

2023:PHHC:115789-DB

**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-15139-2023****Date of Decision: September 04, 2023****LAKHWINDER SINGH**

.... Petitioner

Versus**THE AUTHORIZED OFFICER AND OTHERS**

.... Respondents

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

Present: Mr. Sahil Khunger, Advocate for the petitioner.

Mr. Gaurav Goel, Advocate for the respondent – Bank.

LISA GILL, J.

1. Prayer in this petition is for quashing order dated 16.03.2021 passed by District Magistrate, Ferozepur under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’); notice dated 28.06.2023 (Annexure P9) as well as notice dated 07.07.2023 (Annexure P10) under Section 13(4) of SARFAESI Act. Further prayer is for setting aside letter dated 21.06.2023 (Annexure P8), whereby proposal for One Time Settlement (OTS) dated 12.06.2023 has been rejected.

2. Admittedly, petitioner has an efficacious remedy for redressal of the grievance/s raised in this writ petition. 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**. 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.

xxx

xxx

xxx

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.

xxx

xxx

xxx

xxx

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

xxx

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.”

3. At this juncture, it is relevant to refer to the judgment of the Hon’ble Supreme Court in the **Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56**, wherein it was held that OTS cannot be claimed as a matter of right and that no mandamus can be issued to the Bank to positively consider the grant of benefit under OTS scheme. Such decisions, it was held, should be left to commercial wisdom of the Bank.

4. Faced with the above, learned counsel for the petitioner seeks to withdraw this petition with liberty to the petitioner to avail remedy/remedies available to him in accordance with law.

5. Accordingly, present petition is dismissed as withdrawn with liberty as aforementioned.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 04, 2023

rts

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