

2023:PHHC:093153-DB

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

CWP-15697-2023
Date of Decision: July 24, 2023

ANMOL SINGH

..... Petitioner

Versus

**CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY
LTD AND ANOTHER**

..... Respondents

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

Present: Mr. Naveen Bawa, Advocate for the petitioner.

LISA GILL, J.

1. Petitioner has filed this petition with the averment that loan facility was availed by the petitioner's paternal uncle (*Chacha*) from respondent No. 1. There are as many as five loan accounts. Petitioner alongwith three others are the guarantors. Due to ill health of the petitioner's uncle, there was financial indiscipline leading to loan accounts being classified as Non-Performing Asset (NPA) on 11.07.2022. Notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') was issued to the petitioner's uncle as well as to the petitioner on 18.07.2022. Petitioner's uncle is stated to have passed away on 19.04.2023. Challenge in this writ petition is to notice dated 13.07.2023 seeking

possession, consequent to passing of order dated 19.11.2022 by the District Magistrate under Section 14 of SARFAESI Act. Various arguments have been raised by learned counsel for the petitioner.

2. Having heard learned counsel for the petitioner, we find that the petitioner has efficacious alternate remedy/remedies under SARFAESI Act for redressal of his 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.

3. 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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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.

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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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.”

4. It is reiterated that no exceptional or extraordinary circumstance has been pointed out by learned counsel for the petitioner calling for interference by this Court under Article 226 of the Constitution of India.

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 Keeping in view the facts and circumstances as above, this writ petition is dismissed as withdrawn with liberty to the petitioner to avail remedy/remedies as may be available to him in accordance with law.

6. 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