IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Judgment Reserved on : 12.07.2023
Judgment Pronounced on : 04.10.2023

(1) **CWP-7706-2022**

AMARJEET SINGH BRAR ......Petitioner

VERSUS

THE RESERVE BANK OF INDIA AND OTHERS ....Respondents

(2) **CWP-12411-2023**

RINKU SANDHU ......Petitioner

VERSUS

STATE OF HARYANA AND OTHERS ....Respondents

(3) **CWP-12108-2023**

SUKHJIT SINGH ......Petitioner

VERSUS

RESERVE BANK OF INDIA AND OTHERS ....Respondents

(4) **CWP-11392-2023**

PARAMJIT SINGH ......Petitioner

VERSUS

RESERVE BANK OF INDIA AND OTHERS ....Respondents

(5) **CWP-1978-2023**

HARJINDER SINGH ......Petitioner

VERSUS

RESERVE BANK OF INDIA AND OTHERS ....Respondents

(6) **CWP-24699-2022**

BALVIR SINGH ......Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ....Respondents

(7) **CWP-24672-2022**

KARAMJEET KAUR ......Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ....Respondents

(8) **CWP-12705-2021**

HARJINDER SINGH ......Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Ms. Satinder Kaur, Advocate
for the petitioner in CWP-7706-2022.

Mr. Karan Bhardwaj, Advocate
for the petitioner in CWP-12705-2021, CWP-1978-2023
CWP-11392-2023 and CWP-12108-2023.

Mr. Gagandeep Singh, Advocate for
Mr. J.S. Saneta, Advocate
for the petitioner in CWP-12411-2023.

Mr. Daljeet Singh Virk, Advocate
for the petitioner in CWP-24672-2022 & CWP-24699-2022.

Ms. Lavanya Paul, DAG, Punjab
for respondent-State in CWP-12705-2021, CWP-24672-2022,
CWP-24699-2022.

Mr. Indresh Goel, Advocate
for respondent No.1-RBI in CWP-7706-2022.

Mr. Nitin Thatai, Advocate
for respondents No. 3 & 4 in CWP-7706-2022,
for respondents No.4 & 5 in CWP-24672-2022.

Mr. Vikas Kumar Gupta, Advocate
for respondents No. 3 and 4 in
CWP-12411-2023.

Mr. Nakul Sharma, Advocate
for the respondents No.2 & 3 in CWP-12108-2023.

Ms. Tavleen Kaur, Advocate for
Mr. Amarjit Singh Virk, Advocate
for respondent No.4 in CWP-1978-2023 and
for respondent No. 3 in CWP-11392-2023
(INDUSIND BANK)

Mr. Saurabh Savara, Advocate with
Mr. Sandeep K. Sharma, Advocate
for respondent No.4 in CWP-1978-2023,
for respondents No.4 & 5 in CWP-24699-2022 and
for respondents No.3 and 4 in CWP-11392-2023.

Mr. Manish, Advocate
for respondents No.4 & 5 in CWP-12705-2021.

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VINOD S. BHARDWAJ, J.

1. These eight writ petitions are being disposed by a common judgment as identical questions are involved in the present batch.

2. The facts as reflected from the pleadings in these cases are extracted as under:

CWP-7706-2022 -AMARJEET SINGH BRAR VERSUS THE RESERVE BANK OF INDIA AND OTHERS

3. Prayer in the present petition was for seeking directions to respondent No.3 and 4 i.e. the Cholamadalam Investment and Finance Company to refrain from seizing the vehicle (School Van) bearing registration No.PB-13-AW-9930 by the recovery agents and their musclemen.

4. The petitioner has averred that he plies a School van to earn his livelihood by carrying School children to DPS School, Bathinda from remote areas. The livelihood of the petitioner(s) was hit by pandemic-covid-19 as schools were closed w.e.f. 15.03.2020 and he became jobless. The vehicles remain Non-operative for a long time on account of the instruction issued under the Disaster Management Act. The schools reopened only on 04.04.2022 after a gap of nearly 02 years. The repo-agents of the respondents tried to take forcible possession of the van more-so at a time when the children were boarded in the school bus.

