2024:PHHC:017220-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-27420-2022
Date of decision: 29.01.2024

M/s Balwindra Tools Private Ltd.

...... Petitioner

V/S

State Bank of India and Ors.

..... Respondents

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

Present: Mr. Brijesh Nandan, Advocate
for petitioner.

Mr. Rakesh Gupta,Advocate
for respondents No.1 to 3.

Mr. Sandeep Jain, Addl. A.G. Punjab.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside notice dated 31.10.2022 (Annexure P-12) issued by respondent No.5-Naib Tehsildar, Ludhiana (South)-cum-Officiating Magistrate, Ludhiana pursuant to order dated 23.03.2019 passed by District Magistrate, Ludhiana under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act. There is further prayer to direct respondents No.1 to 3 to extend the period for payment of settlement amount as per sanctioned One Time Settlement (OTS) dated 31.01.2022. It is further prayed that action of respondent-Bank in cancelling the settlement vide communication dated 19.09.2022 is illegal and arbitrary, therefore, should be set aside as terms and conditions of settlement dated 31.01.2022

could not be complied with on account of unavoidable circumstances beyond the control of petitioner.

2. Learned counsel for petitioner while not denying the availing of financial facility by petitioner from respondent-Bank, its subsequent financial indiscipline and initiation of proceedings under SARFAESI Act submits that as per terms and conditions of settlement dated 31.01.2022 petitioner's account was settled for a sum of Rs.7,10,00,000/- plus interest, if any, qua a total outstanding of Rs.11,36,81,553/- as on 26.12.2017. Learned counsel for petitioner submits that even as on date petitioner is ready to deposit the interest which may have accrued on the amount in question in terms of settlement dated 31.01.2022. The bank, it is further submitted, is carrying on proceedings for taking over possession of property in question which is totally unjustified in given factual matrix where petitioner is continuously requesting for extension of OTS granted to him.

3. Learned counsel for respondent has opposed this writ petition firstly raising an objection qua entertainability of same. It is further submitted that due to non-compliance of terms and conditions of settlement dated 31.01.2022, same was cancelled and duly communicated to petitioner vide letter dated 19.09.2022 attached as Annexure P-11 with writ petition. Therefore, proceedings under SARFAESI Act are being pursued by petitioner in accordance with law.

4. We have heard learned counsel for parties and have gone through the file with their able assistance. However, we do not find any ground to interfere in this writ petition in exercise of jurisdiction under Article 226/227 of the Constitution of India.

5. It has been held by Hon'ble the Supreme Court in '**State Bank of India vs. Arvindra Electronics Pvt. Ltd.' (2023) 1 SCC 540** that a borrower cannot claim extension of time period under OTS scheme as a matter of right. Granting extension of time and rescheduling payment under OTS scheme, it was held would tantamount to rewriting the contract which is not permissible.

6. It is settled position of law that a borrower/creditor does not have vested right for an OTS as has been held by Hon'ble the Supreme Court in its earlier judgment (**'The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Agarwal and others', 2021 SCC Online SC 1040)** and equally well settled is the position that they cannot seek a direction for extension for the period for payment of settlement amount. These matters have to be left to commercial wisdom of Banks.

7. Insofar as the question of initiation of proceedings under SARFAESI Act by Bank is concerned, petitioner is provided with sufficient remedies under the SARFAESI Act itself. It was held by Hon'ble the Supreme Court in an arena of judgments that interference by the High Court in such like matters should be minimal and limited to exceptional or extraordinary circumstances. Gainful 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, M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771 and Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34.***

8. Learned counsel for petitioner is unable to point out any extraordinary exceptional circumstance which calls for interference at this

stage. Petitioner is always at liberty to raise all available grounds which very well are within the realm of consideration by appropriate Forum/Tribunal.

9. Keeping in view facts and circumstances above, this writ petition is dismissed with liberty to petitioner to avail remedy/ies available to it in accordance with law.

10. Pending miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

29.01.2024
Sunil Devi

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