2024:PHHC:006138-DB

256 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25724-2021
Date of Decision: January 16, 2024

SIMRAN SHARMA ..... Petitioner

Versus

AUTHORISED OFFICER,PUNJAB AND SIND BANK ANDANR.
..... Respondents

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

Present: Mr. Mahipal S. Yadav, Advocate for the petitioner.

Ms. Adarshpal Kaur, Advocate for the respondents (through VC).

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside auction/sale notice dated 26.11.2021 and directing respondent – Bank to settle the house loan account in terms of One Time Settlement (OTS) scheme in view of communication sent to petitioner, copy of which is attached as Annexure P4.

2. It is submitted that petitioner had availed of car loan and stood guarantor qua one house loan and availed credit limit of Rs.25 lakhs as has been detailed in para 2 of writ petition. Details of mortgaged property are also available in the said para. Financial indiscipline on the part of petitioner/guarantor and subsequent initiation of proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (for short – 'SARFAESI Act') is a matter of record. OTS was arrived at between the parties for a sum of Rs.48 lakhs against outstanding liability of Rs.56 lakhs. However, OTS failed as petitioner was unable to deposit the same by stipulated date i.e. 30.04.2020. Sale pursuant to notice dated 26.11.2021 did not take place due to non participation of any bidder. It is pleaded that respondent – Bank sent communication (Annexure P4) to petitioner in respect to OTS wherein total recoverable dues as on 31.12.2020 are stated to be Rs.17,80,740/- and OTS amount is Rs.7,58,000/-. Petitioner was ready and willing for said OTS. Respondent – Bank, however, did not sanction the said OTS.

3. Learned counsel for respondent – Bank while referring to written statement filed on its behalf explained that communication (Annexure P4) was sent to petitioner inadvertently because Scheme in question i.e. PSB Krishi Samadhan 2021 is not applicable to loan accounts and this scheme is applicable qua NPA only where agricultural land is mortgaged and no other security is available. Mistake committed by the Bank was rectified and clarified by respondent – Bank vide letters dated 24.02.2021 and 25.02.2021 attached as Annexures R2 and R3. Learned counsel for respondent raised objection regarding entertainability of this writ petition and states that proceedings under SARFAESI Act are correctly undertaken and are in consonance with provisions of law.

4. Having heard learned counsel for parties, we do not find any ground for interference in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. It is a settled position that SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise

in respect to proceedings taken thereunder. Interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters has to be minimal and actuated only in extra-ordinary and exceptional circumstances. 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,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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> 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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> 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."

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5. Learned counsel for petitioner is unable to deny that sale pursuant to notice dated 26.11.2021 has not taken place. Moreover, learned counsel is unable to point out any extraordinary and exceptional circumstance, which calls for interference by this Court, at this stage. In respect to averment that direction should be issued to the respondent – Bank for entering into OTS is concerned, it is again a settled position that a borrower/guarantor does not have a vested right to One Time Settlement. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56** wherein it has been held 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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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."

6. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance, which calls for intervention by this Court, at this stage.

7. Keeping in view the facts and circumstances as above, we do not find any ground which calls for interference in exercise of jurisdiction under Article 226 of Constitution of India.

8. Writ petition is, accordingly, dismissed with liberty to petitioner to avail remedy(ies) available to her in accordance with law.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

January 16, 2024
rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No