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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10953-2022
Date of Decision: 18.01.2024

Paramjit Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

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

Present: Mr. Naveen Batra, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Sr. DAG Punjab
for respondents No. 1 and 2.

Mr. Nishant Badhran, Advocate
for respondent No. 3-Bank.

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LISA GILL, J. (Oral)

1. Prayer in this writ petition is for quashing notice dated 23.09.2020 (Annexure P-1 to P-3) issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and possession notice dated 04.01.2021 (Annexure P-5) issued under Section 13(4) of SARFAESI Act. There is a further prayer for setting aside sale notice dated 30.04.2022 (Annexure P-7) and order dated 02.05.2022 (Annexure P-6) passed by respondent No. 2/Additional District Magistrate, Ludhiana under Section 14 of SARFAESI Act.

2. Petitioner is the guarantor of loan account of the partnership firm in question. He claims to be the partner thereof besides owner of mortgaged property. Declaration of loan account of the firm Non

Performing Asset (NPA) is alleged to be illegal and arbitrary being in violation of various circulars issued by Reserve Bank of India. Partnership firm is pleaded to be registered as MSME under Micro, Small and Medium Enterprises Development Act, 2006.

3. Learned counsel for petitioner is unable to deny that the matter is squarely covered against the petitioner in terms of order dated 18.12.2023 passed in CWP-21657-2022, wherein it has been held as under :-

> "28. Relationship between the respondent-Bank/Financial Institutions and petitioners is clearly governed by privity of contract between parties. Whether there has been any violation of contractual stipulation between the parties or of the RBI regulations as has been urged before us, is necessarily a mixed question of fact and law. We do not find any merit in the argument that learned DRT does not have power or jurisdiction at the appropriate time, hence this argument is also repelled. First Division Bench of this High Court in **M/s Ranbir Textiles and another Vs. Reserve Bank of India and others (supra),** while observing that assuming the Scheme and Guidelines of RBI to be mandatory and required to be implemented while adjudicating upon Debt Restructuring Scheme dated 12.09.2011 as well as Guidelines dated 01.11.2012 issued by RBI for rehabilitation of Sick Micro and Small Enterprises, held under:-
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> > "12. Assuming that the scheme and the guidelines are mandatory and to be implemented by the banks, the only question would be whether the bank concerned has assessed the proposal for reliefs/ concessions/restructuring in a reasonable manner and after taking into consideration the relevant facts. If it is found that the decision of the bank has been taken after considering the relevant facts, it is not open to the Court to interfere and to substitute its view or

assessment for that of the banks. These are commercial decisions which require the assessment by financial experts taking into consideration a variety of facts and factors relating to financial feasibility, the nature and quality of the unit and the equipment, the staffing pattern and the viability of the projections made. These are commercial decisions best left to the parties equipped to deal with the same. The Courts especially while exercising their extra ordinary writ jurisdiction under Article 226 of the Constitution of India ought not to substitute their judgment on such matters for that of the experts in the field. Even if we were to be so presumptuous as to assume having knowledge of the expertise to assess and judge such matters, it would not be permissible to substitute our decisions with those of the experts in the field and those concerned with the decision making process in this regard." Learned counsel for the petitioners is unable to point out any exceptional or extraordinary circumstance, which calls for interference by this Court. Further argument raised by learned counsel for the petitioners that with issuance of notice of motion, respondents are estopped from raising the question of maintainability/entertainability of this writ petition or that this Court is precluded from examining the same, is devoid of any merit, hence rejected. Merely due to issuance of notice of motion in writ petition without there being any specific adjudication on the issue, it cannot be presumed that hurdles of entertainability/ maintainability has been finally crossed by the litigant."

29. Division Bench of High Court of Himachal Pradesh while considering a similar controversy as the one at hand in case of **Neelkanth Yarn Vs. Punjab National Bank (supra)** held that judicial scrutiny of declaration of account of the petitioners therein as NPA (petitioners therein also claimed to be MSME) was not called for and it is open to learned DRT to go into all these aspects at the relevant time. In case of **Neelkanth Yarn Vs. Punjab National Bank (supra)**, it was held as under:-

> "27. From the statutory scheme and decisions noted here-in-above, it is clear that this Court, in exercise of its jurisdiction, cannot go into the decision of respondent-bank in classifying the petitioner's account as NPA. If the respondent-bank proceeds further and reaches Section 13(4) of the SARFAESI Act stage, the petitioner-firm can file application under Section 17 of the SARFAESI Act. The DRT can go into the aspect of classifying the account as NPA and also whether RBI guidelines have been violated on any aspect leading to declaring the account as NPA and taking recourse under the SARFAESI Act.
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> 28. It has also been repeatedly held that the aspect of classifying an account as NPA is not justiciable in exercise of power of judicial review under Article 226 of the Constitution."

30. We are in agreement with the above view taken by High Court of Himachal Pradesh in abovesaid case. It is well within jurisdiction of learned DRT to adjudicate upon matters relating to validity or otherwise of proceedings undertaken by Banks/Financial Institutions under SARFAESI Act and examine whether necessary parameters have been observed and adhered to and applicable Rules and Regulations, including RBI circulars have been complied with. Any intervention by Courts at this stage would be against the avowed letter and spirit of SARFAESI Act. Issue as raked up in these writ petitions is necessarily within the realm of consideration by learned DRT, at the appropriate juncture. There cannot be a pre-emptory intervention. It was strenuously argued before us that non-intervention by this Court would lead to extremely harsh consequences for petitioners. However, the same cannot be a ground for interference as there is no escape from the provisions of law even if, harsh - '*Dura lex, sed lex*' i.e. the law is harsh but it is the law.

31. It is a settled position that provisions of SARFAESI Act prevail over MSME Act with SARFAESI Act being a complete code in itself. There is no scope for interference in the present matters at this stage. It is open to petitioners to avail the

> remedy(ies) available to them under the statute in accordance with law and agitate all grievances before learned DRT including the question of incorrect classification or otherwise of their accounts NPA. DRT is well within its jurisdiction to consider this aspect."

4. Learned counsel for petitioner is unable to carve out any distinction in the present writ petition which calls for a different dispensation. Writ petition is accordingly dismissed with liberty to petitioner to avail alternative remedy/remedies as may be available to him in accordance with law. However, in the given factual matrix wherein interim order was granted to petitioner in May, 2022 and has continued till date, it is directed that dispossession of petitioner from asset in question shall remain stayed for 20 working days from the date of receipt of certified copy of this order in order to enable petitioner to take necessary steps in accordance with law for redressal of grievance(s) as raised in this petition. It is clarified that stay of dispossession of petitioner shall not enure beyond said period of 20 days in the absence of appropriate order by competent Authority/Tribunal to be passed in accordance with law without being influenced by any order which may have been passed in this writ petition. There is no expression of opinion on merits of the matter.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

18.01.2024

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