5. It is averred that the petitioner had availed finance on the above said school van, which is a Traveller -26, registered with the office of RTO, Faridkot. The total loan was Rs. 6,85,000/- to be repaid in 60 monthly instalments of Rs. 19,671/- The petitioner had already paid 17 instalments till 15.03.2020, without any default, and that the subsequent defaults occurred on account of the unprecedented pandemic situation. It is averred that the respondents commenced arbitration proceedings in the year 2021, at the peak time of the Corona wave, and an ex-parte Arbitral award was

passed on 13.12.2021 at Chandigarh. The petitioner claims that he became aware of the award only after receiving a copy of the same and the same has been challenged by him before the District Court of Faridkot, however, there is no interim stay. The petitioner apprehended that the employees/officials of the respondent finance company are likely to take forcible possession of the aforesaid vehicle, in an illegal manner, and without following due process of law.

6. A short reply on behalf of respondent No.1-Reserve Bank of India has been filed wherein it was averred that the writ petition was not maintainable against the Reserve Bank of India and that no case has been made out by the petitioner either on facts or on law for interference of the High Court in exercise of the extra-ordinary writ jurisdiction. Details were also mentioned with respect to the initiatives taken by the Reserve Bank of India to mitigate the adverse impact of the pandemic over the financial system of the country and the moratorium so extended. It was also reiterated that appropriate guidelines in regards to engaging of recovery agents and repossession of hypothecated vehicles have also been issued and that the petitioner may, in the event of any default, take recourse to appropriate remedies in law.

7. Counsel for respondents No.3 and 4-Finance company have specifically submitted that the respondents have not taken physical possession of the vehicle and that the instant petition is pre-mature as no cause of action has accrued. The petition is based on apprehension and anticipation. It is further averred that the petitioner admits that an arbitral award has already been passed against him and that no stay on the arbitral award has been granted by the competent Court despite the petitioner having

preferred objections against the said award. Hence, the present writ petition is not maintainable in view of the above. The petitioner may, if so advised should have approached the competent Court qua seeking redressal of the said grievance.

CWP-12411-2023 -RINKU SANDU VERSUS STATE OF HARYANA AND OTHERS

8. The prayer made in the present petition is for seeking directions against the Private Bank namely DCB Bank Limited from illegally or forcibly taking possession of vehicle bearing registration No.HR45-B-9784. It has been averred in the writ petition that the petitioner had got financed the above commercial vehicle i.e. Ashok Leyland, Goods Carrier in the year 2016 and the same was financed from respondent No.4 against a total loan amount of Rs. 21,10,583/- to be repaid in 60 equated monthly instalment of Rs. 52,000/- each. The petitioner claims that he could not pay the instalments regularly on account of Covid-19 pandemic and that he apprehends that respondents are likely to take recourse to illegal acts and forcibly seize possession of the said vehicle.

9. An affidavit on behalf of the respondent-Bank has been filed wherein it has been averred that the petitioner has not approached this Court with clean hands and that he had earlier filed one CWP No. 26756 of 2019. After the order dated 19.09.2019 passed in the above writ petition, the petitioner deposited only one instalment through cash on 27.09.2019 and that notwithstanding the undertaking given by the counsel for the petitioner that the outstanding amount of Rs. 4,15,000/- would be deposited within a period of 08 weeks, the said undertaking was not complied with. It was further averred that the respondent Bank is bound by law and would take

action strictly in conformity with the the judgments of the Hon'ble Supreme Court in the matter of "Manager ICICI Bank Ltd. versus Parkash Kaur" as well as in the matter of "ICICI Bank versus Shanti Devi Sharma and others". It is further averred that the petitioner has not denied the liability as well as the fact that he has been in default in making of the payments. It is further averred that the respondent-Bank is not an agency and instrumentality of the State and the commercial transaction of extending financing facility is not in discharge of a public function or a public duty. It is also averred that the petitioner was a defaulter even prior to Covid-19 pandemic and that as per the agreement executed, the total outstanding worked out to be Rs. 26.39 lacs approximately. The filing of the present writ petition, under the garb of the Covid-19 pandemic, is only to evoke sympathy of the Court. It is averred that possession of the vehicle had not been taken so far and that the present writ petition is only pre-empatory and based on conjectures and surmises. The petitioner is thus required to take recourse to the appropriate remedies available under the law for seeking such relief.

CWP-12108-2023 -SUKHJIT SINGH VERSUS RESERVE BANK OF INDIA AND OTHERS

10. The petitioner in this case has been seeking a stay against Poonawala Fincorp (Formerly Magma Fincorp Limited) against attempt to take forcible recovery & possession of vehicle bearing Registration No. PB-06-AT 0231 with the help of recovery agents. The contention of the petitioner is that the petitioner had purchased the said vehicle in the year 2018 and the same was hypothecated with the Finance Company w.e.f. 27.08.2018. The petitioner failed to pay the due instalments in time on account of the intervening circumstances including the Covid-19 pandemic

during which he could not ply the vehicle. He contends that the respondents are taking steps to take forcible possession of the vehicle and that such directions had been issued to the recovery agents. An attempt was also made on 11.05.2022 to effect recovery of the said vehicle but the same could not be done. It is averred that the respondents are bound to comply with law for seeking repossession of the vehicle and that there is a grave apprehension that the procedure of law would not be followed by the respondents.

