

2024:PHHC:070680-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CWP No.11931 of 2024 (O&M)
Date of Decision:20.05.2024

M/s Ananta Exports and others

.....Petitioner

Versus

Debts Recovery Tribunal-III, Chandigarh and others

..... Respondent

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

Present: Mr.Vivek Goyal, Advocate
for the petitioners.

Mr. C.S.Pasricha, Advocate
for respondent-Bank.

LISA GILL, J(Oral).

1. Prayer in this writ petition is for setting aside order dated 28.03.2024, Annexure P-4, passed by respondent no.1. There is a further prayer for setting aside notice dated 08.02.2021, Annexure P-1, under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and notice dated 02.02.2024, under Section 13(4) of SARFAESI Act, issued by respondent-Bank as the same were allegedly never served upon petitioners.

2. Loan facility was admittedly availed of by petitioners from respondent-Bank. On account of financial indiscipline, their account was declared 'Non Performing Asset' (NPA) on 31.03.2020. Notice under

Section 13(2) of SARFAESI Act was issued on 08.02.2021, Annexure P-1 and possession notice issued on 02.11.2021. It is the case of petitioners that notice(s) under Section 13 (2) and 13(4) of SARFAESI Act were not served upon them.

3. SA No. 3 of 2022 was filed by petitioners before learned Debt Recovery Tribunal-III, Chandigarh, however interim relief was not granted by learned tribunal upon which CWP No. 19776 of 2022 was filed by petitioners. Said writ petition was dismissed as withdrawn on 05.01.2024 as notice under Section 13 (4) of SARFAESI Act was withdrawn by respondent-Bank as per intimation dated 29.05.2023.

4. Following order was passed on 05.01.2024 in CWP No. 19776 of 2022:-

“1. Learned counsel for petitioners submits that notice under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) has been withdrawn by respondent-Bank as per intimation dated 29.05.2023. Corrigendum in this respect was published on 13.03.2023 in two newspapers. In view thereof petitioners be permitted to withdraw this writ petition with liberty to avail remedy available to them to challenge proceedings under SARFAESI Act. Photocopy of communication dated 29.05.2023 alongwith its annexures furnished in Court today, is taken on record, subject to just exceptions.

2. Dismissed as withdrawn with liberty as aforementioned.”

5. It is submitted that purportedly possession notice dated 02.02.2024 was issued by respondent-Bank, but it was never served upon any of the petitioners. Sale notice was also issued. SA No. 114 of 2024 was filed by petitioners challenging the same. Though, notice was issued in said

SA, interim relief was not granted to petitioners on account of which present writ petition has been filed challenging order dated 28.03.2024.

6. Learned counsel for petitioners has raised various arguments to submit that impugned order is absolutely illegal and arbitrary, passed without taking into consideration the fact that respondent-Bank has acted in a mala fide manner. Learned counsel for petitioners vehemently argued that present writ petition should be entertained.

7. We note at this stage that an incorrect declaration has been made in the writ petition that petitioners have no other speedy remedy of appeal or revision against the impugned order except to file writ petition. This is clearly in the teeth of specific provisions of the Act itself. In terms of Section 18 of SARFAESI Act, impugned order is an appealable one. Learned counsel for petitioners submits that an exceptional circumstance is carved out for intervention of this Court inasmuch as in CWP No. 19776 of 2022 interim order in favour of petitioners had been passed on 06.09.2022, therefore interim relief should have been granted. Reference has been made by learned counsel to decision dated 10.04.2024, of Hon'ble the Supreme Court in PHR Invent Educational Society Vs. UCO Bank and others, Civil Appeal No.4845 of 2024 (Arising out of SLP (C) No. 8867 of 2022) to submit that an exceptional circumstance is carved out calling for interference. It is thus prayed that present writ petition be allowed.

8. Learned counsel for respondent-Bank (on advance notice) has opposed this writ petition in view of the remedy available to petitioners under SARFAESI Act itself besides supporting the impugned orders to be correct and justified with action under SARFAESI Act being taken in complete consonance with applicable provisions.

9. We have heard learned counsel for the parties and have gone through the file with their able assistance.

10. Admittedly, impugned order dated 28.03.2024 is an appealable order in terms of Section 18 of SARFAESI Act. It has been held by Hon'ble the Supreme Court in a catena of cases that interference by High Court in such like cases should be minimal and actuated only in exceptional or extraordinary circumstances. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Union Bank of India Vs. Satyawati Tandon and others, 2010(8) SCC 110, Varimadugu Obi Reddy v. B. Sreenivasul R.C.R.(Civil) 34 and M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(1) RCR (Civil) 771.**

11. We have perused decision dated 10.04.2024 passed by Hon'ble the Supreme Court in **PHR Invent Educational Society Vss. UCO Bank and others (supra)**. Exceptions as carved out thereunder read as under:-

“29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
- (ii) it has acted in defiance of the fundamental principles of judicial procedure;
- (iii) it has resorted to invoke the provisions which are repealed; and
- (iv) when an order has been passed in total violation of the principles of natural justice.”

12. Learned counsel for petitioners is unable to point out any ground which brings the matter within the ambit of the same. It is pertinent

to note at this stage that Hon’ble the Supreme Court in **PHR Invent Educational Society Vss. UCO Bank and others (supra)** has categorically held that High Court will not entertain petition under Article 226 of the Constitution of India, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of itself contains a mechanism for redressal of grievance. Reference has been made to its earlier decision in **Union Bank of India Vs. Satyawati Tandon and others (supra)**.

13. Learned counsel for petitioners is unable to point out any exceptional or extra ordinary circumstance which calls for interference in this case.

14. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail the remedy(ies) available to them in accordance with law. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 20, 2024.
s.khan

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