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

109 **CWP-6079-2023**
Date of Decision: 31.08.2023

SUSHMA VERMA

... Petitioner

VERSUS

DISTRICT MAGISTRATE, PATIALA AND ORS.

....Respondents

2. **CWP-6092-2023**

MAMTA VERMA

... Petitioner

VERSUS

DISTRICT MAGISTRATE, PATIALA AND ORS.

....Respondents

3. **CWP-6224-2023**

SUSHMA VERMA

... Petitioner

VERSUS

DISTRICT MAGISTRATE, PATIALA AND ORS.

....Respondents

4. **CWP-6180-2023**

MAMTA VERMA

... Petitioner

VERSUS

DISTRICT MAGISTRATE, PATIALA AND ORS.

....Respondents

5. CWP-6169-2023

MAMTA VERVA

... Petitioner

VERSUS

DISTRICT MAGISTRATE, PATIALA AND ORS.

....Respondents

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

Present: Mr. Sunny K. Singla, Advocate
for the petitioner (s).

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

Mr. Harsh Chopra, Advocate and
Mr. Sunil K. Dahiya, Advocate
for respondents No.2 and 3.

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

1. All the above said five writ petitions are taken up together for hearing and decision at request and with consent of learned counsel for the parties, as an identical issue is involved in all of them.

2. Prayer in all these writ petitions is for directing respondents to regularize the loan accounts No. 00000662, 00001390, 00002232, 00003051, 00003052 of the petitioners therein on the ground that petitioners are ready and willing to deposit the overdue installments. It is further prayed that dispossession of the petitioners from the mortgaged property should be stayed. Facts are being extracted from CWP-6079-2023 for the sake of convenience and brevity.

3. Details of five loan accounts which are the subject matter

of the present five writ petitions have been mentioned in para five of said writ petition.

4. All accounts of the petitioners were declared Non-Performing Asset (NPA) on different dates from 01.12.2019 to 10.04.2020. Notices under Sections 13(2) and 13 (4) were issued qua the different loan accounts and applications under Section 14 of SARFAESI Act were filed by the respondent seeking possession of the property in question. Details of the proceedings in respect of all the five accounts as provided by the respondent-Financial Institution in Court are reproduced as under:-

Borrower Name	**NPA Date**	**Date of Demand Notice**	**Demand Notice Amount**	**Possession Notice Pasting Date Peaceful Notice Date**	**Poss PUB Date, Refusal Panchnama Date, Attempt Date (PN Published**
Sushma Verma	01-Dec-19	21-Jan-20	14,37,560.00	25-Feb-21	27-Feb-21
Mamta Verma	10-Mar-20	29-Apr-21	33,80,213.00	11-Feb-22	15-Feb-22
Sushma Verma	10-Dec-20	29-Apr-21	28,95,514.00	11-Feb-22	15-Feb-22
Mamta Verma	10-Mar-20	17-May-21	12,55,892.00	11-Feb-22	15-Feb-22
Mamta Verma	10-Apr-20	17-May-21	12,22,578.00	11-Feb-22	15-Feb-22

5. When these writ petitions came up for hearing before co-ordinate Bench on 24.03.2023, Mr. Harsh Chopra, Advocate at the asking of the Court accepted notice on behalf of respondents No.2 and 3. The matter was adjourned to enable learned counsel for the said respondents to inform as to how much amount would be required to be deposited for regularizing the loan accounts. Following order was passed on 19.04.2023:-

"Learned counsel for the petitioner (s) prays for time to produce the demand draft of `20,00,000/- on the next

date of hearing since the Bank has produced the statement showing the overdue amount of `76,30,595/- against five accounts.

Adjourned to 17.05.2023.

A photocopy of this order be placed on the file of the other connected cases."

6. Subsequently, the petitioner produced three demand drafts for a sum of Rs. 10 lacs on 17.05.2023. He further submitted that another demand draft of Rs.10 lakhs will be produced on the next date of hearing.

7. However, learned counsel for the petitioner(s) today submits that it is not possible for the petitioner(s) to deposit the entire overdue amount which at the moment has been informed to be approximately Rs.78 lakhs as on date.

