

CM-11552-CWP-2023 in/and
CWP No.11013 of 2023 (O&M)

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2023:PHHC:096981-DB

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

**CM-11552-CWP-2023 in/and
CWP No. 11013 of 2023 (O&M)
Date of Decision: 28.07.2023**

AMARJIT KAUR

..... Petitioner(s)

Versus

PEGASUS ASSETS RECONSTRUCTION PVT. LTD. AND OTHERS

..... Respondent(s)

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

Present: Mr. Gourav Goel, Advocate
for the applicant-petitioner.

Mr. C.S. Pasricha, Advocate
for the non-applicant/respondents no.1 and 2.

LISA GILL, J.

CM-11552-CWP-2023

1. Notice of the application.
2. Mr. C.S. Pasricha, Advocate, accepts notice on behalf of the non-applicant/respondents no.1 and 2. Learned counsel for the non-applicants/respondents no.1 and 2 does not raise any objection to preponement of hearing of this writ petition.
3. At request and with consent of learned counsel for the parties, hearing of the writ petition is preponed from 09.08.2023 for today itself.
4. Application is accordingly disposed of.

CWP No. 11013 of 2023

5. Prayer in this writ petition is for quashing notice dated 27.07.2021, Annexure P-4, under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) issued by respondents no.3 and 4, as well as possession notice dated 17.11.2022 issued by respondents no.1 and 2 under Section 13(4) of SARFAESI Act.

6. Learned counsel for the petitioner is unable to deny that the petitioner has alternate efficacious remedy for redressal of her grievance and all the pleas which have been raised by the petitioner in this writ petition, can very well be adjudicated upon and decided by the Debt Recovery Tribunal.

7. Hon'ble the Supreme Court in a catena of judgments has held that the High Court should desist from interference in such matters under the SARFAESI Act in exercise of jurisdiction under Article 226 of the Constitution of India. It has been categorically held by the Hon'ble Supreme Court that when a Tribunal is constituted under the Act, it is expected to consider the issues of law and fact/s involved. Interference in the matters under the SARFAESI Act, except under extraordinary and exceptional circumstances has been frowned upon and deprecated. Gainful reference 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.

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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."

6. It is also to be noted that respondents no.1 and 2 are private non-banking financial companies, therefore, interference by way of this writ petition is not called for in any manner. Hon'ble the Supreme Court in ***Phoenix ARC Private Limited. Vs. Vishwa Bharati Vidya Mandir and others, 2022 AIR (SC) 1045***, has 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. Imanuel and others, (1969) 1 SCC 585*** and ***Ramesh Ahluwalia Vs. 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.”

7. Keeping in view the facts and circumstances as above, we find no ground to interfere in this writ petition while exercising powers under Article 226 of Constitution of India. Writ petition is accordingly dismissed with liberty to the petitioner to avail the remedy/remedies as may be available to the petitioner, in accordance with law.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

28.07.2023
Sunil

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