(2023) 12 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 9857 Of 2023

Yogeshwari Devi Bhardwaj APPELLANT

Vs

State Of H.P. And Ors RESPONDENT

Date of Decision : 06-12-2023

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2023) 12 SHI CK 0018

Hon'ble Judges : Tarlok Singh Chauhan, J;Satyen Vaidya, J

Bench : Single Bench

Advocate : Naveen Kumar Dass, I.N. Mehta, Yashwardhan Chauhan, Navlesh Verma, Sharmila Patial, J.S. Guleria, Sunil Mohan Goel

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Notice. Mr. Navlesh Verma, learned Additional Advocate General and Mr. Sunil Mohan Goel, learned counsel, appear and waive service of notice on behalf of respondents No. 1 & 4 and respondents No. 2 and 3, respectively.

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

i) Issue a writ of certiorari to quash Annexure P-4 i.e. impugned order dated 02.12.2023 in Case No. 31 of 2023.

ii) Issue a writ of mandamus directing the respondent authorities to afford the petitioner an opportunity to remit the complete amount of Rs. 17,25,079.00 alongwith upto date interest."

3. Since, the petitioner has assailed the impugned order (Annexure P-4), dated 02.12.2023, passed by the District Magistrate, Shimla, District Shimla, H.P. in the proceedings initiated against the petitioner under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short "SARFAESI Act"), therefore, clearly this Court has no jurisdiction

to entertain the instant petition as repeatedly held by the Hon'ble Supreme Court. Reference in this regard can conveniently be made to one of the latest Judgment of the Hon'ble Supreme Court in Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others, (2023)2 SCC 805. It is apt to reproduce hereinafter the relevant observations made therein: -

"4.7. Ms. Meenakshi Arora, learned counsel appearing on behalf of the appellant Bank has heavily relied upon the decisions of the Allahabad High Court in the case of M.M. Accessories vs. U.P. Financial Corporation, Kanpur, reported in AIR 2002 All 96 as well as another decision in the case of Vipin Kumar Gupta v. Branch Manager, Union Bank of India, Gyanpur, reported in= AIR 2004 All 319 by submitting that in the aforesaid two decisions, it is specifically observed and held by the very High Court that no such writ of mandamus directing to grant the benefit of OTS can be issued in exercise of powers under Article 226 of the Constitution of India. It is submitted that though the aforesaid decisions were cited before the High Court, the same have not been dealt with and considered by the High Court.

14. 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.

15. In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant-Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside."

4. Since, this Court has no jurisdiction to entertain the instant petition, therefore, the same is accordingly dismissed. Pending applications, if any, also stand disposed of.