

CWP-25335-2022 (O&M)

2024:PHHC:053254-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-25335-2022 (O&M)

Date of Decision: April 20, 2024

UMESH KUMAR

..... Petitioner

Versus

CENTRAL BANK OF INDIA

..... Respondent

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

Present: Mr. Sanjeev Sharma, Advocate for the petitioner.

Mr. Saurav Goyal, Advocate for the respondent.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 18.07.2022 (Annexure P3) under Section 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act'). It is also prayed that rejection of petitioner's proposal for One Time Settlement (OTS) be set aside being illegal and arbitrary.

2. Availing of financial facility by petitioner from respondent, as is detailed in para 3 of writ petition, by mortgaging the property in question is a matter of record. Admittedly, there was financial indiscipline on the part of petitioner for reasons as may be, leading to his account being declared Non Performing Asset (NPA) and proceedings under SARFAESI Act being initiated.

Notice under Section 13(2) of SARFAESI Act was issued on 14.03.2022 and notice under Section 13(4) of SARFAESI Act on 18.07.2022. Present writ

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petition was filed by petitioner challenging said proceedings as well as rejection of his proposal for OTS.

3. Learned counsel for petitioner submits that proceedings under SARFAESI Act are absolutely illegal, arbitrary and in complete violation of applicable provisions of law. Moreover, once petitioner had come forward for OTS, it was incumbent upon the bank to have accepted the same. Rejection of petitioner's proposal is stated to be absolutely illogical. It is, thus, prayed that this petition be allowed.

4. Learned counsel for respondent – Bank has opposed this writ petition while raising preliminary objection qua entertainability of this writ petition itself. It is further submitted that proceedings under SARFAESI Act have been initiated against petitioner in complete consonance with applicable provisions. It is asserted that petitioner has not come forward till today to deposit outstanding amount. It is, thus, prayed that this petition be dismissed.

5. Having heard learned counsel for parties and perusing the file, we do not find any ground to interfere in this writ petition in exercise of jurisdiction under Article 226 of the Constitution of India. Interference by High Court in such like matters has to be minimal and actuated only in extra-ordinary and exceptional circumstances as has been detailed by Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110** as under:-

“18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very

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wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in **Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107** and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

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25. In **Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another (2010) 4 SCC 772**, the Court was dealing with the issue whether the alternative statutory remedy

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available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed:

"31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction.

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6. Said decision has been reiterated by Hon’ble the Supreme Court in the case of **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**, wherein it was held that:-

“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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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

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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.”

7. It is to be noted, at this stage, that learned counsel for respondent – Bank on 14.12.2023 had submitted that minimum indicative amount in April, 2023 for settlement/regularization was conveyed to petitioner to be about Rs.16 lakhs. Learned counsel for petitioner on 20.12.2023 had stated that petitioner is ready and willing to deposit a sum of Rs.16 lakhs by 31.03.2024. However, till date, no such amount has been deposited and neither does learned counsel for petitioner have any instructions in this regard.
8. Learned counsel for the petitioner is unable to point out any extraordinary or exceptional circumstances which call for interference in exercise of jurisdiction under Article 226 of the Constitution of India.
9. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail remedy/remedies available to him in accordance with law. It is always open to parties to arrive at any mutually acceptable settlement.
10. It is clarified that there is no expression of opinion on the merits of matter.
11. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 20, 2024
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