

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 21451 of 2020 (O&M)
Date of Decision: 14.12.2020**

Kishan Chand and another

..... Petitioners

Versus

Canara Bank , Chandigarh and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Parminder Singh, Advocate
for the petitioners.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

The two petitioners, namely, Kishan Chand and Nani Devi, have filed the present writ petition seeking quashing of Notice dated 28.03.2019 (**Annexure P-2**) under Section 13(2) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (in short “the SARFAESI Act, 2002”) and auction notice for 27.11.2020 (**Annexure P-5**) alongwith subsequent auction of their house, on the ground that their negotiations with the bank were ongoing for a one time settlement when behind their back, respondent-Canara Bank sold their sole residential house.

Heard learned counsel for the petitioners and perused the paper book.

It is apparent from the record that the house of the petitioners has already been auctioned on 01.12.2020 in pursuance to the notice issued by the Bank under Section 13(2) of the SARFAESI Act, 2002. Further, it is

an admitted position that an Original Application No. 236 of 2019 has also been filed by the Bank before the Debt Recovery Tribunal for recovery of amount. Not only this, learned counsel has not been able to point out any defect in either the auction proceedings or the procedure adopted by the bank for recovery of their admitted amount of money. Only plea taken by petitioners is that their business has collapsed, and therefore they need some time to reply the amount. We are afraid, that such a plea cannot be entertained by this Court as the principle of equity cannot be stretched to such an extent that we usurp the statutory powers conferred upon authorities constituted under the SARFAESI Act, 2002.

While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part-III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why we should entertain a petition filed under Article 226 of the Constitution and pass an order ignoring the fact that the petitioners can avail effective alternative remedy by filing application, appeal, revision, etc. and

the particular legislation contains a detailed mechanism for redressal of their grievance.

Hence, we **dismiss** the present **petition** being not maintainable and relegate them to avail their (petitioners) appropriate remedy before the Debt Recovery Tribunal, in accordance with law.

(JASWANT SINGH)
JUDGE

December 14, 2020
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(SANT PARKASH)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>