IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2024:PHHC:078009-DB

(208) **CWP-25983-2017(O&M)**
Date of Decision: 30.05.2024

Kamlesh Gupta --Petitioner

Versus

Punjab National Bank & another --Respondents

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

Present:- Mr. H.S. Jagdev, Advocate for petitioner.

Ms. Madhu Dayal, Advocate for respondent-Bank (through V.C).

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<u>LISA GILL.J (Oral)</u>

Prayer in this petition is for setting aside Sale Notice dated 11.10.2017 (Annexure P-3) issued by respondent-Bank under provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short SARFAESI Act) vide which sale/E-auction of properties of petitioner/guarantor has been fixed by respondent-Bank.

2. Financial facility of Rs.8.50 crores in the year 2011 was admittedly availed of by M/s Shree Jitender Kumar Ankush Kumar Trading Company through its proprietor i.e. son of petitioner. Properties as described in para 3 of writ petition were mortgaged. It is pleaded that there was financial indiscipline as son of the petitioner i.e. the borrower suffered heavy losses in business. Account in question was declared Non Performing Assert (NPA) on 28.04.2014. Notice(s) under Section 13(2) and 13(4) being issued on 10.07.2014 and 26.02.2015 respectively. Sale notice

was issued on 11.10.2017. Petitioner, it is stated had approached the respondent-Bank seeking release of properties of the petitioner on the condition that she would deposit a sum of Rs.30 lakhs and the remaining reserve price of the properties would be deposited within six months thereafter, however, her request was not considered leading to filing of the present writ petition.

3. Learned counsel for the petitioner vehemently argued that proceedings under the SARFAESI Act have initiated in an illegal and arbitrary manner without adherence to the specific provisions of SARFAESI Act. Notice of the sale was never served upon petitioner. Furthermore, petitioner's application dated 06.10.2017 for One Time Settlement was still pending before the Bank but without taking any decision thereon sale notice was issued. Petitioner in order to save her property was ready to pay the reserved price of the properties but respondent-Bank is only interested in taking over the proverty of petitioner by hook or by crook. It is thus prayed that this writ petition be allowed.

4. Learned counsel for respondent-Bank has opposed the writ petition firstly by raising an objection qua entertainability of the same. It is submitted that proceedings under SARFAESI Act have been undertaken in strict consonance with provisions thereof. Any allegation qua violation of the provisions is denied. It is further informed that One Time Settlement (OTS) had also been sanctioned in favour of petitioner on 29.02.2024. The petitioner was to deposit the entire amount due by 29.05.2024, however, out of the settled sum of Rs.2.5 crores, only a sum of Rs.1.75 crores was deposited. Cheque dated 29.05.2024 for a sum of Rs. 62 lakhs was

submitted on 29.05.2024 with the request that the same should be presented only on 31.05.2024. Learned counsel submits that even if this cheque is encashed, a sum of Rs.30 lakhs would still be due. Thus the only effort of petitioner is evidently to delay proceedings. Dismissal of writ petition is sought.

5. Learned counsel for petitioner, at this stage, submits that petitioner has in fact deposited the entire amount of Rs.2.5 crores as settled and the payment would be complete with the deposit of Rs.62 lakhs. This is seriously disputed by learned counsel for respondents.

6. Be that as it may. Perusal of the file reveals that some amount in terms of various orders passed in this writ petition had been deposited by petitioner. Thereafter, One Time Settlement was sanctioned in favour of petitioner on 29.02.2024. It is duly recorded in order dated 09.04.2024 that the last tranche of payment was to be deposited by petitioner by 28.05.2024. Terms and conditions of the settlement have not been complied with by the petitioner and no extension is reported to have been given by the respondent -Bank. In the given facts and circumstances, we do not find any ground to interfere in the matter keeping in view categoric judgments of Hon'ble the Supreme Court in ***Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56*** and ***State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540***. In so far as challenge to proceedings under SARFAESI Act is concerned, petitioner admittedly had efficacious remedy of approaching learned Tribunal in terms of specific provisions under the SARFAESI Act.

7. Keeping in view the facts and circumstances above, we do not find any ground to interfere in this petition, at this stage. However, petitioner is at liberty to avail the remedy/(ies) as may be available in accordance with law in respect to the grievances qua proceedings under the SARFAESI Act and the question regarding compliance of the terms and conditions of OTS would be a matter to be settled between the parties at mutually acceptable terms, however, no interference by this Court is called for in the matter at this stage.

8. Keeping in view facts and circumstances as above, present petition is dismissed with liberty as aforesaid to the petitioner.

9. Pending application(s), if any, shall also stand disposed of.

(LISA GILL)
JUDGE

30.05.2024 **(AMARJOT BHATTI)**
lucky **JUDGE**

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