2024:PHHC:020343-DB

223 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8363-2019
Date of Decision: February 13, 2024

M/S KAUR SAIN SPINNERS LIMITED AND OTHERS ..... Petitioners

Versus

ORIENTAL BANK OF COMMERCE ..... Respondent

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

Present: Mr. H.S. Jagdev, Advocate for
Mr. Aalok Jagga, Advocate for the petitioners.

Mr. Anil K. Ahuja, Advocate for the respondent.

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LISA GILL, J.

1. Prayer in this writ petition is for quashing notice dated 26.12.2017 (Annexure P3) 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 13.03.2019 (Annexure P7) under Section 13(4) of SARFAESI Act.

2. It is pleaded that petitioner No. 1 is a Company incorporated under provisions of the Companies Act, 1956 represented by its Director – Sushil Kumar, who is arrayed as petitioner No. 3. Petitioner No. 5 is a partnership Firm also represented by Sushil Kumar. Petitioners No. 2 and 3 are also

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Directors/partners/borrowers and petitioner No. 4 is a guarantor. It is submitted that financial credit was afforded to petitioners by a consortium of banks namely Oriental Bank of Commerce, Allahabad Bank and Central Bank of India and financial facility was afforded to petitioner No. 5 by sole creditor i.e. respondent – Bank in this writ petition. It is the case of petitioners that loan account of petitioner No. 5 is standard and continuing with respondent – Bank, however, loan account of petitioner No. 1 was declared Non Performing Asset (NPA) on 31.08.2017. Notice under Section 13(2) of SARFAESI Act was issued on 26.12.2017 claiming amount of Rs.1,93,41,71,512.52. Notice under Section 13(4) of SARFAESI Act was issued on 06.04.2018 and 13.03.2019. Issue agitated in the writ petition is that it was not open to respondent – bank to have included residential securities in view of the fact that in the sanction letter, it is mentioned that said residential securities are primary security for loan of petitioner No. 5 and since their residual value is nil, therefore, it cannot be considered for collateral security of petitioner No. 1. It is, thus, prayed that this writ petition be allowed.

3. Learned counsel for respondent – Bank has contested this writ petition while raising preliminary objection qua entertainability of writ petition itself in view of specific remedies available to petitioners under SARFAESI Act itself. It is submitted that proceedings under SARFAESI Act are in complete consonance with applicable provisions of law. Petitioners, it is submitted, have indulged in misreading and mis-interpretation of relevant clause in sanction letter dated 25.01.2017. Respondent – Bank, it is further submitted, is entitled to proceed against residential properties of petitioners. Learned counsel for

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respondent has referred to relevant clause of sanction letter dated 25.01.2017, which reads as under:-

> 2. **Collateral:**
>
> A. Extension of charge over residential properties having aggregate realizable value of Rs.9.87 crore as given below, primarily charged in the account of Kaur Sain Spinning Mills (Total exposure of 39.85 Crore) is available exclusively to our bank. However, as the residual value available is NIL, the same is not considered for collateral coverage.

4. It is submitted that interpretation as set forth by petitioners is fallacious and erroneous inasmuch as in banking parlance, it is well known that in the context of stipulation of creation of second mortgages by way of extension of charges over these properties would mean and signify that value of said properties will not be taken into account and considered by respondent – bank while arriving at value of available security to determine available stipulated margin for taking credit decision as to the drawing power that is available to petitioner No. 1 and/or to determine the outstanding dues becoming secured from time to time. It is submitted that by no stretch imagination, it can be presumed that mortgaged securities (residential properties) are not to be considered as mortgaged securities for credit facilities availed of by petitioner No. 1. It is, thus, prayed that this writ petition be dismissed.

5. We have heard learned counsel for parties and have gone through the file with their able assistance.

6. Dispute raised in this writ petition is qua interpretation of clause as referred to above. Petitioners seek quashing of proceedings under SARFAESI Act initiated against them on this count.

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7. At this stage, it is relevant to note 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** 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.
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> xxx xxx xxx
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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 54of 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

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> 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."

8. Learned counsel for petitioners 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. All arguments and pleas as raised before us are well within the realm of consideration by appropriate Forum/Tribunal.

9. Writ petition is, accordingly, dismissed with liberty to petitioners to avail remedy(ies) available to their in accordance with law.

10. It is clarified that there is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

February 13, 2024
Rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No