11. The submission on behalf of the respondents have been similar and no formal reply has been filed.

CWP-11392-2023 -PARAMJIT SINGH VERSUS RESERVE BANK OF INDIA AND OTEHRS

12. A prayer against forcible recovery of possession of truck bearing registration No. PB-02-EG 8886 with the help of recovery agents has been made in the present writ petition with a further direction that the respondents ought to follow the procedure prescribed in law for taking such possession instead of allowing their recovery agents to take law in their own hands. The abovesaid vehicle was purchased by taking loan from IndusInd Bank. The financed amount of Rs. 40,76,042/- was to be repaid in 60 monthly instalments of Rs. 89,800/- each. The petitioner claims that he had paid some amount to Gurpreet Singh who had helped the petitioner in availing of finance and that credit of the said amount has not been given to him. Accordingly, an undue outstanding amount has been shown by the respondents to be recoverable from the petitioner. An apprehension was expressed by the petitioner that the recovery agents of the respondents are likely to take forcible possession of the vehicle without following the due process of law which is likely to cause grave prejudice to the petitioner.

13. Reply on behalf of respondents was not sought for. Parties were, however, heard.

CWP-1978-2023 –HARJINDER SINGH VERSUS RESERVE BANK OF INDIA AND OTHERS

14. Prayer in the present writ petition is to restrain the respondent-Private Bank from taking forcible possession of vehicle bearing Registration No. PB-05-Y- 6037 with the help of recovery agents without following the due process of law. The petitioner had availed loan on 04.02.2019 to the tune of Rs. 8,83,954/- to be repaid in 70 monthly instalment of Rs. 26,200/-. It is contended that the petitioner has not been supplied copy of the account statement and that the employees of the respondent are likely to take forcible possession of the vehicle without following the due process of law which is likely to cause grave prejudice to the petitioner.

15. Recovery of the vehicle has not taken place and there is no attempt for doing so, as per the pleadings.

CWP-24699-2022 -BALVIR SINGH VERSUS STATE OF PUNJAB AND OTHERS

16. Prayer in the present writ petition is for seeking restraint against the respondents No.4 and 5 i.e. IndusInd Bank from taking forcible possession of the vehicle bearing registration No. PB-13-BE-2713 in violation of the statutory mandate of not taking forcible possession of vehicles. The aforesaid vehicle was purchased after availing loan of Rs. 28,70,133/- to be repaid in 58 installments of Rs. 63,245/- each. The petitioner claims that he could not pay certain instalments on account of lockdown during Covid-19 and that the petitioner is not being supplied with the correct statement of account about total outstanding. It is averred that the

petitioner apprehends forcible recovery of the said vehicle by the Recovery agents of the respondent-Bank and that an attempt had been made earlier in this regard. Any such attempt being in violation of the mandate of law, needs to be restrained.

17. A reply on behalf of respondents No. 1 to 3 had been filed wherein it was averred that the above said vehicle bearing Registration No. PB-13-BE-2713 for which the present petition has been filed, has not been recovered by the respondent-Bank and that one Truck bearing Registration No. PB-13-BE-2711 was recovered in Delhi and that no cause of action has arisen within territorial jurisdiction of this Court. No claim against Truck No. PB-13BE-2711 has ever been filed.

CWP-24672-2022 –KARAMJEET KAUR VERSUS STATE OF PUNJAB AND OTHERS

18. The petitioner seeks mandamus against respondent-Equitas Small Finance Bank from attempting to forcibly recover the Trucks bearing Registration No. PB-19H-9787; PB-19-H-9887 and PB-03W-1381. The petitioner claims that two vehicles bearing registration No. PB-19-H-9887 and PB-19H-9787 had been purchased by the petitioner on 25.10.2013 and 11.03.2014 respectively after obtaining finance from the respondent- Equitas Small Finance Bank. Monthly installments of Rs. 21,120/- and Rs. 20, 850/- were to be paid respectively. The third vehicle PB-03W-1381 was purchased and finance was obtained on 31.12.2020. A monthly installment of Rs. 18,400/- is to be paid on the same. The petitioner could not pay some of the installments and that there is a dispute with respect to the amount being claimed by the respondents and the amount which the petitioner believes to be outstanding. He contends that the respondents are intending to take

forcible possession of the vehicle without following the process of law. The same is likely to cause imminent prejudice to the petitioner and that any such act of the respondent Bank needs to be restrained.

