



Sr. No.120

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-29943-2024 (O&M)

Date of Decision : 05.11.2024

M/S WALIA TRADERS LTD AND OTHERS

...Petitioners

V/S

STATE OF UT CHANDIGARH AND OTHERS

...Respondents

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

Present : Mr. Rajiv Malhotra, Advocate,
Mr. Vivek Tiwari, Advocate,
Mr. Manan Khetarpal, Advocate and
Ms. Heena, Advocate,
for the petitioners.

Mr. Himanshu Sharma, Advocate,
for respondent No.3.

ANUPINDER SINGH GREWAL, J. (Oral)

The petitioner(s) have sought quashing of the order dated 08.10.2015 (Annexure P-12) whereby application preferred by the respondent under Section 14 of the SARFAESI Act has been allowed by the District Magistrate, Chandigarh and notice dated 09.10.2024 (Annexure P-30 C) under Section 13 (8) of the SARFAESI Act. The petitioner(s) have also sought a writ in the nature of prohibition restraining respondent No.3-Bank from taking possession of the property of the petitioner.

Learned counsel for the petitioner(s) submits that there is a change in the cause of action as on 14.05.2015 outstanding amount as per notice under Section 13(2) of SARFAESI Act due to the respondent-Bank

was Rs.1,05,60,96,347/- (Annexure P-2). The petitioner(s) had already made a payment of Rs.377 crores thereafter but the respondents have put another property of the petitioner to auction vide notice dated 09.10.2024 which is unreasonable and unjustified. He therefore, submits that the respondent No.3-Bank is acting arbitrarily and in utter disregard of the law as it has not given the breakup of the amount which is due from the petitioner. He also submits that the petitioner was willing to abide by all the terms and conditions set out in the OTS but it could not fructify as de-merger was not allowed by the respondent Bank. He further submits that petitioner is willing to pay the entire outstanding amount if any, in accordance with law, provided it was given the break up of the amount on an affidavit sworn by a responsible officer of the Bank. At this stage, learned counsel submits that as on date respondent-Bank has not fixed any date for taking physical possession of the secured asset.

Learned counsel for the respondent-Bank submits that loan amount had been advanced to the petitioners in the instant case and the outstanding amount due as on 30.06.2024 was approximately Rs.323 crores. A hotel in Sector-3, Panchkula has been sold for a sum of Rs.166.50 crores and the remaining amount is still due *qua* the petitioners. He also submits that petitioners have an efficacious alternative remedy and this Court should not interfere in the matter at this stage, in view of the law laid down by the Supreme Court in the case of **M/s South Indian Bank Ltd. and others Vs. Naveen Mathew Philip and another**, 2023 SCC online SC 435. He further submits that if the secured asset is an immovable property then the limitation for recovering the outstanding amount is of 12 years in view of Article 62 of the Limitation Act. He has also relied upon the judgment of

this Court in the case of '**Raj Rani and another Vs. Oriental Bank of Commerce**' decided on 13.11.2007. Besides, he also disputes the factum that the petitioners have discharged the outstanding liability by paying Rs.377 crores. He submits that the amount of Rs.377 crores which is being stated to have been paid by the learned counsel for the petitioners pertains to four different entities including the petitioners. Each entity had obtained separate loans and, therefore, all the entities are liable for discharging the individual loans which had been advanced to each one of them, since the OTS had failed.

After hearing learned counsel for the parties and perusing the material on record, we are of the considered view that the petitioner has efficacious, alternative remedy of approaching the DRT for redressal of its grievance as admittedly Section 13(4) notice was received by the petitioners. It has been held by the Supreme Court in the case of "**M/s South Indian Bank Ltd. and others Vs. Naveen Mathew Philip and another (supra)**" that in the event of efficacious alternative remedy in commercial matters, the constitutional Court should not interfere by exercising its writ jurisdiction under Article 226.. The relevant extract of the judgment is reproduced hereunder:-

"13. *In view of the fair stand taken by the learned Senior Counsel appearing for the Appellants, we do not wish to interfere with the impugned orders passed. 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. We are also constrained to take judicial notice of the fact that certain High Courts continue to interfere in such*

*matters, leading to a regular supply of cases before this Court.
One such High Court is that of Punjab & Haryana.”*

In view of the above, the petition stands dismissed accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

November 05, 2024
vandana

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