

2023:PHHC:091752-DB

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

CWP-9992-2023**Date of Decision: July 20, 2023****ANU SHARMA**

..... Petitioner

Versus**RESERVE BANK OF INDIA AND OTHERS**

..... Respondents

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

Present: Mr. Naveen Batra, Advocate for the petitioner.

LISA GILL, J.

1. Prayer in this petition is for quashing demand notice dated 07.06.2019 (Annexure P6) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) issued by respondent No. 3; notice dated 28.02.2023 (Annexure P7) under Section 13(4) of SARFAESI Act besides setting aside of possession notice dated 25.04.2023 (Annexure P8).

2. Learned counsel for the petitioner submits that petitioner alongwith her husband had availed of the facility/IES of loan, the date of which is, however, not mentioned in the writ petition. Unfortunately, marital discord arose between the petitioner and her husband – respondent No. 3. Due to this reason, there was financial indiscipline on the part of the petitioner, on which loan accounts of the petitioner were declared NPA on 30.04.2019. Notice dated 07.06.2019 was issued under Section 13(2) of SARFAESI Act. Detailed objections are stated to have been filed by the

petitioner. However, without deciding the same, notice under Section 13(4) of the SARFAESI Act was statdly issued. Petitioner filed CWP-29132-2019, which was disposed of as infructuous on 17.10.2022 with the respondent – Bank withdrawing notice under Section 13 (4) of SARFAESI Act.

3. Learned counsel for the petitioner submits that yet again without deciding her objections, notice under Section 13 (4) of SARFAESI Act has been issued on 25.04.2023. Various arguments have been raised by learned counsel for the petitioner.

4. Having heard learned counsel for the petitioner, we find that the petitioner has an efficacious alternate remedy/remedies for redressal of her grievance under SARFAESI Act. No exceptional or extra-ordinary circumstances have been projected before us, which call for interference in exercise of jurisdiction under Article 226 of the Constitution of India.

5. Gainful reference in this regard can be made to the judgment of the Hon'ble 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 and Division Bench judgment of this High Court in **CWP No.10738 of 2022 (M/s Harinder Fabrics v. Shriram City Union Finance Ltd.)** decided on 04.05.2023. 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.

When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel.

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15. The object and reasons behind the Act 54of 2002 are very clear as observed by this Court in **Maria 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 or 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. It is, thus, apparent that there is no ground for interference in this writ petition, which has been filed straightaway by the petitioner without availing her alternate remedy.

7. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail remedy/remedies as may be available to her in accordance with law.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

July 20, 2023
rts

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