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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9012-2024
Date of Decision:- 22.04.2024

MS AJAY KUMAR NITIN KUMAR PROPRIETORSHIP FIRM
....Petitioners

Vs.

THE NAINITAL BANK LIMITED AND ANR ...Respondents

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

Present:- Mr. Saurabh Kaushik, Advocate for petitioners.

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LISA GILL, J.

1. Prayer in this writ petition is for quashing notice dated 11.11.2021 (Annexure P-4) issued under Section 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. Brief facts necessary for adjudication of the matter are that on 17.06.2013, Vijay Kumar sole proprietor of petitioner Firm availed CC limit for a sum of ₹15,00,000/- against collateral security of equitable mortgage of House No.332/10, Ravi Nagar, Near Drona School, Basal Road, Gurugram. On 10.03.2021, principal borrower – Mr.Vijay Kumar passed away and thereafter due to financial indiscipline, loan account was classified Non-Performing Asset (NPA) on 27.01.2021. Petitioners were

served with notice (s) dated 21.08.2021 (Annexure P-2) issued under Section 13 (2) and 11.11.2021 (Annexure P-4) issued under Section 13 (4) of SARFAESI Act. Respondent-Bank also approached the Debt Recovery Tribunal by way of OA-1648-2023 wherein notice was issued to petitioner but no effective orders have been passed as yet.

3. Learned counsel for petitioners submits that absolutely illegal and arbitrary action has been taken by respondent – Bank under the SARFAESI Act. Mandatory provisions under SARFAESI Act, it is contended, have not been followed. It is submitted that petitioners are ready for One Time Settlement ('OTS'). The respondent – Bank, vide communication dated 12.02.2024 which was received by petitioners on 20.04.2024, has called upon petitioners to submit concrete proposal towards OTS offer. Petitioners shall be submitting their proposal immediately but apprehension raised is that auction of the property is slated for 24.04.2024. It is, thus, prayed that this writ petition be allowed.

4. Having heard learned counsel for the petitioner and perusing the file, we do not find any ground to interfere in this writ petition in exercise of jurisdiction under Article 226/227 of the Constitution of India. At this stage, it is relevant to note that SARFAESI Act is complete code in itself which brooks no interference by this Court at this stage except in 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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> 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."

5. 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. Argument that writ petition should be kept pending till matter regarding OTS is finally concluded is not of any avail to petitioner because it is settled position that borrower does not have vested right for OTS. It is open for the parties to arrive at mutually acceptable settlement. This order would not stand in the way of any settlement which may be arrived at between the parties. Said argument is thus rejected.

6. 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.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

22.04.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No