

CM-12562-CWP-2023 and 1 2023:PHHC:115250-DB
CM-12563-CWP-2023 in/and
CWP-9768-2023 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106+215 CM-12562-CWP-2023 and
CM-12563-CWP-2023 in/and
CWP-9768-2023 (O&M)
Date of Decision: 01.09.2023

GURDEV SINGH

... Petitioner

VERSUS

ADITYA BIRLA FINANCE LTD. AND ORS.

....Respondents

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

Present: Mr. Parunjeet Singh, Advocate
for the petitioner.

Mr. Jatin Bansal, Advocate and
Mr. Keerti Sandhu, Advocate
for respondents No.1 and 2.

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

LISA GILL, J.(Oral)

CM-12563-CWP-2023

This application is for placing on record written statement
along Annexures R-1 to R-4 on behalf of respondents No.1 and 2.

Written statement along with Annexures R-1 to R-4, are
taken on record, subject to just exceptions.

Application is disposed of accordingly.

CWP-9768-2023

1. Prayer in this writ petition is for quashing notice dated
07.12.2021 (Annexure P-2) issued under Section 13(2) of Securitization

and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act, notice dated 26.05.2022 (Annexure P-3) under Section 13(4) of the SARFAESI Act and notice dated 28.04.2023 (Annexure P-13) issued pursuant to order dated 31.03.2023 passed by District Magistrate, Jagraon with a further prayer to regularize the account of the petitioner.

2. Notice of motion was issued in this writ petition by co-ordinate Bench on 10.05.2023 while recording that two demand drafts for a sum of Rs.6 lakhs have been handed over by the petitioner in favour of the respondent-Financial Institution against outstanding of Rs.23,37,307.78/- as on 05.11.2021. It was further recorded that petitioner undertakes to deposit a sum of Rs.3 lakhs on the next date of hearing and that overdue amount would be cleared by payment of the said amount and loan can thereafter be restructured. It was further undertaken that petitioner would continue to pay the EMIs regularly. Dispossession of the petitioner was stayed subject to the petitioner abiding by his undertaking. As recorded in order dated 07.08.2023, it was informed by learned counsel for respondents No.1 and 2 that in case, petitioner deposits another sum of Rs.4 lakhs apart from the demand draft of Rs.6 lakhs, which is in the safe custody of learned Registrar General, account of the petitioner would be regularized.

3. However, today learned counsel for the petitioner submits that only a demand draft of Rs.3 lakhs is available with him and petitioner is not in a position to deposit the total amount of Rs.4 lakhs and at this stage, petitioner does not seek regularization of his account

but seeks a One Time Settlement (OTS) instead.

4. Heard learned counsel for the parties.

5. Without adverting to the arguments as raised on the merits of the matter, it is to be noticed that the petitioner has an efficacious remedy for redressal of his grievance insofar as the initiation of proceedings under SARFAESI Act against him by respondent financial institution is concerned. Gainful reference in this regard can be made to the judgments 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, 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) while reiterating its earlier judgments held that where an alternate efficacious remedy is available to the litigant before a Forum constituted under a statute, interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India should be restricted to exceptional cases. It was held 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."

6. No exceptional or extra ordinary circumstance has been pointed out in this writ petition which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India.

7. In so far as the prayer addressed by learned counsel for the petitioner that there should be a direction to the respondent Financial Institution to enter into OTS with the petitioner, the same is devoid of any merit especially keeping in view of the judgment of Hon'ble the Supreme Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others, 2022 AIR (SC)**

56. In view of the said judgment, it is apparent that there cannot be any specific direction asking the Financial Institution to enter in a particular OTS. An OTS is to be entered in between the parties on mutually acceptable terms.

8. Furthermore, it is to be noted that relief claimed in this writ petition is qua a private non-Banking Financial Institution, therefore, in any case, no ground is made out for entertaining this writ petition keeping in view the judgement of Hon'ble the Supreme Court in *Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others*, 2022 (5) SCC 345.

9. Consequently, the demand drafts directed to be kept in the safe custody of the learned Registrar General vide order dated 10.05.2023 be returned to the petitioner against adequate proof of identity.

10. Writ petition is accordingly dismissed with liberty to the petitioner to avail the remedy/remedies as available to him in accordance with law. There is no expression of opinion on the merits of the matter.

11. Pending applications, if any, also stand disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

01.09.2023
Rimpal

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