2023:PHHC:139861-DB

246 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10188-2022(O & M)
Date of Decision: November 02, 2023

PARSHOTAM KUMAR AND OTHERS ...... Petitioners

Versus

IIFL FINANCE LTD. AND ANOTHER ..... Respondents

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

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

Mr. Vineet Sehgal, Advocate for the respondents.

****

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 22.04.2002 (Annexure P3) under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act').

2. Concededly, petitioners have availed of loan facility(ies) (two loan accounts). Proceedings under SARFAESI Act were initiated against petitioners pursuant to financial indiscipline on their part. Learned counsel for petitioners submits that proceedings initiated against petitioners are in complete and total violation of provisions thereunder. Petitioners in order to clear the loan amount also entered into agreement to sell some of their properties. Petitioners had submitted proposal for One Time Settlement and adjustment of amount already deposited. However, respondents have wrongly declined to sanction the One Time Settlement. Levy of penal

interest and other charges, it is contended, is in absolute violation of applicable Rules and Regulations. It is, thus, prayed that this writ petition be allowed.

3. Learned counsel for respondents has opposed this writ petition while taking preliminary objection regarding entertainability of this writ petition as the respondent is admittedly a Private Non-Banking Finance Company. It is further submitted that petitioners had undertaken before this Court on 13.05.2022 that after deposit of a sum of ₹5 lakhs within two weeks, entire loan due would be cleared by the end of July, 2022. However, even as on date, there is outstanding amount of ₹15,43,761/-. Learned counsel for petitioners at this stage, points out that sum of ₹ 15 lakhs by way of two demand drafts dated 25.05.2022 and 05.07.2022 had been submitted.

4. Having heard learned counsel for the parties and perusing the file with their able assistance, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of the Constitution of India. Prayer for direction to the respondents for accepting OTS is not maintainable as it is a settled position that guarantors and borrowers do not have a vested right to claim One Time Settlement. Gainful reference in this regard can be made to the judgment of Hon'ble the Supreme Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56.**

5. Furthermore, apart from the fact that petitioners admittedly have an efficacious remedy for redressal of their grievance, relief claimed in this writ petition is qua a Private Non-Banking Finance Company, therefore, this writ petition is not entertainable. Gainful reference in this regard can be

made to the judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888,** wherein it has been held as under:-

> " 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 v. Shri C.A. Imanual, (1969) 1 SCC 585** and **Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

6. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail statutory remedy/remedies as available to them in accordance with law. It is always open to parties to arrive at any mutually acceptable settlement.

7. It is clarified that there is no expression of opinion on the merits of the case.

8. Pending application(s), if any, also stand(s) disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 02, 2023
rts

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