2024:PHHC:136770-DB

204 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9407-2023
Date of Decision: October 19, 2024

Juneja Sheetz Pvt. Ltd. ..... Petitioner

Versus

District Magistrate-cum-Deputy Commissioner, Ludhiana and others ..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Akshay Chadha, Advocate for the petitioner.

Mr. G.S. Bhullar, AAG, Punjab.

Mr. Vipul Dharmani, Advocate for respondents No. 2 to 5.

****

LISA GILL, J.

1. Prayer in this writ petition is for directing respondents to allow petitioners to deposit the remaining settlement amount of Rs.58,33,333/- alongwith interest w.e.f. 01.04.2022 and not to take physical possession of property of the petitioner as described in the writ petition.

CWP-9407-2023

2. Financial facility to the tune of Rs.1,21,54,501/- was availed of by petitioner in the year 2016. Admittedly, there was financial indiscipline on the part of petitioner and its account was declared Non-Performing Asset (NPA). Notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') was issued on 28.02.2020. CWP-5251-2021 was filed by the petitioner earlier. During pendency of said writ petition, settlement was arrived at between the parties for a sum of Rs. 1 crore, in view of which writ petition was dismissed as withdrawn. Sanction of settlement was afforded on 20.03.2021. Petitioner deposited a sum of Rs. 41,66,667/- by 22.04.2021 but could not deposit entire settled amount within the stipulated period. Extension sought by petitioner vide letter dated 04.02.2022 was granted by the respondent on 09.03.2022, according to which, petitioner was to deposit balance outstanding amount i.e. Rs. 15 lakhs and Rs. 43,33,333/- in two installments before 29.03.2022. Petitioner failed to deposit the said amount within the extended time schedule as well. His request for further extension was rejected on 23.03.2022 and One Time Settlement (OTS) was recalled on 12.04.2022. Present writ petition was filed a year thereafter in April, 2023.

3. Learned counsel for respondent – Financial institution while submitting that present writ petition is otherwise not even entertainable states that this writ petition is rendered infructuous because as of now petitioner's account is regular with the amount as deposited being adjusted towards its liability. Learned counsel for petitioner, however, insists that OTS sanctioned in its favour on 20.03.2021 should be enforced with direction to respondent –

CWP-9407-2023

Financial Institution to accept the component of interest or finality etc. as applicable on the said amount.

4. It is pertinent to note that there can be no specific or positive direction issued to the Bank/Financial Institution to enter into a particular OTS. Gainful reference in this respect can be made to judgment of Hon'ble the Supreme Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56** wherein it has been held as under:-

> "9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs.100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the Bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the Bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the

> OTS Scheme and the guidelines issued from time to time. If the Bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the Bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/Bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove."

5. Furthermore it is to be noted that relief claimed in this writ petition is qua Private Non-Banking Financial Institution, the writ petition in any case, is thus not entertainable. Hon'ble the Supreme Court in **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888,** wherein it has been held as under:-

> " Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is

aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of **Praga Tools Corporation v. Shri C.A. Imanual, (1969) 1 SCC 585** and **Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

6. It is to be noted that amount as deposited by the petitioner admittedly stands adjusted towards its liability and its account is regular as of now. Needless to say, parties are always at liberty to arrive at any further/fresh OTS as may be mutually acceptable to them.

7. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty as aforementioned.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

October 19, 2024
Rts

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