2024:PHHC:039259-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27046 of 2023(O&M)
Date of Decision:19.03.2024

M/s Hari Ram

......Petitioner

Versus

Authorized Officer of M/s Ambit Finvest Private Limited and another

...... Respondents

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

Present: Mr.S.K.Mukhi, Advocate
for the petitioner.

Ms. Keerti Sandhu, Advocate
for Mr. Jatin Bansal, Advocate
for respondent no.1.

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LISA GILL, J(Oral).

1. Prayer in this writ petition is for setting aside order dated 28.11.2023, Annexure P-5, passed by learned Debt Recovery Tribunal-II, Chandigarh.

2. Availing of financial facility by petitioner from respondent on 18.06.2018 is a matter of record. It is submitted that petitioner was depositing all the amounts due even during the period of Pandemic COVID-19. Loan had been taken for medical treatment of his wife, who was suffering from Lung Cancer, but ultimately passed away on 05.10.2018. Insurance premium had also been charged from petitioner. Respondent, it is submitted in complete violation of provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act) as well as various Circulars issued by Reserve Bank of India and directions passed by Hon'ble the Supreme Court

in **W.P (Civil) No. 476 of 2020, titled Small Scale Industries Manufactures Vs. Union of India and others**, raised illegal and unreasonable levies. Earlier notice was issued for taking possession of property pursuant to order dated 09.11.2023, Annexure P-2, passed by the District Magistrate, Gurugram. CWP No. 29125 of 2022 filed by petitioner was dismissed on 13.10.2023 while affording liberty to petitioner to avail the remedy (ies) available to him for redressal of his grievance in accordance with law. Subsequently, petitioner filed SA No. 312 of 2023, however interim relief was not afforded to petitioner. Petitioner's request was declined vide order dated 28.11.2023. Said order has been challenged by petitioner in this writ petition.

3. It is vehemently argued by learned counsel for petitioner that petitioner is a poor person and respondent is simply bent upon taking over possession of secured asset i.e., a residential house. The matter had been adjourned at request of learned counsel for the parties to explore the possibility of an amicable settlement. Learned counsel for petitioner on 19.01.2024 had submitted that it was only an amount of Rs.2,55,556.17/-, which is due, but respondent was raising an unreasonable demand of Rs.27,23,263/-.

4. It has been informed by learned counsel for respondent no.1 that it is a sum of Rs.3,50,000/- which is overdue and in case, said amount along with additional sum of Rs.1,50,000/- which would be adjusted towards future installments is deposited by petitioner within next 15 days, account of petitioner can be regularized. However, learned counsel for petitioner submits that this is not even the total outstanding, which is due as per calculation of petitioner and that petitioner would only be interested in a One Time Settlement and does not wish to have the account regularized.

5. We have heard learned counsel for parties and have perused the file with their able assistance.

6. Petitioner has challenged order dated 28.11.2023, passed by learned Debt Recovery Tribunal-II, Chandigarh, which is admittedly an appealable order in terms of Section 18 of SARFAESI Act.

7. Keeping in view the facts and circumstances of the case, we do not find any ground whatsoever for interference in this writ petition, at this stage, in exercise of jurisdiction under Article 226 of the Constitution of India. It has been held by **Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34** as under :-

> "34. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of predeposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the Act 2002."

8. Submission made by learned counsel for petitioner that respondent should be directed to enter into an OTS cannot be countenanced for the reason that a borrower/guarantor does not have a vested right for OTS. It has been held by Hon'ble the Supreme Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56,** 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 Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the Bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the Bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

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11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the Bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the Bank

would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/Bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove."

9. In the given facts and circumstances, we do not consider it appropriate to undertake the exercise of examining the merits of the controversy as has been urged before us by learned counsel for the petitioner. We thus relegate the petitioner to its remedy of appeal in terms of Section 18 of SARFAESI Act. In case, appeal is filed by the petitioner within the next seven (07) working days along with requisite applications, the same may be considered by learned Appellate Authority in accordance with law after affording due opportunity of hearing to all concerned with the application for interim relief if any, being decided expeditiously. No coercive steps be taken for seven days to enable petitioner to avail remedy of appeal. Said interim protection shall not automatically enure beyond the period of seven days as above in the absence of specific order of learned Appellate Authority.

10. Writ petition is disposed of accordingly. There is no expression of opinion on the merits of the matter. Pending application/s, if any, is/are disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

March 19, 2024.
s.khan

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