

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9284-2023

Date of Decision: October 09, 2023

HARSH CHAWLA

..... Petitioner

Versus

INDIAN BANK AND ORS

..... Respondents

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

Present: Mr. Naveen Kumar, Advocate for
Mr. Imran Farooqui, Advocate for the petitioner.

Ms. Jasleen Kaur, Advocate for respondents No. 1 and 2.

Mr. Sandeep Jain, Addl. AG, Punjab.

LISA GILL, J.

1. Prayer in this petition is for setting aside notice dated 23.09.2022 (Annexure P1) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) and notice dated 12.12.2022 (Annexure P2) under Section 13(4) of SARFAESI Act

2. Liability of the petitioner as such is not under challenge. It is, however, submitted that procedure adopted by the respondents in initiation of proceedings under the SARFAESI Act is illegal, erroneous and in flagrant violation of principals of natural justice. Fair and reasonable opportunity was not afforded to the petitioner to present his case.

3. Having heard learned counsel for the parties, we do not find any ground for interference in exercise of jurisdiction under Article 226 of Constitution of India. Petitioner has an efficacious remedy for redressal of

his grievance under the SARFAESI Act, which is complete code in itself. It has been held by Hon'ble the Supreme Court in a number of cases that there should be no interference in such matter except in extraordinary and exceptional cases. Gainful reference in this regard can be made to the judgment of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34** and **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**. Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) held as under:-

“13. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.

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14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.

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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.”

4. Learned counsel for the petitioner is unable to point out any exceptional or extraordinary circumstances, which call for interference by this Court.

5. Writ petition is, accordingly, dismissed with liberty to the petitioner to avail the remedy/remedies available to him in accordance with law.

6. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 09, 2023
rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No