(2021) 10 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 6327 Of 2021

Swaroop Chand Dhiman And Others — APPELLANT

Vs

Punjab National Bank And Others — RESPONDENT

Date of Decision : 05-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(4), 17, 18

Citation : (2021) 10 SHI CK 0013

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : B.C. Negi, Senior Y.P. Sood, Arvind Sharma

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for the grant of following substantive reliefs:-

"i). That a writ in the nature of certiorari may kindly be issued and auction/sale proceedings conducted by respondent No.2 on 12.8.2021 and sale certificate Annexure P-8 dated 23.8.2021 issued in favour of respondent No.3 pursuant to the sale may kindly be quashed and set aside.

ii) That a writ in the nature of mandamus may be issued against the respondents No.1 and 2 directing them not to dispossess the petitioners from the double storeyed residential house built upon the land comprised in Khata No.160 min, Khatauni No.238 min, khasra Nos.546, 547, 548, 549, 550, 551, 1020/552, plot 7 measuring 0-07-06 hectares situated at Mohal Sanoura, Mauza Dugyari, Tehsil & District Kangra (HP) on the basis of sale held on 12.8.2021."

2. It would be evident from the pleadings that the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') are pending adjudication before the

Competent Authority and the petitioners under the guise of invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, are trying to quash the proceedings so initiated by the respondent-Bank against them under the SARFAESI Act.

3. The Hon'ble Supreme Court has strongly deprecated the tendency of the High Courts in entertaining the writ petitions filed under Article 226 of the Constitution of India by the aggrieved party, without availing alternative and efficacious remedy available to them, more particularly, in the matters, which arise under the SARFAESI Act.

4. In State Bank of Travancore vs. Mathew K.C., (2018) 3 SCC 85, the Hon'ble Supreme Court while dealing with alternative remedy under the SARFAESI Act held as under:-

"3. The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section

18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Ikbal and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same.

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8. The statement of objects and reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. The Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long

term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as 'the DRT Act') with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order.

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10. In Satyawati Tandon (supra), the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding :-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person.

Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

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55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

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15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of exparte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in Satyawati Tandon (supra), has also not been kept in mind before passing the impugned interim order:- "46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Another, 1997 (6) SCC 450, observing :-

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position.

Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

5. Similar question of law again came up for consideration before the Hon'ble Supreme Court in ICICI Bank Limited and ors. vs. Umakanta Mohapatra and ors., (2019) 13 SCC 497, wherein it was observed as under:-

"2. Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act , 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).

3. The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:

"17. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Another, (1997) 6 SCC 450, observing:-

"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

4. The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside."

6. Similar reiteration of law can be found in a recent judgment rendered by Hon'ble Three Judges of Supreme Court in Criminal Appeal No.377/2020, titled as K. Virupaksha and anr. vs. State of Karnataka and anr., dated 3.3.2020.

7. Similar position of law has also been reiterated by one of us (Justice Jyotsna Rewal Dua, Judge), while sitting as a Vacation Judge, in CWP No.635 of 2021, titled Harbans Lal Versus State Bank of India and others, decided on 10.02.2021.

8. In view of the aforesaid judgments, the instant writ petition is not maintainable and is accordingly dismissed alongwith pending miscellaneous application(s), if any.

9. However, it is made clear that this Court has not gone into the relative merits

of the case and it shall always be open to the petitioners to raise their grievances before the Debt Recovery Tribunal (DRT) or Appellate Authority, as the case may be. It is expected that the DRT, which has adjourned the case from 4. 10.2021 to 11.10.2021, shall finally decide the applications filed by the petitioners before it in accordance with law.

10. Before parting, it needs to be noticed that the petitioners herein filed Civil Suit No.174/2021, titled Swaroop Chand Dhiman Versus PNB and another, before the Civil Judge (Senior Division) Kangra, for declaration and permanent prohibitory injunction, restraining the respondent-Bank from taking possession of the property in question. What is disturbing is not only that the concerned Judge entertained the suit, but he also proceeded to pass orders of opening/breaking the locks of the premises. We really wonder as to how the Civil Judge could have entertained the suit, which questiones the lawful proceedings initiated by the respondent-Bank under the SARFAESI Act.

11. Therefore, let the Senior Civil Judge, Kangra, explain his position in this regard within a period of three weeks from today. The records of the civil suit be requisitioned by the Registry, so as to reach this Court before the next date.

For this purpose, list on 2nd November, 2021.

