236 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-2107-CWP-2024 in/and
CWP-27870-2023(O&M)
Date of Decision: 01.04.2024

Rajni Behal ....Petitioner

versus

Indian Bank and another ....Respondents

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

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Present: Mr.Bikramjit Singh Randhawa, Advocate for the petitioner.

Mr. Gaurav Goiel, Advocate for the respondent-bank.

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LISA GILL, J. (ORAL)

CM-2107-CWP-2024

Prayer in this application is for restoration of present writ petition which was dismissed in default on 24.01.2024.

Learned counsel for respondent-bank does not raise any serious objection to the above. Order dated 24.01.2024 is accordingly recalled and writ petition is restored. At request and with consent of learned counsel for parties writ petition is taken up for hearing today itself.

Application is accordingly disposed of.

CWP-27870-2023

1. Prayer in this petition is for setting aside Sale Notice dated 29.11.2023 (Annexure P-3) issued by respondent No.1 under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (for short 'the SARFAESI Act') and subsequent proceedings pursuant thereto initiated by respondent-bank. There is further prayer for directing respondents to settle petitioner's account under One Time Settlement (OTS) Scheme.

2. It is submitted that loan facility was availed of by M/s Vijay & Company Proprietor Ltd. thorough its proprietor Kailash Chander who is father-in-law of present petitioner. Loan amount was being repaid regularly by father-in-law of petitioner, however, due to his unfortunate death on 04.05.2021, his legal representatives failed to deposit the requisite amount leading to account being declared Non Performing Asset (NPA) and Demand Notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') being issued on 22.11.2022. Petitioner's husband, it is submitted, approached respondent No.2 for OTS which was sanctioned for a sum of Rs. 43 lakhs. However, the amount could not be deposited by the stipulated date i.e. 26.10.2023 which was also the day on which petitioner's husband unfortunately passed away. Notice dated 29.11.2023 was issued for auction to be held on 21.12.2023. Petitioner approached respondent for OTS but to no avail. Order under Section 14 of SARFAESI Act has been passed on 11.03.2024.

3. Learned counsel for petitioner submits that proceedings under the SARFAESI Act initiated by respondent-bank are in violation of the said Act and applicable Rules itself. Moreover, respondent-bank is not coming forth to enter into OTS.

4. Learned counsel for respondent-bank has opposed this writ petition by firstly raising objection qua entertainability of the writ petition

itself. It is further submitted that action under SARFAESI Act has been correctly initiated and undertaken by respondent-bank in strict compliance of applicable provisions of law. Moreover, auction pursuant to Sale Notice dated 29.11.2023 did not fructify, thus in any case no cause survives. Dismissal of writ petition is sought.

5. Having heard learned counsel for parties we do not find any ground whatsoever to interfere in exercise of jurisdiction under Article 226 of the Constitution of India. Petitioners admittedly have an alternate efficacious remedy. It is a settled position that SARFAESI Act is a complete Code in itself providing for remedies for redressal of grievance(s) which any person may have in respect to action taken thereunder. It has been held by the Hon'ble Supreme Court in a number of cases including ***Union Bank of India vs. 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 anohter, 2023(2) RCR (Civil) 771*** that interference by High Court in such like matters should be minimal and actuated only in exceptional or extraordinary circumstances. Furthermore, prayer is made for direction to the respondent-bank to positively enter into OTS with petitioner as has been sought. Admittedly, a borrower does not have any vested right for as One Time Settlement as has been held by the Hon'ble 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 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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."

6. This writ petition is accordingly dismissed with liberty to the petitioner to avail the statutory remedy/remedies as may be available to her

in accordance with law for redressal of any grievance she might have qua proceedings undertaken under the SARFAESI Act. It is open to the parties to enter into any mutually acceptable settlement. There is no expression of opinion on the merits of the matter.

7. Pending miscellaneous applications, if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

01.04.2024
sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No