IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

235 **CWP-20106-2020 (O&M)**
Date of Decision: 25.09.2023

GURPARTAP CHOUDHARY AND ANR

... Petitioners

VERSUS

STATE BANK OF INDIA AND ORS

....Respondents

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

Present: Mr. Sandeep K. Sharma, Advocate
for the petitioners.

Mr. Rakesh Gupta, Advocate
for respondents No.1 to 3.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing demand notice dated 07.11.2017 (Annexure P-3) issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act, possession notice dated 18.01.2018 (Annexure P-4) issued under Section 13(4) of SARFAESI Act and order dated 01.03.2018 (Annexure P-5) passed by District Magistrate, Jalandhar.

2. It is submitted that the petitioners availed facility of house loan of Rs.25 lakhs in the year 2017. Property as detailed in the writ

petition was mortgaged. Car loan was also availed of by the petitioners in the year 2017 which was secured by hypothecating the car in question. Due to financial indiscipline, accounts of the petitioners were declared Non-Performing Asset (NPA). Demand notice dated 07.11.2017 was issued under Section 13 (2) of SARFAESI Act calling upon the petitioners to deposit an amount of Rs.33,06,477/-. Thereafter, notice dated 18.01.2018 was issued under Section 13(4) of SARFAESI Act. Order under Section 14 of SARFAESI Act was passed on 12.03.2018 by the Additional District Magistrate, Jalandhar exercising power of District Magistrate. It is submitted that there was complete violation of the procedure envisaged under the SARFAESI Act. Petitioners, it is further submitted had also approached the respondent-Bank for One Time Settlement (OTS) of the loans but the same was not acceded to. An exorbitant amount is being demanded by respondent-bank with unjustified levy of interest and penalty.

3. Learned counsel for the respondent while raising a preliminary objection regarding maintainability of the writ petition itself submits that there has been no violation of provisions of the SARFAESI Act. Accounts of the petitioners were declared NPA in accordance with law and subsequent proceedings under the SARFAESI Act undertaken. Learned counsel for the respondent points out that petitioners have not deposited any amount despite an undertaking given before this High Court on 10.12.2020 and as of now the total outstanding against them is over Rs.35 lakhs. The vehicle in question was sold by the petitioners and an FIR in this respect stands lodged.

4. We have heard learned counsel for the parties and have

carefully perused the file.

5. Availing of the loan(s) by the petitioners and initiation of proceedings under the SARFAESI Act on account of financial indiscipline is a matter of record. It is to be noted at this stage that this writ petition came up for hearing on 10.12.2020 and it was stated on behalf of petitioners that they are ready and willing to pay the entire amount due. Matter was adjourned to enable the petitioners to place on record the proposed repayment schedule. Despite opportunities needful was not done. Ultimately on 15.03.2021, notice was issued in this writ petition, subject to deposit of Rs.5 lakhs in view of undertaking by the petitioners that apart from the said amount, another amount of Rs.5 lakhs would be deposited within a week thereof. An application seeking vacation of the interim order granted on 15.03.2021 was filed by the respondent-Bank while stating that the said order was not complied with as the payment was not deposited within seven days and the amount of Rs.10 lakhs was deposited on 25.05.2021. Total amount payable as per the application dated 27.01.2022 was Rs.31,43,222/-.

6. *De hors* the merits of the matter, it is a settled position that the Court would not interfere in such like matters where the petitioners admittedly have efficacious alternate remedy for redressal of their grievance. The SARFAESI Act is a complete code in itself with requisite remedies being provided thereunder. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110 and M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**. In the latter judgment, it has been

held by Hon'ble the Supreme Court as under:-

> "*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.*
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> *XXX*
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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.*"

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. Writ petition is accordingly dismissed with liberty to the petitioners to avail their statutory remedy/ies in accordance with law.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

25.09.2023
Rimpal

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