



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

115

CWP-22934-2024.

Date of Decision: 10.09.2024.

Gaurav Mamik

....Petitioner.

VERSUS

Canara Bank and another

....Respondents.

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Manish Jain, Advocate
Mr. Rahul Tyagi, Advocate
Mr. Siddhant Jain, Advocate and
Ms. Manan Jain, Advocate for the petitioner.

ANUPINDER SINGH GREWAL, J. (Oral)

Learned counsel for the petitioner submits that petitioner had availed a commercial loan along with overdraft facility for an amount of Rs.25.00 Crores in the year 2013. Notice under Section 13(2) of SARFAESI Act, was issued on 08.04.2021 for a sum of Rs.26,27,67,918.25. He submits that petitioner had earlier preferred an SA before the DRT-II, challenging the sale notices issued on 05.08.2024 and 13.08.2024, which were withdrawn by the respondent-bank. The respondent-bank issued fresh sale notice on 17.08.2024 proposing the date of auction as 11.09.2024 and the petitioner has also preferred IA challenging the sale notice dated 17.08.2024. He further submits that the SA preferred by the petitioner cannot be listed for hearing for want of functioning of DRT-II. He also submits that the petitioner may be protected till the DRT-II resumes its functioning.

2. Issue notice to respondent No.1 only at this stage.
3. Mr. Rakesh Gupta, Advocate has put in appearance and accepts notice on behalf of respondent No.1-bank.
4. At the asking of the Court, Mr. Satya Pal Jain, Additional Solicitor General for India with Mr. Dheeraj Jain, Advocate has put in appearance. On the query of this Court, as to whether steps have been initiated for appointment of the Presiding Officer of DRT-II, he states that proposal for handing over charge of Presiding Officer of DRT-II to Presiding Officer of DRT-I, is pending consideration before the Appointment Committee of the Cabinet and a decision is likely to be taken shortly.
5. Heard.
6. The petitioner has preferred SA before the DRT-II and due to its non-functioning, the same is not being taken up for hearing.
7. It is settled law that the petitioner or a litigant cannot be left remediless especially when the same has been provided by a Statute. We also draw our support from the order of the Supreme Court dated 16.12.2021 in the case of **'State Bar Council of Madhya Pradesh Vs. Union of India'** *Special Leave Petition (C) No.10911/2021*. Relevant extract is reproduced herein-below:-

“13. With a view to resolve the problem being faced by the parties, for the time being and purely as a stopgap arrangement, we request the concerned High Court(s) to entertain the matters falling within the jurisdiction of DRTs and DRATs under Article 226 of the Constitution of India, till further orders.

14. We make it clear that once the Tribunal(s) is/are constituted, the matters can be relegated to the Tribunals by the High Court(s).”

8. As DRT-II is stated to be non-functional, it would be in the interest of justice, if the petitioner is protected for some time till the DRT-II resumes its functioning. We expect the competent authority to take decision expeditiously.
9. Consequently, the petition is disposed of with a direction that the sale shall not be confirmed for a period of 15 days after the DRT-II resumes its functioning. It is made clear that the petitioner shall not make any effort to delay the proceedings and shall cure the defects in the application, if any, immediately.
10. Needless to observe that we are not making any expression on the merits of the case which would be adjudicated by the DRT in accordance with law.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

10.09.2024
jitender

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No