

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

**CM-11535-CWP-2023 in/and
CWP-14421-2023
Date of Decision: July 26, 2023**

PAYAL TANEJA Petitioner

Versus

NAIB TEHSILDAR-CUM-EXECUTIVE MAGISTRATE AND ORS
..... Respondents

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

Present: Mr. Umesh Kumar Kanwar, Advocate for the petitioner.

LISA GILL, J.

CM-11535-CWP-2023

Prayer in the application is for preponement of hearing of this petition.

For the reasons mentioned in the application as well as arguments addressed, hearing of the petition is preponed from 23.08.2023 for today itself, at request of learned counsel.

Application is disposed of, accordingly.

CWP-14421-2023

1. Prayer in this writ petition is for setting aside notice dated 29.05.2023 (Annexure P5) issued by respondent No. 1 for taking over possession of the property i.e. secured asset, consequent to passing of order dated 25.05.2022 by District Magistrate, Gurugram under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’).

2. It is submitted that petitioner purchased a residential flat from respondent No. 3. Home loan was taken by the petitioner from respondent No. 2. Sale deed, it is stated, has not been executed by respondent No. 3 in an unjustified manner. However, proceedings under the SARFAESI Act have been initiated by respondent No. 2. No notice under Section 13(2) or 13(4) of SARFAESI Act was ever received by the petitioner. Petitioner, it is submitted, came to know that respondent No. 2 after initiation of proceedings under SARFAESI Act also fixed the date of auction of the property in question on 20.04.2022. Auction, however, failed.

3. Order under Section 14 of the SARFAESI Act was passed on 25.05.2022. It is submitted that in a civil suit filed by one Dayanand Tripathi and another against the petitioner and others, statement of the petitioner, who is defendant No. 1 therein alongwith others was recorded that they would maintain status quo regarding alienation of the property. This was brought to the notice of respondent No. 1 i.e. Naib Tehsildar-cum-Executive Magistrate, Wazirabad but to no avail. Physical possession of the property was, however, taken. It is submitted that notice dated 29.05.2023 is illegal, arbitrary and issued in a malafide manner without adherence to principles of natural justice, therefore, the same should be set aside.

4. It is to be noted that the petitioner on earlier occasion filed CWP-27562-2022 challenging initiation of proceedings under SARFAESI Act by respondent No. 2, including notice dated 11.11.2022 under Section 14 of SARFAESI Act and notice dated 28.10.2021 under Section 13(4) of SARFAESI Act. Petitioner had earlier thereto filed SA-98-2022 before DRT-II, Delhi in which notice was issued but interim relief was not granted.

5. Notice of motion was issued in CWP-27562-2022 directing that petitioner would not be dispossessed from the secured asset till the next date of hearing and petitioner was permitted to take steps for amendment of pleadings in SA-98-2022 with regard to her dispossession as well. CWP-27562-2022 was, however, dismissed on 10.05.2023 for want of prosecution as process fee had not been filed neither counsel appeared on behalf of the petitioner nor was there any document on record to show that amendment in the pleadings in the pending SA had been carried out.

6. Though not mentioned in this writ petition, learned counsel for the petitioner submits that necessary application for amendment of the pleadings in SA-98-2022 before DRT-II, Delhi with regard to dispossession has also been filed.

7. Keeping in view the fact that alternate efficacious remedy is available to the petitioner and has indeed been availed of by the petitioner, coupled with the fact of dismissal of earlier writ petition for non-prosecution, no ground is made out for interference of this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

8. Moreover, it is also to be noted that respondent No. 2 is a private financial institution, therefore, in any case, no interference is called for in this matter. 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. Imanuel, (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.”

9. Accordingly, this writ petition is dismissed. Needless to say, petitioner is at liberty to take all available pleas before DRT-II, Delhi in the pending SA.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

July 26, 2023

rts

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