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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10119-2022
Date of Decision:- 25.04.2024

M/S PARGATI FEEDS & ANOTHER ...Petitioners
Vs.
INDIAN OVERSEAS BANK & OTHERS ...Respondents

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

Present:- Mr. Suresh Kumar Jindal, Advocate for petitioners.

Mr. Deepak Grewal, DAG, Haryana

Mr. K.K. Goel, Advocate along with Mr. Ankush Bharti, Advocate for respondent- Bank.

Mr. Gunjan Rishi, Advocate for respondent No.4.

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<u>LISA GILL, J.</u>

1. Prayer in this writ petition is for quashing notice (s) dated 02.04.2022 (Annexures P-9 & P-10) issued under Rules 8 (6) and 9 (1) of Security Interest (Enforcement) Rules, 2022 and subsequent proceedings initiated by respondent – Bank.

2. Availing of financial credit as is detailed in para No.3 of writ petition i.e. Cash Credit Loan of Rs.4.30 crores and term loan of Rs.5,69,70,000/- by petitioners vide sanction letter dated 05.08.2013 are matter of record. The factory, land & buildings as well as plant & machinery etc. were mortgaged along with agricultural land and residential house, as detailed in para No.3 of the writ petition. Residential house was

also mortgaged in respect to housing loan of Rs.29 lakhs availed of by petitioner No.2 namely Satish Kumar and three others. Financial indiscipline on the part of petitioners for reasons as may be is not denied leading to declaration of petitioners' account non-performing asset ('NPA') on 31.03.2019 with notice (s) under Section 13 (2) being issued on 24.04.2019 & 30.04.2019 respectively (Annexures P-3 and P-4). Various sale notices were issued with sale notice (s) dated 02.04.2022 (Annexures P-9 & P-10) being subject matter of challenge in present writ petition.

3. Learned counsel for petitioners submits that property in question i.e. the residential house was undervalued. Moreover, there has been complete violation of applicable provisions of law insofar as proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') initiated against petitioners are concerned. Reserve price of the property as per sale notice dated 30.06.2020 was Rs.1,18,08,200/- thereafter increased to Rs.1,32,89,700/- vide sale notice dated 02.12.2020. However, as per impugned sale notice dated 02.04.2022 it was reduced to Rs.1,15,54,000/-. It is submitted that this action has been taken only to the benefit of auction purchaser i.e. respondent No.4 in collusion and in conspiracy with each other. Residential house was mortgaged in two of the loan accounts once of which stands settled. It is, thus, prayed that this writ petition be allowed while setting aside the impugned notices and subsequent sale in favour of respondent No.4.

4. Learned counsel for respondent – Bank has opposed this writ petition while raising the ground of entertainability of the writ petition

itself. It is further submitted that entire proceedings have been undertaken inconsonance with the applicable provisions. There is huge outstanding of Rs.22 crores from petitioners. Even after the sale of the property in question the only objective of petitioners is to delay the recovery proceedings. The property in question has been auctioned for a total sale consideration of Rs.1,86,54,000/- on 27.04.2022. There is no question of undervaluation of the property in any manner. Dismissal of writ petition is sought.

5. Heard learned counsel for the parties and perused the file. It is pertinent to note that SARFAESI Act is complete code in itself providing for remedy (ies) for any grievance which may arise on account of action taken thereunder. Interference in such like matters in exercise of jurisdiction under Article 226/227 of the Constitution of India has to be minimal and restricted to exceptional or extraordinary circumstances. Gainful 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*** and ***M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.*** While reiterating its earlier judgments, Hon'ble the Supreme Court in ***M/s. South Indian Bank*** has 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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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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

15. The object and reasons behind the Act 54 of 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 of 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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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 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."

6. Learned counsel for petitioners is unable to point out any extraordinary or exceptional circumstances which call for any interference

by this Court at this stage. All arguments as raised before us are very well within the realm of consideration by the appropriate Authority/Tribunal as provided under the Act.

7. 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 petitioners to avail remedy (ies) available to them in accordance with law. There is no expression of opinion on merits of the matter.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

24.04.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No