222

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8021-2022
Date of Decision:- 21.02.2024

SUNRISE BOOKS DISTRIBUTORS ....Petitioner

Vs.

BAJAJ FINSERV AND ANR ...Respondents

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

Present:- Mr. Saransh Sabharwal, Advocate for the petitioner.

Mr. Nimanyu Gautam, Advocate for respondent No.1.

Mr. Vipul Dharmani, Advocate for respondent No.2.

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LISA GILL, J.

1. Prayer in this writ petition is for quashing notice dated 28.04.2021 issued under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and notice dated 05.03.2022 issued under Section 13 (4) of SARFAESI Act.

2. Present writ petition has been filed by petitioner through its proprietor Shilpi Garg. Husband of Shilpi namely Anand Garg was earlier proprietor of petitioner company. Loan agreement dated 29.02.2016 had been entered into with respondent No.1 during his lifetime for a sum of Rs.27,60,000/- against property bearing Shop No.46-47, Raj Hospital

Market Mission Road, Sonepat, Haryana. Anand Garg unfortunately passed away on 10.10.2020 and thereafter, installments could not be deposited. Due to financial indiscipline, loan account in question was classified Non-Performing Asset (NPA). Petitioner along with others was served with notice dated 28.04.2021 of SARFAESI Act to deposit Rs.21,38,442/-. Subsequently, petitioner was served with notice dated 05.03.2022 issued under Section 13 (4) of SARFAESI Act. .

3. Learned counsel for petitioner argued that on account of death of Anand Garg amount due towards respondent – Bank could not be deposited though it was regularly being deposited during his lifetime. Sum of Rs.21 lakhs was deposited by him from April, 2016 till October, 2020. He further argued that action taken under SARFAESI Act is in violation of the applicable provisions of law, hence, should be set aside.

4. Heard learned counsel for the parties.

5. At this stage, it is relevant to note that petitioner in para No.9 of writ petition has stated that petitioner is ready and willing to deposit the outstanding amount but addresses a limited prayer for more time for repayment and also seeks restructuring of the loan amount. Notice of motion was issued in this writ petition on 21.04.2022. No interim order was passed in favour of petitioner at that stage. On 19.07.2022, it was directed by co-ordinate Bench that subject to petitioner depositing a sum of Rs.5 lakhs with respondent No.2 by 29.08.2022, no coercive action shall be taken against petitioner and that in default of compliance of said order, same shall stand vacated. Averment by learned counsel for the petitioner that there had been compliance of order dated 19.07.2022 is noted in order

dated 11.10.2022 passed in this writ petition. Learned counsel for petitioner, on pointed query, informs that thereafter no amount whatsoever has been deposited by petitioner by way of discharge of her liability. At this stage, it is relevant to note that SARFAESI Act is complete code in itself which brooks no interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. Interference in such like matters has to be minimal and restricted to exceptional or extraordinary circumstances. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in ***Union Bank of India v. Satyawati Tandon and others 2010(8) SCC 110*** and ***M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.***

6. Learned counsel for petitioner is unable to point out any extraordinary or exceptional circumstances which calls for interference by this Court for exercising jurisdiction under Article 226 of the Constitution of India.

7. Moreover, relief claimed in this writ petition is qua a private non-banking financial institution, therefore, the writ petition is not entertainable in any manner. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in ***Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888*** wherein it has been held as under:

> *"12. 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 and others, (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."*

8. Keeping in view the facts and circumstances, we do not find any ground for interference in this writ petition. Writ petition is accordingly dismissed with liberty to petitioner to avail remedy (ies) available to him in accordance with law.

9. However, as interim order dated 19.07.2022 in favour of petitioner has continued till date, it is directed that said order shall enure for a period of 15 days from the date of receipt of certified copy of this order, in order to enable petitioner to avail appropriate remedy (ies) as may be available to her 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 shall necessarily be 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.

10. 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 in accordance with law. There is no expression of opinion on merits of the matter.

11. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

21.02.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No