

CWP-29631-2022 (O&M)

2024:PHHC:016955-DB

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29631-2022 (O&M)
Date of Decision: February 07, 2024

RADHA PRAKASH AND ANOTHER Petitioners

Versus

STATE BANK OF INDIA AND OTHERS Respondents

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

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Shikhar Sarin, Advocate for the petitioners.

Mr. Akshay Jain, Advocate for the respondent – Bank.

Mr. Deepak Grewal, DAG, Haryana.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 06.12.2022 (Annexure P3) issued by Naib Tehsildar, Wazaribad, Gurugram pursuant to order dated 11.10.2022 passed by District Magistrate, Gurugram under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) on the ground that petitioners proposal for One Time Settlement (OTS) was still pending consideration. Petitioners also seek direction to respondent – Bank to consider and implement OTS offer dated 05.12.2022 submitted by petitioners on behalf of borrower.

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2. Learned counsel for petitioners contends that various proposals have subsequently also been submitted by petitioners for OTS but to no avail as respondent – Bank is not coming forward to consider the same in an illegal manner.

3. Learned counsel for respondent – Bank while raising objection qua entertainability of the writ petition itself submits that petitioners are only indulging in delay tactics with sole intention to stall proceedings for recovery of amount due towards the bank. It is submitted that offers/proposals for OTS, as submitted by petitioners, have been found to be unacceptable, keeping in view huge recovery to be made. Total outstanding amount due as 31.01.2024 is more than Rs. 58 crores. OTS in favour of petitioners was sanctioned on 28.07.2023 for a sum of Rs.13.65 crores. However, terms and conditions of said OTS were not complied with by petitioners due to which OTS was ultimately cancelled on 06.11.2023. It was only an amount of Rs.0.6825 lakhs, which was deposited by the petitioners. Therefore, this writ petition should be dismissed.

4. We have heard learned counsel for parties and have gone through file with their assistance.

5. Availing of financial credit from respondent – Bank, subsequent financial indiscipline on the part of petitioners for reasons as may be and consequent initiation of proceedings under SARFAESI Act against them are a matter of record. It is further not in dispute that OTS was sanctioned in favour of petitioners in July, 2023, terms and conditions of which were admittedly not complied with by petitioners. Hon'ble the Supreme Court in **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540** has clearly held that a direction for extension of period of OTS for deposit of balance amount

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cannot be issued as it would tantamount to re-writing the terms and conditions of contract between parties which can be done only with mutual consent of parties.

6. Insofar as question of challenge to proceedings under SARFAESI Act is concerned, 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** and **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

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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 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. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance, which calls for interference by this Court in respect to proceedings taken under SARFAESI Act by respondent – bank against petitioner.

8. Argument raised by petitioners that fresh OTS should be sanctioned in favour of petitioners in case, there can be no extension of OTS already sanctioned in July, 2023 is completely devoid of merit. 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

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9. 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.

10. Writ petition is, accordingly, dismissed with liberty to petitioners to challenge proceedings initiated against them under SARFAESI Act in accordance with law. However, keeping in view the fact that interim order in favour of petitioners was granted on 21.12.2022 to the extent that they would not be dispossessed from secured asset and the same has enured till date, interim

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protection shall continue for one week from receipt of certified copy of this order to enable petitioners to avail remedy as may be available to them in accordance with law. In case, petitioners file appropriate application/petition, question of continuance or otherwise of interim order in petitioners’ favour shall necessarily be within the realm of consideration by the appropriate Forum which will be considered in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

11. Interim protection afforded to petitioners shall not enure beyond the period of said seven days in the absence of any order by appropriate authority/Forum.
12. It is clarified that there is no expression of opinion on the merits of the matter.
13. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

February 07, 2024
Rts

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