IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118 **CWP-14898-2023 (O&M)**
Date of Decision: 20.09.2023

AMAN PREET SINGH AND ANR
... Petitioners

VERSUS

CAPRI GLOBAL HOUSING FINANCE LTD. AND OTHERS
....Respondents

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

Present: Mr. Sumit Dua, Advocate
for the petitioners.

Mr. Harsh Chopra, Advocate
for the respondents.

*****

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing impugned notice dated 25.07.2022 (Annexure P-4) under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act with a further prayer to stay impugned order dated 22.02.2023 (Annexure P-8) passed by District Magistrate.

2. It is pleaded that petitioners availed of loan facility of Rs.12,38,000/- in February 2019. However, there was financial indiscipline due to which petitioners' account was declared NPA on 05.04.2022. Proceedings under the SARFAESI Act were initiated with notice under Section 13(4) of the Act being issued on 25.07.2022. Auction notice for sale of petitioners' property was also issued.

3. Learned counsel for the petitioners submits that action taken by the respondent-Financial Institution under the SARFAESI Act is absolutely illegal as they merely want to grab valuable property of the petitioners for one reason or the other. Petitioners it is submitted have been depositing the amount towards overdue balance but respondent-Institution is not coming forward for either regularization of the account or a One Time Settlement (OTS) despite requests. Moreover, proceedings under the SARFAESI Act are illegal as the amount due is under Rs.20 lakhs. Reference is made to notification dated 12.02.2021.

4. Learned counsel for the respondents submits that this writ petition 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. Moreover, notification dated 12.02.2021 is not applicable as respondent is a Housing Finance Company.

5. Heard learned counsel for the parties.

6. It is undeniable that petitioners have an efficacious remedy under the SARFAESI Act for redressal of their grievance. It has been held in a catena of judgments that interference in such matters should be refrained from except in exceptional or extra-ordinary circumstances. Gainful reference in this regard can be made to judgments by Hon'ble Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110 and South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.** Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) reiterated its earlier judgments that where an alternate efficacious

remedy is 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.*
>
> *XXX*
>
> *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. Learned counsel for the petitioners is unable to point out any exceptional or extraordinary circumstance which calls for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

8. It is further to be noticed that relief claimed in this writ petition is qua a Private Housing Finance Company, therefore, in any case, no ground is made out for interference especially in view of judgment of Hon'ble Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345. wherein it has been held 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."*

9. Accordingly, this writ petition is dismissed with liberty to

the petitioners to avail their remedy/ies in accordance with law. Pending applications, if any, also stand disposed of accordingly.

10. It is clarified that there is no expression of opinion on the merits of the controversy.

11. Pending applications, if any, also stand disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

20.09.2023
Rimpal

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