2023:PHHC:093187-DB

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

CWP-15603-2023
Date of Decision: July 24, 2023

SURINDER KUMAR AND ANOTHER ...... Petitioners

Versus

INDIA INFRO LINE FINANCE LTD. AND ORS. ..... Respondents

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

Present: Mr. Munish Mittal, Advocate for the petitioners.

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LISA GILL, J.

1. Prayer in this petition is for setting aside notice dated 17.09.2022 (Annexure P15) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act'); notice dated 08.12.2022 (Annexure P16) under Section 13(4) of SARFAESI Act besides notice dated 28.06.2023 (Annexure P17) for conducting e-auction of the secured assets i.e. property of the petitioners.

2. Learned counsel for the petitioners submits that present petitioners at no point of time have taken any loan from respondents No. 1 and 2 or mortgaged the present property in question. It is submitted that allotment letter was issued to the petitioners on 22.12.2017 in respect to property in question, i.e. the villa as described in the writ petition. Booking amount was paid by the petitioners to the builder i.e. respondent No. 6. Revenue record in respect to the property was duly checked by the petitioners and the same was found to be free from any kind of

encumbrances. Sale deed of the property in question was executed on 13.02.2018. Petitioners had raised finance from Allahabad Bank for a sum of ₹35 lakhs for purchase of the property. Allahabad bank also carried out due verification at its own level. After issuance of impugned notices, which are claimed to be absolutely unjustified, it came to notice of the petitioners that property in question had been mortgaged at one point of time by respondents No. 3 to 5 with respondents No. 1 and 2. Petitioners, it is stated, are victims of fraud, therefore, no action under the SARFAESI Act qua loan allegedly taken by respondents No. 3 to 5 is maintainable. It is further submitted that petitioners on coming to know about the proceedings, filed application under Order 1 Rule 10 CPC in the proceedings under Section 14 of the SARFAESI Act. Objections have been filed by the petitioners and the matter is still pending.

3. We have heard learned counsel for the petitioners.

4. Keeping in view the efficacious alternate remedy/remedies for redressal as available to the petitioners under the SARFAESI Act, we do not find any exceptional and extraordinary circumstances, which call for interference in exercise of jurisdiction under Article 226 of the Constitution of India.

5. 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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> When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel.
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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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> 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."

6. Therefore, it is apparent that all the questions and arguments which are raised on behalf of the petitioners are to be considered by the Tribunal. Moreover, petitioners are claiming relief qua respondent, 'India Infro Line Finance Ltd.', which is admittedly a private financial institution, therefore, present writ petition is not maintainable. 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**.

7. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioners to avail remedy/remedies as may be available to them in accordance with law.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

July 24, 2023
rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No