

Bank kept presenting the cheques available with them for the payment of instalments. In view of the insurance policy, respondent – Bank, it is submitted, was not entitled to initiate proceedings under SARFAESI Act. Notice dated 30.04.2021 under Section 13(2) of SARFAESI Act was, thus, incorrectly issued and the same was not in the notice of the petitioner, who only received notice dated 06.04.2023 from Field Kanungo, Patiala seeking to take possession of the property in question on 20.04.2023. As of now, respondent – bank seeks to take possession. It is, thus, prayed that this writ petition be allowed.

3. We have heard learned counsel for the petitioners, who is unable to deny that the petitioners have an alternate efficacious remedy under the SARFAESI Act for redressal of the grievance/s raised in this writ petition. It is a settled position of law that as a general rule, there would be no interference by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India in the wake of availability of efficacious alternate remedy to the litigant, except in exceptional circumstances and more so in commercial matters. 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.

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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 petitioners is unable to point out any extraordinary or exceptional circumstances which call for interference in exercise of jurisdiction under Article 226 of the Constitution of India. All the arguments and pleas raised by the petitioners are clearly within the realm of consideration by the Tribunal.

5. Thus, finding no ground to interfere, this writ petition is dismissed. Needless to say, petitioners are at liberty to avail remedy/remedies available to them in accordance with law. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

August 07, 2023
rts

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