2024:PHHC:045544

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15931-2024 (O&M)
Date of Decision: 03.04.2024

CFM Asset Reconstruction Private Limited ………………*Petitioner*

Versus

State of Punjab & another …………....*Respondents*

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. Suvir Tandon, Advocate, for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner seeks quashing of FIR No.23 dated 20.03.2024 registered at Police Station Punjab Agriculture University, Police Commissionerate Ludhiana, under Sections 420, 465, 467, 468, 471, 120-B IPC and Section 82 of the Registration Act (Annexure P-23) and all consequential proceedings emanating therefrom.

2. Before proceeding to refer to the allegations in FIR, it will be appropriate to state a few facts, as may be discerned from perusal of this petition. It is borne out that in the year 2012, M/s Venus Texspin Limited (for short - 'the Company') availed credit facility from the Union Bank of India (for short - 'the Bank'); that the said Company was engaged in the business of Textile Industry; that respondent No.2 Sanjay Gupta/complainant was a co-sharer in the company; on 31.01.2016, the Bank declared the loan account of the Company as a Non Performing Asset (for short - 'NPA'); resultantly, the

Company was called upon to pay its dues or face proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002; that a Demand Notice dated 05.02.2016 under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued and symbolic possession of the secured asset assumed under Section 13 (4) of the Act, 2002, on 11.04.2016; that on 24.04.2018, the Company's debt was assigned to the petitioner (hereinafter referred to as 'the Financial Creditor'). The petitioner CFM Asset Reconstruction Company is thus, an assignee of the Bank in view of the Assignment Agreement dated 24.04.2018 (Annexure P-1). The petitioner CFM-ARC had arrived at a settlement with respondent No.2 and other co-sharers/Directors on 18.09.2018 (Annexure P-2).

3. On an earlier occasion, when the petitioner was proceeding to sell the collateral security i.e. the mortgaged property, respondent No.2 Sanjay Gupta had approached this Court by way of filing a writ petition i.e. CWP-18377-2021, which was disposed off on 16.09.2021 by passing the following order:

> "*The guarantor is assailing the action of the secured creditor in proceeding to sell the collateral security, i.e. mortgaged property of the guarantor by way of private treaty without consent of the guarantor and at a price, which is much lower than the valuation reports.*
>
> *Notice of motion for 28.10,2021.*
>
> *Mr. Charanjiv Singh Pasricha, Advocate, appears and waives off notice on behalf of sole respondent.*
>
> *Let the reply by way of affidavit be filed by the next date of hearing.*

It is ordered that any action qua the property in question shall be subject to the decision of the present writ petition."

4. The FIR in question was lodged at the instance of respondent No.2 Sanjay Gupta and Avinisha Gupta, wherein it is stated that they had been running a joint family business with their brother Ajay Gupta. However, a dispute arose with Ajay Gupta in the year 2021 leading to filing of a writ petition before this Court i.e. CWP-18377-2021, wherein certain interim directions were issued on 16.09.2021 to the effect that any action taken qua the property in question i.e. Plot No.20, Garden Enclave, City South measuring 4082 square yards situated at Ayali Khurd, Tehsil & District Ludhiana, would be subject to decision of the writ petition. Thereafter, the complainant by moving an application apprised the revenue authorities i.e. the Tehsildar (West) about the said order for the purpose of incorporating the same in the revenue record. It is further the case of the complainant that on 03.02.2023 appropriate directions were issued by the concerned Tehsildar to the Patwaris to incorporate the entries with regard to order dated 16.09.2021 in the revenue record and rapat No.277 dated 08.02.2023 with regard to the compliance was recorded. It is alleged that the accused, however, forged the revenue record and removed the entries recorded vide rapat No.277 dated 08.02.2023 with regard to order dated 16.09.2021 and got executed a registered sale deed with respect to the property in question on 15.02.2023.

5. Learned senior counsel appearing on behalf of the petitioner submits that it is a case where the complainant having been declared a defaulter of loan with respect to the accounts of Venus Texspin Limited and the said loan

having been assigned to the petitioner-company being an Asset Reconstruction Company of Union Bank of India and as such, sale, if any, of the property in question has been made in discharge of its functions and there is no mala fide in the same. Learned senior counsel submits that in any case all such actions are protected under Section 32 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and consequently, lodging of an FIR is nothing, but an abuse of process of law and that the complainant is trying all antics and is creating hurdles for the purpose of realization of loan by sale of the property in question. Learned senior counsel in order to hammer forth his aforesaid submissions places reliance upon a judgment of Hon'ble Apex Court reported as <u>K. Virupaksha & another Vs. State of Karnataka & another, 2020 (4) SCC 440</u>.

6. This Court has considered the aforesaid submissions and has also gone through the judgment pressed into service on behalf of the petitioner.

7. A perusal of the FIR would show that specific and categoric allegations with regard to tampering with the revenue record have been leveled so as to facilitate the execution of the sale deed. The question as to whether any omission of relevant entry is intentional or is just on account of oversight, is a question of fact, which can only be ascertained on the basis of evidence collected during investigation. It will not be out of place to mention that while the writ petition i.e. CWP-18377-2021, wherein interim directions had been issued on 16.09.2021, was disposed off on 31.07.2023 (Annexure P-19), the public notices dated 26.05.2022, 23.06.2022 & 16.12.2022 (Annexures P-9, P-10 & P-12), though issued before withdrawal of writ

petition, do not refer to any '*lis pendens*'. In any case, this Court is not expected to embark upon mini trial to return a finding on factual aspects.

8. As far as judgment pressed into service on behalf of the petitioner i.e. K. Virupaksha's case (supra) is concerned, a perusal of the same shows that in the cited case there is not even a whisper of any allegation pertaining to any forgery. Section 32 of the SARFAESI Act certainly cannot be a protective umbrella even in a case where criminal offences as serious as forgery are alleged to have been committed, as in the present case. Thus, Section 32 of the SARFAESI Act would not be attracted to the facts of the present case. The matter is at its nascent stage of investigation, the FIR having been lodged merely about fortnight back. Under these circumstances, this Court does not find any ground to quash the FIR in question. The instant petition is sans merit and is hereby dismissed.

03.04.2024 **(GURVINDER SINGH GILL)**
Vimal **JUDGE**

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