2024:PHHC:134759-DB

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11672-2024
Date of Decision: October 15, 2024

SANDEEP KUMAR ..... Petitioner

Versus

PUNJAB NATIONAL BANK AND OTHERS ..... Respondents

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

Present: Mr. Rahul Bhargava, Advocate for the petitioners.

Mr. Teginder Singh, Advocate for
Mr. Gaurav Goel, Advocate for respondent – Bank.

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LISA GILL, J.

1. Prayer in this writ petition is for directing respondents not to take physical possession of property as described in the writ petition stated to be owned by the petitioner. Petitioner also challenges auction notice (Annexure P1) issued under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') by the respondent – Bank.

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2. It is submitted that financial facility was availed of by respondent No. 4, a partnership concern run by son of the petitioner as one of its partners. Petitioner stood guarantor of loan facility. Due to financial indiscipline by said entity, account was declared Non Performing Asset (NPA). Notice under Section 13(2) of SARFAESI Act was issued on 30.05.2022. Subsequently, auction notice (Annexure P1) has been issued.

3. Learned counsel for petitioner vehemently argues that petitioner is only the guarantor, however, respondent – Bank is proceeding against his property without taking any measures qua property mortgaged by the borrower himself/itself, therefore, proceedings are absolutely illegal. It is, thus, prayed that this writ petition be allowed.

4. Learned counsel for respondent – Bank opposes the petition while submitting that apart from present writ petition not being entertainable in view of specific remedies available to petitioner under SARFAESI Act itself, property in question has since been sold. Pursuant to auction notice (Annexure P1), sale certificate dated 14.03.2023 has been issued. Moreover, as per specific provision of SARFAESI Act itself, there is no distinction between guarantor and borrower. Bank is entitled to take action against either. It is, thus, prayed that this petition be dismissed.

5. Having heard learned counsel for parties and perusing the file, we do not find any ground to interfere in the matter. It is a settled position that interference by this 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. Gainful reference in this regard

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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.** 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
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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.
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> xxx xxx xxx xxx
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> 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 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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> xxx xxx xxx
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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."

6. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance which calls for interference by this

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Court. All pleas and arguments raised before us are very well within the realm of consideration by learned Tribunal.

7. Accordingly, this writ petition is dismissed with liberty to petitioner to avail remedy(ies) as may be available to him in accordance with law.

8. There is no expression of opinion on the merits of matter.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

October 15, 2024
Rts

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

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