19. Reply on behalf of respondents No.1 to 3 had been filed wherein it has been specifically averred that no Bus or any other vehicle of the petitioner has been recovered by the agents of the company and as such, there is no occasion for taking any action.

CWP-12705-2021 –HARJINDER SINGH VERSUS STATE OF PUNJAB AND OTHERS

20. Prayer in the present petition is to restrain respondents No.4 and 5-Indostar Capital Finance Limited from taking forcible possession of the vehicle bearing Registration No PB-35Q-1682 with the help of recovery agents. It has been averred by the petitioner that he had purchased the above said vehicle after obtaining loan of Rs.10 lacs from the respondents in the month of September, 2018. The said amount was to be repaid in 48 monthly installments of Rs. 35,000/- and that he had paid 24 monthly installments. There were four outstanding installments as per the record of the petitioner and that due to the above said default, the employees as well as the possession agents of the respondent Finance Company are attempting to take forcible possession of the vehicle in violation of the law laid down by the Courts in Catena of judgments.

21. Reply on behalf of respondents No.1 to 3 had been filed in the matter wherein it was averred that there is no intention with respect to the forcibly recovery of the vehicle and that the present petition is based on apprehension.

22. The arguments of the counsel appearing on behalf of the respondents had been identical that no act of forcible repossession or in violation of law has been undertaken by them so far and that the present petition is based on apprehensions & anticipation of the petitioner about the vehicle being repossessed except in the manner known to law. The cause of action for institution of any proceeding, if any, would arise in favour of the petitioner, as per the remedies available to him in law, only on occurrence of such an event. The present petitions are being in anticipation and misconceived are pre-mature & hence liable to be dismissed. It is further argued that all the petitioners acknowledge that they are in default of the installments. It is also not the case of the petitioners that benefit of any moratorium as directed by the Reserve Bank of India has not been extended. Filing of the petition is rather activated by mischief rather than bona-fide, to avoid repayment and also to put pressure on the respondents to not take possession as per law.

23. Counsel for the petitioners have argued that even though possession of the vehicle has not being taken away, however, their apprehension is real as employees/recovery agents of the respondents had made an attempt for seeking repossession of the vehicle without following due process of law. Since the vehicles are source of their livelihood, hence, there would be a grave prejudice to the petitioners in the event of being divested of possession, hence, they have approached this Court at the first instance so as to ensure that due process of law is followed before effecting recovery.

24. I have heard learned counsel appearing on behalf of the respective parties. The factual position which has remained undisputed in the

present set of cases is that the vehicle in question has not been repossessed by the finance company. There can thus be no presumption that the respondents are likely to commit a breach of the rule of law. The petition is based on apprehensions, conjectures and surmises and without any real cause of action. Besides, the petitioners have also not appended their loan agreement documents on the basis whereof it may have been ascertained as to whether there was any other alternative dispute resolution clause or not. Moreover, no reference has been made as to whether there is any Arbitration or Alternative Dispute Resolution Clause or not. There is also no allegation that the benefits as are admissible for the Covid-19 period have not been extended to them. The petitioners have also failed to refer as to how the ordinary remedy under the common law for the same relief, as an injunction suit, would not be efficacious.

25. There are no compelling circumstances disclosed by the petitioners under which it could be said that public law remedy is the only remedy which is feasible & available to address the issues. The present petitions are thus pre-mature at this stage.

26. Hence, without commenting on the other issues pertaining to merits as well as the maintainability of the petition(s) in a dispute pertaining to commercial contracts with private companies, Bank or entities, the present writ petitions are disposed of as pre-mature at this stage.

27. Insofar as the CWP-7706-2022 is concerned, it is not in dispute that an arbitral award has already been passed against the petitioner against which objections under Section 34 of the Arbitration and Conciliation Act, 1996 have already been filed. The prayer against stay on the arbitral award having not been granted by the Court, hearing objections cannot be assailed

by seeking a stay against enforcement of the award by filing a writ petition under Article 226 of the Constitution of India. The same is accordingly dismissed as not maintainable in present form and in light of the specific facts. The petitioner, may, if so advised, take recourse to his alternative remedies as per law.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 04, 2023
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No