2024:PHHC:070552-DB

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:- 16.05.2024

(1) CWP-16368-2022 (O&M)

M/S GK ENTERPRISES, PROPRIETORSHIP FIRM & ANR.
....Petitioners

Vs.

AUTHORIZED OFFICER/CHIEF MANAGER, PUNJAB NATIONAL BANK AND ANR ...Respondents

(2) CWP-5017-2023

AMARJEET KAUR ....Petitioner.

Vs.

PUNJAB NATIONAL BANK & ORS. ...Respondents.

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

Present:- Ms. Parmeet Kaur, Advocate for petitioners in CWP-16368-2022.

Mr. Y.K. Aneja, Advocate for petitioner in CWP-5017-2023.

Mr. Saurav Goel, Advocate for Mr. Gaurav Goel, Advocate for respondent – Bank.
(Through V.C.)

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LISA GILL, J.

1. This order shall dispose of CWP-16368-2022 & CWP-5017-2023. Both writ petitions are taken up together for hearing and decision at

request and with consent of learned counsel for the parties as both the said petitions pertain to same loan account.

2. CWP-16368-2022 has been filed by borrowers challenging proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and CWP-5017-2023 has been filed by one of the guarantors in respect to the same proceedings. It is stated in CWP-16368-2022 filed by borrowers that petitioner No.1 is a proprietorship Firm with petitioner No.2 being its proprietor. Credit facilities were availed of by petitioners from respondent – Punjab National Bank in September, 2016 (CC limit of Rs.25 lakhs). Two residential properties as are detailed in para No.14 of the writ petition were mortgaged. Property No.1 belongs to one Rajinder Singh and the property detailed at Sr. No.2 belongs to petitioner – Amarjeet Kaur in CWP-5017-2023. Installments, it is submitted, were being deposited regularly but on account of outbreak of pandemic Covid-19, loan account became irregular in the year 2020. It is alleged that moratorium and various other benefits which were supposed to be extended by respondent – Bank and as mandated by the Reserve Bank of India were not made available to petitioners. Request for restructuring of the loan was made by borrowers but allegedly despite assurances no action was taken by respondent – Bank. The account was declared NPA on 30.11.2020 and proceedings under SARFAESI Act initiated with notice (s) under Section 13 (2) being issued on 05.06.2021, 11.01.2022 issued under Section 13 (4). Order dated 21.07.2022 was passed under Section 14 of SARFAESI Act.

3. Learned counsel for petitioners in CWP-16368-2022 submits that action taken under SARFAESI Act by respondent Bank is absolutely illegal, arbitrary and in utter derogation of the applicable provisions of law. Complete flouting of Rule 8 of the Security Interest (Enforcement) Rules, 2002 is alleged. Stand taken by borrowers in CWP-16368-2022 is that their liability can be easily discharged by taking over possession of the second residential house (property No.2 belonging to Amarjeet Kaur) and selling the same. In-case, loan amount is still not settled after sale of the second property, it is only then that action should be taken against property No.1.

4. It is to be noted at this juncture that CWP-5017-2023 has been filed by owner of second property in question. It is stated in the writ petition that said petitioner had been taken along by borrowers (respondent Nos.3 and 4 in CWP-5017-2023) to the Bank only for the purpose of identification of said persons who were incidentally resident of same vicinity. It is asserted that said petitioner had never ever obtained any loan from respondent Bank. She was not the co-borrower nor the guarantor and it is only on the asking of official of respondent – Bank that she produced documents of her residential house as proof of her residence. It is submitted that on account of financial indiscipline on the part of borrowers, proceedings under SARFAESI Act were initiated. Petitioner also received notice (s) dated 05.06.2021 under Section 13 (2), 11.01.2022 under Section 13 (4) and order dated 28.07.2022 passed under Section 14 of SARFAESI Act. It is further submitted that borrowers entered into One Time Settlement with respondent Bank on 25.08.2022 for a sum of Rs.23 lakhs. However, borrowers did not adhere to the terms and conditions of

settlement on account of which respondent – Bank now seeks to take possession of mortgaged property.

5. Learned Counsel for petitioner in CWP-5017-2023 submits that petitioner is a victim of fraud at the hands of borrowers. Moreover, the other residential property can very well be sold at the first instance for discharge of the liability. Property of borrowers should be disposed of to discharge their liability and not of the petitioner who is claimed to be a victim of fraud at their hands. Learned counsel for petitioners in both writ petitions thus pray that writ petitions be allowed.

6. Learned counsel for respondent – Bank has opposed these writ petitions while raising objections qua entertainability of said petitions. It is submitted that petitioners have an efficacious remedy with redressal of their grievances under SARFAESI Act itself. In view of the definition of borrower in Section 2 (f) of SARFAESI Act, it is open to respondent – Bank to proceed against properties (secured assets) of both guarantor-borrower. Therefore, present writ petitions should be dismissed. It is denied that there is any violation of any provision of law in respect to proceedings undertaken by respondent Bank under SARFAESI Act for recovery of amount due towards Bank. Entire proceedings, it is submitted, are in complete consonance with the provisions of law. It is thus prayed that both writ petitions should be dismissed.

7. We have heard learned counsel for parties and have perused both the files. Availing of financial assistance by borrowers from respondent - Bank, subsequent financial indiscipline, for reasons as may be and initiation of proceedings under SARFAESI Act by respondent - Bank is

a matter of record. Secured assets in this matter consist of two residential houses one belonging to one Rajinder Singh and the second secured asset is the residential property belonging to petitioner in CWP-5017-2023, guarantor of the loan, though it is denied by Amarjeet Kaur that she ever stood guarantor for the loan in question. Each of the parties before us urge that property of the other should be sold for discharge of liability towards respondent - Bank. At this juncture, it is pertinent to note that SARFAESI Act is a complete code in itself wherein specific remedy (ies) for any grievance (s) which any person may have in respect to proceedings undertaken therein are clearly provided. Interference in the said matters by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India has to be minimal and actuated only in exceptional and extraordinary circumstances. Useful 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*** and ***M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.*** While reiterating its earlier judgments, Hon'ble the Supreme Court in ***M/s. South Indian Bank*** has 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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> 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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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 of 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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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."

8. Learned counsel representing both petitioners are unable to point out any exceptional or extraordinary circumstance which calls for any interference by this Court at this stage. All arguments as raised before us are very well within the realm of consideration by the appropriate Authority/Tribunal as provided under the Act.

9. Keeping in view the facts and circumstances, we do not consider it necessary or appropriate to delve upon the merits of matter. Writ petitions are, accordingly, dismissed with liberty to petitioners to avail remedy (ies) available to them in accordance with law while taking up all pleas. There is no expression of opinion on the merits of matter.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

16.05.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No