

CWP-14705-2023

**2023:PHHC:087918-DB
:1:**

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

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**CWP-14705-2023
Date of Decision: 13.07.2023**

M/S DHARMINDER SCHOOL BUS SERVICE AND OTHERS

... Petitioners

VERSUS

RESERVE BANK OF INDIA AND ANOTHER

....Respondents

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

Present: Ms. Shivya Sehgal, Advocate
for the petitioners.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing the impugned demand notice dated 22.09.2022 (Annexure P-4) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act and impugned possession notice dated 07.07.2023 (Annexure P-6) under Section 13(4) of SARFAESI Act, 2002.

2. Learned counsel for the petitioners while raising various pleas on merits, is however, unable to deny that disputed questions of fact arise in this matter and in any case, the petitioners have efficacious alternate remedy/remedies for redressal of their grievance. No exceptional or extra-ordinary circumstances have been projected before us, which call for interference in exercise of jurisdiction under Article

226 of the Constitution of India. 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) while reiterating its earlier judgments held that where an alternate efficacious remedy was available to the litigant before a Forum constituted under a statute, interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India should be restricted to exceptional cases It was held that :-

“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.”

3. Moreover, petitioners are claiming relief qua respondent No.2 i.e.Hinduja Leyland Finance Limited, which is admittedly a private financial institution, thus present writ petition is not maintainable. Gainful reference in this regard can be made to the judgment of Hon'ble the Supreme Court in Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others, 2022 (5) SCC 345.
4. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioners to avail their remedy/remedies in accordance with law and take up all available pleas.
5. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

13.07.2023
Rimpal

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