CWP-15622-2022

2024:PHHC:004210-DB

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

CWP-15622-2022 (O&M)
Date of Decision: **January 12, 2024**

M/S. S.S. RICE LAND ..... Petitioner

Versus

IDBI BANK AND OTHERS ..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Brijender Kaushik Advocate for the applicant-petitioner.

Mr. Tajinder K. Joshi, Advocate for respondent – Bank.

Mr. Deepak Grewal, DAG, Haryana.

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LISA GILL, J.

1. Petitioner has filed this writ petition seeking direction to respondent - Bank to consider its proposal dated 30.06.2022 (Annexure P8) for One Time Settlement (OTS). It is further prayed that respondent – Bank should regularize petitioner's account as per Clause 4.2.4 and 4.2.5 of Master Circular No. DBOD.No.BP.BC.9/21.04048/2014-15 dated 01.07.2014 issued by Reserve Bank of India and to direct that case of petitioner be sent to Designated Committee for restructuring/revival in terms of guidelines dated 17.03.2016 titled 'Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises'. Petitioner also seeks setting aside of notice(s) dated 30.11.2021 and 25.02.2022 issued

under Sections 13(2) and 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act'), respectively besides order dated 15.06.2022 passed by learned District Magistrate, Karnal under Section 14 of SARFAESI Act.

2. It is submitted that petitioner, which is a proprietorship firm registered within State of Haryana, availed of credit facility from Bank in 2015, which was subsequently enhanced. Loan was being serviced diligently, however, with outbreak of pandemic COVID-19, business of petitioner was adversely affected leading to financial indiscipline on its part. Petitioner's account, it is submitted, was illegally declared Non Performing Asset (NPA) with proceedings under SARFAESI Act being initiated against it. It is contended that notice under Section 13(2) of SARFAESI Act was never served upon petitioner, thus, leading to petitioner being unable to submit its objections. Order dated 15.06.2022 passed under Section 14 of SARFAESI Act was also claimed to have been passed illegally in contravention of applicable provisions of law. Mortgaged property, it is contended, is agricultural land, therefore, not amenable to proceedings under SARFAESI Act. Moreover, petitioner has run into genuine problems, which led to financial indiscipline, therefore, its proposal for OTS should have been considered sympathetically. Furthermore, petitioner's case should have been placed before Designated Committee for revival/rehabilitation in terms of circular dated 17.03.2016 issued by RBI. It is, thus, prayed that this writ petition be allowed.

3. Reply on behalf of respondent No. 2 filed in Court today is taken on record subject to just exceptions.

4. Learned counsel for respondent – Bank opposes this writ petition while firstly raising objection qua entertainability of the same as petitioner has an efficacious remedy for redressal of its grievance. Averments on merits claiming violation of provisions of law are denied being incorrect. It is submitted that proceedings under SARFAESI Act have been taken in strict consonance with provisions thereunder. Leaned counsel for respondent – Bank submits that notice dated 13(2) of SARFAESI Act was duly served upon petitioner. It is denied that land in question is agricultural land. Learned counsel for respondent further points out that sole intention of petitioner is to delay proceedings inasmuch as cheque of Rs.7 lakhs, which had been submitted, as upfront amount alongwith its proposal for OTS was dishonoured in September 2022 due to insufficient funds. Respondent – Bank has filed OA-1027-2022 wherein notice was issued to petitioner and other defendants but no reply has been filed thereto by petitioner herein.

5. Heard, learned counsel for parties and perused the file with their able assistance. However, we do not find any ground for interference in exercise of jurisdiction under Article 226 of Constitution of India. It is a settled position of law that SARFAESI Act is a complete code in itself providing for specific remedies for redressal of any grievance, which may arise on account of violation, if any, of provisions thereunder. 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.** 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 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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> 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."

7. It is, thus, clear that inference by High Court in such like matters has to be minimal and actuated only in exceptional and extraordinary circumstances. Learned counsel for petitioner is unable to point out any such extraordinary and exceptional circumstance, which calls for intervention at this stage.

8. Insofar as argument regarding compliance of circular dated 17.03.2016 issued by RBI is concerned, case of petitioner is squarely covered against it in view of order dated 18.12.2023 passed by this Court in CWP-21657-2022 (M/s Technico Strips and Tubes Pvt. Ltd. and another vs. Deutsche Bank AG and another) and connected writ petitions. It is also to be noted at this stage that there is no averment in the writ petition supported by any document to show that petitioner is registered as Micro/Small or a Medium Enterprise under MSME Act, 2006. Learned counsel for respondent submits that there is huge outstanding of Rs.2,82,00,000/- as on today from petitioner.

9. At this stage, learned counsel for petitioner submits that it is ready and willing to settle the matter with respondent – Bank while contending that rate of interest/penalties etc. have been incorrectly levied by respondent – Bank dehors provisions of law. Be that as it may, same cannot be a ground for continuation of present proceedings. It is always open to parties to arrive at any mutually acceptable settlement with pendency or otherwise of this writ petition being irrelevant.

10. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail remedy(ies) available

to it in accordance with law. However, keeping in view the fact that interim order in favour of petitioner was granted on 21.07.2022 to the extent that it would not be dispossessed from secured asset, same shall continue for fifteen (15) working days only to enable petitioner to avail remedy as may be available to it. In case, petitioner files appropriate petition alongwith requisite applications for exclusion of delay/interim relief, question of continuance or otherwise of interim order in petitioner's favour shall be considered by appropriate Forum in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

11. It is clarified that interim protection afforded to petitioner shall automatically stand vacated on expiry of said fifteen days in the absence of any order by the appropriate authority.

12. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

January 12, 2024
rts

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