

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

Neutral Citation No. 2023:PHHC:067585-DB

(268)

CWP-19958-2022

Decided on : 10.05.2023

M/s Anila Trading Company

.....Petitioner(s)

Versus

Authorized Officer, Canara Bank and another

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH**

Present: Ms. G. Jain, Advocate for
Mr. Aakash Juneja, Advocate for the petitioner

Mr. Nitin Grover, Advocate for the respondent-Bank

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India has been made to the e-acution of the mortgaged property, which was to be done by the respondent-Bank on 07.09.2022.

2. On 05.09.2022, the following order was passed;-

“It is the contention of the counsel for the petitioner that notices under Sections 13(2) and Section 13(4) of the SARFAESI Act, 2002 have not been served on the petitioner.

Notice of motion for 09.02.2023.

Subject to the petitioner paying ₹5 Lakhs to the respondents within one week from today, the sale of secured asset scheduled to take place on 07.09.2022 shall go on, but the sale certificate shall not be issued to the successful auction purchaser.

In default of compliance of this order by the petitioner, this order shall stand vacated.”

3. Counsel for the respondent-Bank submits that payment of ₹5 lakhs has duly been made, but sale could not fructify.

4. In our considered opinion the present writ petition has been rendered infructuous as the petitioner is taking recourse to the proceedings under the Act and his grouse is against the auction notice. Even otherwise, the Apex Court in **Civil Appeal Nos.3152-3153 of 2023 ‘G. Vikram Kumar Vs. State Bank of Hyderabad & others’** decided on 02.05.2023 has held that even the auction proceedings are to be challenged before the Tribunal under

Section 17 of the 2002 Act and, therefore, this Court does not have any jurisdiction. Relevant portion of the said judgment reads as under:-

“8. At the outset, it is required to be noted that what was challenged before the High Court by respondent no.1 in a writ petition under Article 226 of the Constitution of India was the e-auction notice which was pursuant to the action initiated by the Bank in exercise of powers under Section 13(4) of the SARFAESI Act. At this stage it is required to be noted that e-auction was held/conducted on 31.08.2016 in which the appellant participated and was declared as a successful bidder and he made a payment of 25% of the bid amount on the very day i.e., on 31.08.2016. However, thereafter the respondent no.1 filed the writ petition before the High Court challenging the e-auction notice dated 28.07.2016 on 14.09.2016 that is after conducting of the auction. It is required to be noted that against any steps taken by the Bank under Section 13(4) of the SARFAESI Act the aggrieved party has a remedy under the SARFAESI Act by way of appeal under Section 17 of the SARFAESI Act to approach the DRT. Therefore, in view of the availability of the alternative statutory remedy available by way of proceedings/appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India in which the e-auction notice was under challenge. Therefore, the High Court has committed a very serious error in entertaining the writ petition under Article 226 of the Constitution of India challenging the e-auction notice issued by the Bank in exercise of power under Section 13(4) of the SARFAESI Act.”

5. Resultantly, the present writ petition is disposed of in view of the settled law.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
JUDGE

10.05.2023
Naveen

Whether speaking/reasoned :	✓Yes	No
Whether Reportable :	Yes	✓No