2023:PHHC:097464-DB

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

CWP-13677-2023
Date of Decision: July 31, 2023

PRITPAL SINGH MANN ...... Petitioner

Versus

RELIGARE FINVEST LIMITED AND ANOTHER ..... Respondents

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

Present: Mr. Nitish K. Vasudeva, Advocate for the petitioner.

Mr. Sameer Mahajan, Advocate for the respondent – Bank.

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LISA GILL, J.

1. Prayer in this petition is for quashing order dated 05.06.2023 (Annexure P1) under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') passed by respondent No. 2. Further prayer is for restraining the respondents from taking possession of the residential house of the petitioner.

2. When this writ petition came up for hearing on 28.06.2023, following order was passed by the co-ordinate Bench:-

> " The learned counsel representing the petitioner submits that he is handing over the demand drafts of Rs.5,00,000/- and Rs.1,00,000/- each drawn in favour of respondent no.1 in order to show his bonafide. He further undertakes to pay the remaining amount within one month, from today. He further submits that if he fails to pay the remaining amount, he will hand over the peaceful possession of the property to respondent no.1.

> Keeping in view the aforesaid facts, the dispossession of the petitioner shall remain stayed, subject to the deposit of the remaining amount within a period of one month, from today, as undertaken by him.
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> List for further hearing on 31.07.2023."

3. Learned counsel for the respondent – Bank submits that the petitioner has not deposited the remaining amount within the stipulated period in terms of order dated 28.06.2023.

4. Learned counsel for the petitioner submits that it is due to unavoidable circumstances that payment could not be paid, he seeks more time.

5. Heard learned counsel for the parties.

6. Learned counsel for the petitioner is unable to deny that the petitioner has an alternate efficacious remedy for redressal of his grievance. 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. 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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> xxx xxx xxx
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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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> xxx xxx xxx xxx
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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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> xxx xxx xxx
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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.”

7. Apart from the fact that petitioner has not complied with the undertaking given by him on 28.06.2023, learned counsel for the petitioner is also unable to point out any exceptional and extraordinary circumstances, which call for interference by this Court. Furthermore, it is to be noted that respondent No. 1 a private non-banking finance company and is, thus not amenable to writ jurisdiction. Gainful reference in this regard can be made to the judgment of the Hon’ble Supreme Court in **Pheonix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888,** wherein it has been 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.**

> **Imanual, (1969) 1 SCC 585** and **Ramesh Ahluwalia v. 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."

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

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

July 31, 2023
rts

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