223

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-11863-2022
Date of Decision:- 21.02.2024

M/S RITIKA FARMS AND ANR ....Petitioners

Vs.

THE INDIAN OVERSEAS BANK AND ORS. ...Respondents

CWP-13983-2023

M/s RITIKA FARMS AND ANOTHER ....Petitioners

Vs.

THE INDIAN OVERSEAS BANK AND OTHERS ...Respondents

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

Present:- Mr. Suresh Kumar Jindal, Advocate for the petitioners in both writ petitions.

Mr. Gaurav Goel, Advocate for respondent – Bank.

Mr.Rehan Chaudhary, Advocate for respondent Nos.1 to 3 in CWP-11863-2022.

Mr. Abhijeet Taneja, Advocate for respondent No.4 in CWP-11863-2022.

Mr. V.K. Sachdeva, Advocate for respondent No.4 in CWP-13983-2023.

*****

LISA GILL, J.

1. This order shall dispose of Civil Writ Petitions i.e. CWP-

11863-2022 and CWP-13983-2023 which are taken up together, at request and with consent of learned counsel for parties as both writ petitions pertain to the same loan account though in respect of different secured assets/property (ies).

2. In CWP-11863-2022, the petitioners have challenged sale notice dated 06.05.2022 as well as earlier sale notice (s) being illegal and arbitrary. They seek setting aside of auction held on 22.12.2020, 18.02.2021 and 29.01.2022. There is a further prayer in this writ petition for directing respondent- Bank to enter into One Time Settlement ('OTS') with the petitioners.

3. In CWP-13983-2023, prayer is for quashing sale notice dated 01.06.2023 issued under Rules 8 (6) and 9 (1) of the Security Interest (Enforcement) Rules, 2002 and for setting aside auction conducted on 27.06.2023.

4. Having heard learned counsel for parties and perusing the file, we do not find any ground to interfere in this writ petition, at this stage. It is not denied that property (ies) in question stand auctioned, sale confirmed with necessary sale certificates having been issued and registered in favour of subsequent auction purchaser (s). All pleas as raised in this writ petition are very well within the realm of consideration by the appropriate Forum/Tribunal. Gainful reference in this regard can be made to the judgments of Hon'ble the Supreme Court of India in ***M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.*** It has been held in the case of ***M/s South Indian bank Ltd. and***

others (supra) 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.
>
> xx xx xx xx
>
> 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.
>
> xx xx xx xx
>
> 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.
>
> xx xx xx xx
>
> 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. In so far as prayer for a direction to respondent to enter into a settlement is concerned, it is to be noticed that a borrower/guarantor does not have a vested right to a One Time Settlement. It has been held in the case of ***The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Agarwal and others', 2021 SCC Online SC 1040*** 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.

xxx xxx xxx

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 herein above."

6. Keeping in view the facts and circumstances as above but without expression of opinion on the merits of matter, both writ petitions are dismissed with liberty to petitioners to avail remedy (ies) available to them in accordance with law.

7. However, as interim order dated 27.05.2022 in CWP-11863-

2022 and order dated 05.07.2023 in CWP-13983-2023 in favour of petitioner (s) has continued till date, it is directed that said order shall enure for a period of 15 days from the date of receipt of certified copy of this order, in order to enable petitioners to avail appropriate remedy (ies) as may be available to them in accordance with law. In case, petitioners file appropriate application/petition accompanied with requisite application (s), question of continuance or otherwise of interim order in petitioners' favour shall necessarily be in the realm of consideration by the appropriate Forum in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

8. It is clarified that interim protection afforded to petitioners shall not enure beyond 15 working days in the absence of appropriate order by competent authority/Tribunal in accordance with law. There is no expression of opinion on merits of the matter.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

21.02.2024
snd

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