IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202 **CWP-5350-2020**
Date of Decision: 06.09.2023

TEJINDER SINGH AND ANR

... Petitioners

VERSUS

PNB HOUSING FINANCE LTD. AND ANR

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. S. K. Rana, Advocate
for the petitioners.

Mr. Nitin Grover, Advocate
for respondent-PNB HFL.

Mr. Sandeep Jain, Additional A.G. Punjab.

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<u>LISA GILL, J.(Oral)</u>

1. Petitioners in this writ petition have challenged the proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 initiated against them by the respondent- Non-Banking Private Financial Institution including notice dated 14.06.2019 (Annexure P-3) issued under Section 13(2) of SARFAESI Act, notice dated 06.09.2019 (Annexure P-6) issued under Section 13 (4) of SARFAESI Act and order dated 19.11.2019 (Annexure P-7) passed by District Magistrate under Section 14 of SARFAESI Act.

2. It is submitted that petitioners had availed of three loan

facilities. Due to financial indiscipline, one of the accounts was declared Non-Performing Asset (NPA) on 06.06.2019. Thereafter, notice under Section 13(2) was issued on 14.06.2019 (Annexure P-3) seeking recovery of a sum of Rs.31,18,241.64/- qua all the three loan accounts in view of the provisions in the Master Circular-Prudential Norms of Income Recognition, Asset Classification and Provisioning dated 01.07.2019. Objections were filed but without considering them, notice under Section 13(4) of SARFAESI Act was issued and ultimately order dated 19.11.2019 under Section 14 of SARFAESI Act (Annexure P-7) was passed.

3. It is submitted that due to loss in business and death of wife of petitioner No.1 on 16.04.2013 and his mother being admitted in hospital, petitioners were unable to deposit the amount within the stipulated period.

4. Learned counsel for the petitioners submits that during the pendency of this writ petition, respondents had been approached by the petitioners for rescheduling and restructuring of their loan accounts, but their proposal was arbitrarily and illegally rejected on 17.11.2022.

5. Learned counsel for the petitioners submits that proceedings under the SARFAESI Act in respect to all the three loan accounts are absolutely illegal and arbitrary. It is submitted that there is no valid entry available in the revenue record regarding the property in question being mortgaged though it is candidly admitted by learned counsel for the petitioners that the property admittedly stands mortgaged with the respondents. It is submitted that proceedings against petitioners under the said Act are illegal and arbitrary, hence this writ petition should be

allowed with said proceedings being set aside.

6. Arguments as raised by learned counsel for the petitioner have been refuted by learned counsel for the respondent while referring to the reply filed on behalf of respondents. Preliminary objection has been raised regarding entertainability of this writ petition in view of the efficacious remedy available to the petitioners under the SARFAESI Act.

7. Learned counsel for the respondents submits that there has been constant default in the loan accounts of the petitioners. Petitioners had failed to repay the agreed installments in all three loan accounts as per loan agreement. Loan accounts were accordingly classified as Non Performing Asset (NPA) on 06.06.2019. As per demand notice dated 14.06.2019, sum of Rs.31,18,241.64/- was outstanding. Petitioners have only deposited a sum of Rs.5,00,000/- in terms of order dated 27.02.2020, passed in this writ petition. It is further submitted that vide representation dated 26.09.2022, petitioners had requested restructuring of all loan accounts while amalgamating it into one with EMIS of Rs. 25,000/- per month. The same was not viable/feasible or permissible, therefore, the same was declined by the respondents and due communication in this regard was sent on 17.11.2022. Proceedings under the SARFAESI Act, it is submitted are being taken against the petitioners strictly in accordance with the provisions of law. Dismissal of the writ petition is thus sought.

8. Having heard learned counsel for the parties and going through the file with their able assistance, we do not find any exceptional or extra-ordinary ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of

India. All the pleas and arguments raised as above are very well within the purview of consideration by learned Debts Recovery Tribunal (DRT).

9. It has been held by Hon'ble the Supreme Court in a number of cases that where petitioners have an efficacious statutory remedy for challenging the proceedings initiated against them, there should be no interference by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India. Gainful reference in this regard can be made to judgments in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110 and M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**. In the latter judgment, it has been held by Hon'ble the Supreme Court as under:-

> "*15. The object and reasons behind the Act 54 of 2002 are very clear as observed by this Court in Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311. While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order, and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression "any person", who could approach the Tribunal.*
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> *18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are*

required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal."

10. It is further to be noticed that relief claimed in this writ petition is qua a Housing Finance Company, therefore, in any case, no ground is made out for interference especially in view of judgment of Hon'ble Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345.

11. Keeping in view the facts and circumstances as above, we do not find it just or expedient to express any opinion or to delve on the merits of the controversy as raised before us, lest prejudice is caused to any of the parties.

12. Writ petition is accordingly dismissed with liberty to the petitioners to avail their statutory remedy/ies in accordance with law. However, keeping in view the fact that interim relief was afforded to the petitioners on 27.02.2022 and has since continued, we consider it appropriate to direct that this interim order would enure for the next 15 working days. Petitioners are at liberty to file their appropriate applications alongwith prayer for condonation of delay/ exclusion of period of delay. It is made clear that the interim order would not enure any further and all the pleas and arguments as raised including that of exclusion of the period of delay or interim relief, if any, would be within the realm of consideration of the appropriate authority/tribunal.

13. It is reiterated that there is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

06.09.2023
Rimpal

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