

CWP-13557-2022

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2023:PHHC:135324-DB

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

207

CWP-13557-2022

Date of Decision: 17.10.2023

MEENU SHARMA AND ANR

... Petitioners

VERSUS

UNION BANK OF INDIA AND ORS

....Respondents

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

Present: Mr. Sushant Kareer, Advocate
for the petitioners.

Mr. Gaurav Goel, Advocate
for the respondent-Bank.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing notice dated 24.05.2021 (Annexure P-4) under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002, notice dated 05.05.2022 (Annexure P-6) under Section 13(4) of SARFAESI Act and sale notice dated 11.05.2022 (Annexure P-7).

2. Petitioner had earlier filed CWP-10833-2022 which was withdrawn with liberty to the petitioner to avail alternate remedy under Section 17 of the SARFAESI Act. SA-120-2022 was admittedly filed by the petitioners. However, interim relief was declined by learned Debts Recovery Tribunal-II (DRT), Chandigarh vide order dated 13.06.2022 (Annexure P-11). Petitioner admittedly had an efficacious remedy in terms of Section 18 for filing appeal to challenge order dated

13.06.2022.

3. Learned counsel for the petitioner is unable to point out any circumstance which calls for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India as petitioners seek to bypass their remedy of appeal. Hon'ble the Supreme Court in Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34 and 771, has held as under:-

“34. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of predeposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of predeposit contemplated under 2nd proviso to Section 18 of the Act 2002.”

4. Learned counsel for the respondent-Bank at this stage informs us that said SA No.120 of 2022 stands dismissed in default on 16.02.2023 and no steps have been taken by the petitioners for restoration of the same till date. Learned counsel for the petitioners at this stage submits that necessary steps can be taken for restoration of SA in question and the same cannot work to detriment of petitioners. It is further submitted that property in question is not the primary or collateral security for the loan extended to M/s Hari Narain Industries, therefore, interference of this Court is called

for.

5. However, keeping in view the facts and circumstances of the case, we do not find any ground whatsoever to interfere in this writ petition at this stage. Interference in such like matters has been deprecated by Hon'ble the Supreme Court in a number of cases. SARFAESI Act is a complete Code in itself. It is incumbent upon the person aggrieved of any action under this statute to avail of his remedy provided thereunder.

6. Arguments as raised do not constitute any ground for causing interference or for any relief in favour of petitioner at this stage.

7. Learned counsel for the petitioner has insisted that interim order should be continued for some time to enable petitioners to take necessary steps for restoration of SA. However, we find no ground whatsoever to continue interim order granted in favour of the petitioner in this writ petition.

8. Writ petition is accordingly dismissed with liberty to the petitioner to avail their statutory remedy/ies in accordance with law. It is always open to the parties to arrive at a mutually acceptable resolution.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

17.10.2023
Rimpal

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