2024:PHHC:002194-DB

205 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP-12901-2022 (O&M)**
Date of Decision: January 08, 2024

ANISH KATYAL AND ANOTHER ..... Petitioners

Versus

THE BANK OF BARODA AND ANOTHER ..... Respondents

2. **CWP-13033-2022 (O&M)**

M/S MUNISH MEDICAL HALL AND OTHERS ..... Petitioners

Versus

THE BANK OF BARODA AND ANOTHER ..... Respondents

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

Present: Mr. S.S. Kamboj, Advocate for the petitioners.

Mr. Vishal Ahuja, Advocate for the respondents

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LISA GILL, J.

1. This order shall dispose of CWP Nos. 12901 and 13033 of 2022, which are taken up together for hearing and adjudication, at request and with consent of learned counsel for parties.

2. Abovesaid writ petitions have been filed qua two different accounts held by Anish Katyal and Anju Katyal (petitioners No. 1 and 2 in CWP-12901-2022), with M/s Munish Medical Hall of which petitioner –

Anish Katyal is the proprietor being party as borrower in CWP-13033-2022 as well. Writ petitions have been filed challenging proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') initiated against petitioners by respondent – bank for recovery of amount due and for restraining respondents to proceed with sale of secured asset, which is common to both loan accounts i.e. residential house/flat belonging to petitioners. Availing of loan facility i.e. housing loan, which is subject matter of CWP-12901-2022 and OD facility/CC limit/WCTL etc., which is subject matter of CWP-13033-2022 is a matter of record. It is further not in dispute that there was financial indiscipline on the part of petitioners for reasons as may be.

3. Various arguments have been raised by learned counsel for petitioners to submit that proceedings under SARFAESI Act initiated against petitioners are in complete violation of provisions of Act, therefore, absolutely illegal and arbitrary. Objections raised by petitioners pursuant to issuance of notice under Section 13(2) of SARFAESI Act, it is contended, were illegally rejected. Unholy rate of interest, it is further contended, was being charged by respondent, dehors provisions of law and applicable regulations. It is urged that respondent – Bank withdrew huge amount from some loan accounts and deposited the same in other, only with a view to make accounts irregular. Classification of all accounts NPA is urged to be an illegal act on the part of Bank. Allegations of malafide have been raised against one Mr. Monu Bansal stated to be Manager of respondent – Bank though said person is not arrayed as a party to the writ petitions. It is, thus, prayed that these writ petitions be allowed.

4. These writ petitions have been opposed by learned counsel for respondents who raised preliminary objection regarding entertainability thereof, in view of statutory remedy available to petitioners under SARFAESI Act. All allegations of fraud or any violation of applicable Rules or Regulations have been denied. Action under SARFAESI Act, it is submitted, has been carried out in strict consonance with provisions thereunder. It is submitted that there is huge outstanding towards respondent – bank and only effort on the part of petitioners is to delay recovery proceedings. It is, thus, prayed that these writ petitions be dismissed.

5. Heard, learned counsel for parties and have gone through file with their assistance.

6. It is a settled position that interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters has to be minimal and actuated only in extra-ordinary and exceptional circumstances. 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, M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771** and **Authorized Officer, State Bank of Travancore and another versus Mathew K.C. 2018(3) SCC 85.** Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) 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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> xxx xxx xxx

> 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.
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> 15. The object and reasons behind the Act 54of 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 or 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. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance, which calls for intervention by this Court at this stage. All pleas, as have been raised, are well within the realm of consideration by learned Tribunal as provided under the Act itself.

8. Keeping in view the facts and circumstances as above, these writ petitions are dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law. However, keeping in view the fact that interim order in favour of petitioners was granted on 21.10.2022 in CWP-12901-2022 to the extent that they would not be dispossessed from secured asset, same shall continue for fifteen (15) working days only to enable petitioners to avail remedy as may be available to them. In case, petitioners file appropriate application/ petition, question of continuance or

otherwise of interim order in petitioners' favour shall be considered by the appropriate Forum in accordance with law, without being influenced by any order, which may have been passed in these writ petitions.

9. It is clarified that interim protection afforded to petitioners shall automatically stand vacated in the absence of any order by the appropriate authority.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

January 08, 2024
rts

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