the statutory remedy(ies) available to her in accordance with law. All pleas/arguments as raised by petitioner are within the realm of consideration by the learned Tribunal.

11. As interim order passed in favour of petitioner on 20.04.2021 has continued till date, same shall enure for a period of fifteen (15) days from the date of receipt of certified copy of this order, in order to enable her to avail appropriate remedy as may be available in accordance with law. In case, petitioner files appropriate application/petition accompanied with requisite application(s), question of continuance or otherwise of interim order in petitioner's favour is necessarily in the realm of consideration by the appropriate Forum in accordance with law, without being influenced by

any order, which may have been passed in this writ petition. It is clarified that interim protection afforded to petitioner shall not enure beyond 15 working days in the absence of appropriate order by competent authority/Tribunal. There is no expression of opinion on the merits of matter.

12. Pending miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

31.01.2024 **(AMARJOT BHATTI)**
lalit **JUDGE**

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