226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10428-2022 (O&M)
Date of Decision: 27.05.2024

Poonam Sharma

..... Petitioner

Versus

District Magistrate, Ludhiana and others

..... Respondents

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

Present: Mr. Gagan Oberoi, Advocate
for the petitioner.

Mr. P.S. Bhandari, AAG, Punjab.

Mr. Ankit Kaushal, Advocate
for respondent No. 3.

****

LISA GILL, J.(oral)

1. This writ petition has been filed for quashing notice(s) dated 08.09.2021 and 08.03.2022 issued under Section 13(2) and 13(4) respectively of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). There is further prayer for directing respondents No. 1 to 3 not to take coercive steps regarding taking physical possession of properties in question.

2. Learned counsel for the petitioner submits that petitioner availed of two loan facilities i.e. overdraft of Rs. 15,00,000/- and a housing loan of Rs. 12,00,000/- in the year 2018. The amount in question was being deposited regularly but due to some financial crises faced by the petitioner, financial indiscipline did occur on account of which petitioner's accounts were declared Non Performing Asset (NPA) on 31.03.2021. Notice under Section 13(2) SARFAESI Act was issued on 08.09.2021. It is submitted that petitioner had approached the respondent-Bank even prior to declaration of her account NPA for affording facility of moratorium in terms of guidelines issued by Reserve Bank of India after the outbreak of pandemic COVID-19. However, the respondent-Bank did not take any step in this direction. Objections dated 17.11.2021 were also submitted by the petitioner. She also submitted objections under Section 13(3-A) on 01.02.2022 in continuation of her earlier representations/objections dated 17.11.2021. Respondent-Bank did not consider the same or decide them but in an illegal manner issued under Section 13(4) SARFAESI Act on 08.03.2022. Learned counsel for the petitioner further states that liquidity of funds had become problematic due to investment made by her husband for purchase of property in which the seller i.e. one M/s JMS Investments Pvt. Ltd. played fraud with the petitioner and her husband. Forged documents of the property in question belonging to someone else were handed over. The said seller has not returned the amount due despite orders

passed by the Punjab State Consumer Commission in her favour. Amount of loan availed of by petitioner had been invested for purchase of the said flat. It is vehemently argued that inspite of Award dated 13.09.2017 passed in favour of the petitioner in respect to the amount due from M/s JMS Investments Pvt. Ltd., the amount has not been deposited. Said M/s JMS Investments Pvt. Ltd. during execution proceedings agreed to compromise the matter at Rs. 70 lakhs due to which execution petition was withdrawn but thereafter, failed to deposit the complete amount upon which execution proceedings were revived. It is submitted that the petitioner would get the money from M/s JMS Investments Pvt. Ltd. and return the same to the respondent-Bank. Furthermore, petitioner had also requested the respondent-Bank to itself recover the amount in question from M/s JMS Pvt. Ltd. as the said bank has a right to recover the debt being garnishee. It is asserted that entire proceedings under SARFAESI Act against the petitioner are absolutely illegal and arbitrary being completely dehors the applicable provisions of law. Moreover, an irrational penal interest and an unholy rate of interest is being levied by respondent-bank without any kind of authority. It is thus prayed that this writ petition be allowed.

3. Learned counsel for respondent-Bank has opposed this writ petition by firstly submitting that said writ petition is not entertainable at all in view of the alternate remedy which is available to the petitioner under the SARFAESI Act. Allegation raised by petitioner that objections filed by the petitioner pursuant to notice

under Section 13(2) SARFAESI Act were not decided, is absolutely incorrect. Apart from the fact that the objections were received beyond the statutory period provided under SARFAESI Act, the objections/representation dated 01.02.2022 was nevertheless decided by respondent-Bank. Copy of communication dated 17.02.2022 in this respect alongwith the postal receipts are attached as Annexures R-3/1 with written statement filed on behalf of respondent-Bank. The alleged objections/representation dated 17.11.2021 was never received by answering respondent. Furthermore, notice under Section 13(4) SARFAESI Act was issued only after decision of the said objections. Learned counsel for respondent-Bank has submitted that in the present case the objections were correctly decided. Learned counsel for respondent-Bank further submits that any transaction by the petitioner and her husband with M/s JMS Pvt. Ltd. is of no concern to respondent-Bank which was never a party to the said transaction. Proceedings under SARFAESI Act cannot be stalled on this account. It is thus prayed that this writ petition be dismissed.

4. We have heard learned counsel for the parties and have perused the file with their assistance.

5. It is admitted by the petitioner that financial credit was availed of by her from respondent-Bank. Financial indiscipline on her part for reasons as may be is also a matter of record with proceedings under SARFAESI Act being initiated against her. Various arguments have been raised by learned counsel for petitioner, duly refuted by

learned counsel for respondents. However, in the given facts and circumstances, we do not consider it necessary or appropriate to delve upon the merits of the matter. This is so for the reason that SARFAESI Act is a complete code in itself providing for specific remedies for grievance(s) which may arise on account of action taken thereunder. The Hon'ble Supreme Court in a recent case i.e. **PHR Invent Educational Society Versus UCO Bank and others**, ***2024 AIR (SC) 1893*** has reiterated the position that interference by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India should be minimal and actuated only by exceptional circumstances. In the said judgment it has been held as under :-

> "29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:
>
> (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
>
> (ii) it has acted in defiance of the fundamental principles of judicial procedure;
>
> (iii) it has resorted to invoke the provisions which are repealed; and
>
> (iv) when an order has been passed in total violation of the principles of natural justice.
>
> 30. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself

contains a mechanism for redressal of grievance.

31. Undisputedly, the present case would not come under any of the exceptions as carved out by this Court in the case of Chhabil Dass Agarwal (supra).

32. We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.

33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of Satyawati Tondon (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

> '55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection'."

6. This view clearly reiterates the view expressed in the earlier judgments of the Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110**, **M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771** and **Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34**.

7. Keeping in view the facts and circumstances as above, we do not find any ground which calls for interference by this Court. Writ petition is accordingly dismissed with liberty to petitioner to avail remedy(ies) as may be available to her in accordance with law. There is no expression of opinion on the merits of the matter.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

27.05.2024
lalit

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