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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15969-2022
Date of Decision: 16.02.2024

Ajay Kumar Sharma

..... Petitioner

Versus

Bank of Baroda and others

..... Respondents

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

Present: Mr. Maninder Arora, Advocate
for the petitioner.

Mr. Anil K. Ahuja, Advocate
for respondent No. 1.

Mr. Deepak Grewal, DAG, Haryana.

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LISA GILL, J.(oral)

1. Prayer in this writ petition is for quashing notice dated 01.02.2019 (Annexure P-1) issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') by respondent No. 1 as well as order dated 20.10.2020 (Annexure P-2) passed by District Magistrate, Faridabad under Section 14 of SARFAESI Act. There is further prayer for restraining respondents from taking possession of house in question. Further prayer is for directing respondent No. 1 to consider case of petitioner for One Time Settlement (OTS) pursuant to settlement letter dated 12.01.2022.

2. It is submitted that petitioner along with his wife availed of cash credit limit of ₹24,00,000/- from respondent-Bank for business

purposes in November 2015 by mortgaging property (flat) as is described in para No. 2 of the writ petition. Financial indiscipline on the part of petitioner for reasons as may be and consequent initiation of proceedings under SARFAESI Act are a matter of record. Notice under Section 13(2) of SARFAESI Act was issued on 01.02.2019. Order under Section 14 of SARFAESI Act was passed on 20.10.2020.

3. Learned counsel for petitioner submits that OTS was sanctioned in favour of petitioner in December 2020. However, due to unforeseen circumstances, terms and conditions of OTS could not be complied with by petitioner and his wife. It is submitted that petitioner and his wife again submitted proposal for OTS which is stated to have been accepted, though there is no letter sanctioning the said OTS. Learned counsel for petitioner refers to an endorsement on the request submitted by petitioner on 12.01.2022 in this respect wherein it is stated that rate of interest would be 12% simple interest on the amount so mentioned and failure in payment would lead to cancellation of OTS.

4. It is an admitted position that petitioner and his wife again could not comply with terms and conditions of settlement. Learned counsel for petitioner submits that petitioner, at this stage is ready and willing to comply with terms and conditions of said settlement but bank is not ready and willing to accept the same.

5. Heard learned counsel for parties.

6. We do not find any ground whatsoever to interfere in the present matter. In so far as proceedings under SARFAESI Act are concerned, it is a settled position that petitioner has specific remedy(ies)

provided under the Act itself which is a complete code in itself. Interference by this Court is not called for in such like matters except in extra-ordinary or exceptional circumstances in exercise of jurisdiction under Article 226 of the Constitution of India. Gainful reference in this respect can be made to judgments of the Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tandon and others**, ***2010(8) SCC 110*** and **M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another**, ***2023(2) RCR (Civil) 771***. No extra-ordinary or exceptional circumstance has been pointed out in the instant case which calls for interference at this stage.

7. So far as prayer addressed by petitioner for acceptance of OTS is concerned, same is also devoid of any merit. It is again a settled position that borrower/guarantor has no vested right to seek OTS and neither there can be any direction by Court for extension of period of OTS for compliance of terms and conditions thereof. Gainful reference in this respect can be made to judgments of the Hon'ble Supreme Court in the case of **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Agarwal and others**, ***2021 SCC Online SC 1040*** and **State Bank of India vs. Arvindra Electronics Pvt. Ltd.** ***(2021) 3 SCC 1***. It has been held in the case of **The Bijnor Urban Cooperative Bank Limited, Bijnor and others** (supra) as under :-

> "9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs.100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a

> lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the Bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the Bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.
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> 11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the Bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the Bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/Bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

8. In the present case, respondent-Bank admittedly sanctioned OTS twice in favour of petitioner who failed to comply with terms and conditions thereof. It is brought to our notice that as of now there is outstanding amount of approximately ₹22,50,000/-. Learned counsel for respondent-Bank submits that account statement of petitioner shall be

supplied to learned counsel for petitioner within a period of four working days.

9. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail efficacious remedy(ies) available to him in accordance with law for redressal of his grievance(s) in respect to action under SARFAESI Act is concerned. There is no expression of opinion on the merits of the matter. Parties are always at liberty to arrive at any mutually acceptable settlement.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

16.02.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No