8. Heard learned counsel for the parties and have gone through the files with their able assistance.

9. It is to be noticed that petitioners in all these writ petitions seek a direction to the respondent-Financial Institution to regularize all their accounts on the ground that they are ready to deposit the overdue amount in terms of judgment of a Division Bench of this Court in ***M/s Amar Alloys Pvt. Ltd (Registered) Vs. State Bank of Inda, 2019 (3) PLR 81.*** There is a further prayer for staying the dispossession of the petitioners from the mortgaged property pursuant to the notices issued under Section 13(2) of the SARFAESI Act.

10 It is a matter of record that above said decision in **M/s Amar Alloys (supra)** has been challenged before Hon'ble the Supreme

Court in SLP (C)-21342-2019 and operation of the said judgment has been stayed vide order dated 13.09.2019. The matter is still pending adjudication. Thus the same cannot be pressed in service by the petitioners. In so far as grievance against proceedings initiated by the respondent under SARFAESI Act is concerned, petitioners admittedly have an efficacious remedy under the said Act for redressal of their grievance. Gainful reference in this regard can be made to the judgments of Hon'ble the Supreme Court in **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771, Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110 and Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34**.

11. Furthermore, another relevant fact to be noted is that relief claimed in these writ petitions is qua Piramal Capital & Housing Finance Ltd. which is admittedly a private financial/housing institution. Therefore, there is no question of interference in the matter 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, wherein it has been held as under:-

> *"12. Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC – appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such*

cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of Praga Tools Corporation (supra) and Ramesh Ahluwalia (supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

12. At this stage learned counsel for the petitioner submits that the amount of Rs.10 lakhs which has been accepted by the respondents on 17.05.2023 should be returned. Reliance has been placed by learned counsel for the petitioner on the judgment of Hon'ble Supreme Court in ***M/s Kut Energy Pvt. Ltd. And others Vs. Authorized Officer, Punjab National Bank, Large Corporate Branch, Ludhiana and others, 2019(4) R.C.R.(Civil) 151,*** as it is submitted that this amount had merely been deposited to show bona fides of the petitioner(s) and not towards discharge of their liability.

13. However, we do not find any merit in this argument because first and foremost the prayer itself in this writ petition is for directing the respondents to regularize the account of the petitioners as they would

deposit the overdue amount. Further, a perusal of various orders passed in these writ petitions do not indicate that the amount has been deposited for any reasons other than discharge of their liability. In the case of ***M/s Kut Energy Pvt. Ltd. And others (supra),*** it was found that the deposit was not towards satisfaction of the debt in question and was merely to reflect bona fides of the appellants therein when a revised offer for settlement was submitted by them. The said amount had been directed to be deposited with the Registry of the High Court. It is in this factual matrix that it was held by the Hon'ble Supreme Court that secured creditor would be entitled to proceed only against a secured asset and deposit made by a party to show its bona fides cannot be appropriated by the Bank/Financial Institution for satisfaction of the debt.

14. In the present case as has been noted in the foregoing paras, offer of the petitioners to deposit the amount in question was clearly for discharge of the debt once the overdue amount qua the five accounts was informed by learned counsel for the respondents to Rs.76,30,595/- as recorded in order dated 19.04.2023.

15. We take note of the fact that during the course of arguments, learned counsel for the petitioners had submitted that petitioners are ready and willing to deposit another sum of Rs.10 lakhs but they would be unable to deposit the entire overdue amount even as on date.

16. In the given factual matrix, we are of the considered opinion that the deposit of Rs.10 lakhs made earlier by the petitioners is certainly not for reflecting their bona fides for seeking regularization of their account but clearly a deposit towards the discharge of debt in question after the overdue amount had been indicated by learned counsel for respondents

No.2 and 3. Therefore, there is no ground for directing a refund of the said amount. All the five writ petitions are accordingly dismissed with liberty to the petitioners to avail the remedy/ies available to them for challenging proceedings under the SARFAESI Act initiated against them if so advised and in accordance with law.

17. Photocopy of this order be placed on the connected case files numbered above.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

31.08.2023
Rimpal

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