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

123 **CWP-11692-2023**
Date of Decision: 28.08.2023

PRAMILA

... Petitioner

VERSUS

**ART HOUSING FINANCE (INDIA) LIMITED
AND OTHERS**

....Respondents

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

Present: Ms. Rosi, Advocate
for the petitioner.

Mr. Jatin Bansal, Advocate
for respondents-caveator.

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<u>LISA GILL, J.(Oral)</u>

1. This writ petition has been filed by the petitioner for setting aside auction notice dated 30.03.2023 (Annexure P-1) issued by respondents.

2. Petitioner is stated to be a co-borrower with others of loan account number LNPNP06917-180003411. Details of said other persons have not been mentioned in this writ petition. Account in question, it is stated was declared NPA on 25.03.2021. It is contended that without issuance of any notice under Section 13(2) or 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act (SARFAESI Act), 2002, e-auction notice dated 30.03.2023 was issued to the petitioner.

3. Learned counsel for the respondents-caveator however, submits that due notice had been issued to the petitioner under Section 13(2) of the SARFAESI Act on 07.04.2021 and thereafter notice under Section 13(4) was also issued and that action was taken in strict compliance of applicable provisions. He further informs that sale pursuant to e-auction notice dated 30.03.2023 has been concluded and sale certificate dated 20.04.2023 has been issued to the auction purchaser.

4. Heard.

5. Apart from the fact that disputed questions of fact are involved in this writ petition, it is undeniable that the petitioner has efficacious alternate remedy for redressal of the grievance raised by her in this writ petition. It has been held by Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110,** as under:-

> *17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression `any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the*

matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

"18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion

and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order."

6. Learned counsel for the petitioner is unable to point out any exceptional or extraordinary circumstance which calls for interference by us in exercise of jurisdiction under Article 226 of the Constitution of India. Furthermore, it is noticed that relief claimed in this writ petition is

qua a private non-banking financial institution therefore, writ petition in any case is not entertainable in view of judgment of Hon'ble the Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345, as under:-

> *"12. 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 (supra) and Ramesh Ahluwalia (supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."*

7. Writ petition is accordingly dismissed with liberty to the petitioner to avail the remedy/remedies as available to her in accordance with law to challenge the proceedings under the SARFAESI Act

initiated by the respondents. There is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

28.08.2023
Rimpal

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