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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15553-2022

Date of Decision: 12.02.2024

M/S BHULLAR CONSTRUCTION CO. AND OTHERS

..... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

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

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

Mr. C.S. Pasricha, Advocate with
Mr. Sushil K. Bhardwaj, Advocate
for respondent No. 4-Bank.

Mr. R.S. Pandher, Senior DAG, Punjab.

LISA GILL, J.(oral)

1. Prayer as addressed in this writ petition is reproduced as
hereunder :-

“Civil writ petition under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari to quash notice under Section 13(2) SARFAESI Act dated 31.01.2022 (Annexure P-2) and possession notice dated 22.06.2022 (Annexure P-7) being illegal and unlawful as the respondent bank illegally issued above said notices and now the respondent bank is bent upon to unlawfully take the physical possession of the properties mortgaged by the petitioners, though the petitioners are ready and willing to pay the outstanding dues of the bank however seeks only reasonable time of six months to pay the same moreover delay in repayment has not been caused because of the fault of the

petitioners, infact the same was because of respondent No. 1 to 3 who have to pay more than Rs. 38.50 Lacs of the petitioners and respondents are not paying the same despite of various requests, representations and legal notices dated 09.04.2022 attached as (Annexure P-3 to P-5) hence the petitioners are unable to pay due amount of the bank.

Further for issuance of writ in nature of mandamus directing the respondent bank not to take the physical possession of the properties mortgaged with the bank, as the petitioners are ready and willing to pay the outstanding dues of the bank and seeks only reasonable time of six months to pay the same.

Further during the pendency of writ petition the notice issued by the bank under Section 13(2) SARFAESI Act dated 31.01.2022 (Annexure P-2) and possession notice dated 22.06.2022 (Annexure P-7) and any other proceedings to be initiated by the bank for taking physical possession of the property may kindly be stayed.

Further for issuance of writ in nature of mandamus directing the respondent No. 1 to 3 to pay/clear the outstanding payment of the petitioners towards respondent state, as despite of various legal notices (Annexure P-3 to P-5) dated 09.04.2022 and despite of various visits the payment of more than Rs. 38.50 Lacs is pending with the respondent state since long.

For issuance of any other appropriate writ, order or direction, which this Hon'ble Court may deem fit and proper in the fact and circumstances of the case.”

2. It is submitted that two construction companies i.e. petitioners No. 1 and 3 are being run by its partners Mr. Jaspal Singh and petitioner No. 2 Mr. Harpal Singh. Learned counsel for petitioners submits that financial indiscipline was only on account of unjustified withholding of dues towards petitioner by State of Punjab. Reference has been made to

communication dated 'NIL' by Superintending Engineer (Nigram Engineer), Usari Mandal, PWD, Bhatem Branch, Amritsar, whereby dues towards petitioners are acknowledged. It is submitted that credit limit is ₹50 lakhs qua petitioner No. 1 and outstanding amount in notice dated 31.01.2022 is stated to be ₹41,74,912/- which is below the essential limit. Proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') in this writ petition are in complete derogation of applicable provisions of law. Therefore, this writ petition should be allowed.

3. Learned counsel for respondent-Bank while raising preliminary objection qua entertainability of writ petition submits that proceedings under SARFAESI Act have been undertaken in complete consonance with provisions of law. It is submitted that petitioners have always been erratic in deposit of dues. Account remained in continuous default. Petitioners failed to service interest periodically. Their account had earlier been declared Non Performing Asset (NPA) on 27.08.2018, 29.12.2018 and thereafter on 31.05.2021. Recall notice(s) had earlier been issued on 01.09.2018, 01.02.2019 and 21.06.2021. Learned counsel for respondent-Bank also referred to para No. 4 of reply to writ petition. Dismissal of writ petition is sought.

4. After having heard learned counsel for the parties and perusing the file, we do not find any ground for interference in this writ petition, at this stage. Availing of financial facility from respondent-Bank, subsequent indiscipline for reasons as maybe and initiation of proceedings under SARFAESI Act against petitioners is matter of record. It is a settled position that SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise due to proceeding

thereunder. Interference is called for only in extra-ordinary or exceptional circumstances in exercise of jurisdiction under Article 226 of the Constitution of India. Learned counsel for petitioners is unable to point out any such circumstance. Argument that genuine dues of petitioners are not being released by State of Punjab therefore proceedings under SARFAESI Act should be stalled, is an argument devoid of merit as dues towards the bank cannot be made contingent upon release of payment by State of Punjab. Petitioners admittedly have remedies on that account as well.

5. We take particular notice of prayer addressed in this writ petition that petitioners are ready and willing to deposit outstanding dues of Bank but seek only a reasonable time of six months to pay the same. This writ petition was filed in July 2022 but till date dues have not been deposited. There is no ground whatsoever which calls for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

6. Keeping in view the above, this writ petition is dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law for redressal of their grievance(s).

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

12.02.2024

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