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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12468-2022
Date of Decision:- 18.05.2024

RESHAM KAUR ...Petitioner

Vs.

UNION OF INDIA AND ORS. ...Respondents

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

Present:- Mr. Manish Verma, Advocate for petitioner.
(Through V.C.)

Mr. Hashmat Nabi, Advocate for respondent – DCB.
(Through V.C.)

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 12.03.2019 issued under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') by respondent Bank calling upon petitioner to deposit a sum of Rs.44,40,118.28/- with her account being declared NPA on 01.03.2019. Petitioner also seeks setting aside of proceedings under SARFAESI Act initiated by respondent - Bank and to stay all further proceedings.

2. Learned counsel for petitioner submits that loan facility was availed of by petitioner and her husband qua property, details of which are given in para No.4 of the writ petition, in the year 2016 for a sum of Rs.44

lakhs with monthly installments of Rs.55,671/-. Petitioner and her husband, it is submitted, were depositing installments regularly but in the year 2019 due to slump in their business, certain irregularities did occur in the loan account due to financial indiscipline. Petitioner's husband was working in Dubai and suffered heart problems. Their financial position did not improve though certain amounts were deposited by petitioner as is detailed in para No.9 of the writ petition. Present writ petition was filed on the premise that officials of the Bank along with anti social elements of society were visiting the house of petitioner and threatening to forcibly evacuate her, even though no notice whatsoever under Section 13 (4) of SARFAESI Act had ever been issued. Petitioner, it is stated, is living alone in the said residential house with her husband in Dubai and she has no other accommodation to live in. It is contended that no notice under Section 13 (4) was ever issued, despite accepting numerous payments as are mentioned in the writ petition. Benefit of various guidelines issued during outbreak of pandemic COVID-19 were never given to petitioner. Respondent – Bank seeks to take possession of the property in question on the basis of notice dated 12.03.2019 under Section 13 (2). The Bank, it is submitted, cannot proceed on the basis of this notice and at best it is open to respondent Bank to initiate proceedings afresh. It is further submitted that petitioner, if given sufficient time, is ready and willing for regularisation of her loan amount provided penal interest and unreasonable penalties are not levied. It is, thus, prayed that this writ petition be allowed.

3. Per contra, learned counsel for respondent – Bank submits that present writ petition is not entertainable. Petitioner without submitting any

objections under Section 13 (3-A) of SARFAESI Act has now filed the present writ petition. It is contended that availing of the loan facility as well as subsequent financial indiscipline is admitted by petitioner. Proceedings under SARFAESI Act were correctly initiated against petitioner and her husband with interest and penalties being levied in terms of the sanction letter itself. It is denied that loan account in question was declared NPA in violation of the applicable provisions of law or that proceedings under SARFAESI Act have been incorrectly initiated. It is further submitted that petitioner, after deposit of Rs.10 lakhs in terms of order dated 01.06.2022 passed in this writ petition whereby notice of motion was issued, has not made any effort whatsoever to discharge the liability towards respondent – Bank. It is thus prayed that present writ petition be dismissed.

4. We have heard learned counsel for the parties and have perused the file with their assistance.

5. It is a matter of record that petitioner and her husband availed of financial facility from the respondent - Bank in 2016. There was financial indiscipline on their part, for reasons as may be, leading to declaration of their account NPA and initiation of proceedings under SARFAESI Act. It is further a matter of record that as of now it is notice under Section 13 (2) of SARFAESI Act which stands issued to petitioner and her husband. Intervention by this Court, at this stage, in exercise of jurisdiction under Article 226 Constitution of India is not called for. It is specifically provided in SARFAESI Act that upon receipt of notice under Section 13 (2) of SARFAESI Act it is open to the borrower/guarantor to file objections under Section 13 (3-A) and in case further proceedings are

initiated by financial institution/Bank under Section 13 (4), it is open to the person aggrieved to approach learned DRT with his/her reasons in terms of Section 17 of SARFAESI Act. It has been held by Hon'ble the Supreme Court in number of cases that interference by High Court in exercise of jurisdiction under Article 226 is not called for at this stage. It is only in exceptional or extraordinary circumstances that interference should be caused.

6. 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, Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34*** and ***M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.*** In ***M/s. South Indian Bank (supra)*** it has been 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

> 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."

7. It is to be noticed that this writ petition has been filed after issuance of notice under Section 13 (2) SARFAESI Act. No objections were filed by petitioner or her husband in terms of Section 13 (3-A) which reads as under:-

> **“Section (3-A)** If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen

> days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:
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> Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17-A."

8. It is pertinent to note that proviso to Section 13 (3-A) clearly provides that even the reasons for non-acceptance of objections/representation of borrower or even the likely action of secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application before learned DRT. This position has been reiterated in Explanation to Section 17 (1) which reads as under:-

> "Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section."

9. Arguments that writ petition should be entertained at this stage itself as petitioner is left remediless is completely devoid of any merit. On issuance of notice under Section 13 (2) of SARFAESI Act, it is open to the guarantor/borrower to file objections under Section 13 (3-A) and in case Bank/Financial Institution takes action under Section 13 (4), necessary

action can be taken under Section 17 of SARFAESI Act in case of any grievance. Borrower/Guarantors/Affected person has to wait till measures under Section 13 (4) are taken. Any intervention at this stage has been termed to be a disservice to the will of legislature. Useful reference in this respect can be made to judgments of Hon'ble the Supreme Court in ***Authorised Officer, State Bank of Travancore and another Vs. Mathew K.C. (2018) 3 SCC 85*** and ***Satyawati Tandon (supra).***

10. Learned counsel for petitioner is unable to point out any ground whatsoever which calls for interference by this Court at this stage. In so far as the question of a settlement between parties is concerned, it is always open to them to arrive at any mutual acceptable settlement at any stage with pendency or otherwise of the writ petition being irrelevant.

11. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail statutory remedy (ies) as may be available to her in accordance with law at appropriate stage. There is no expression of opinion on the merits of matter.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

18.05.2024
snd
Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No