

CWP-17354-2023

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2023:PHHC:120514-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-17354-2023

Date of Decision: 13.09.2023

ASHOK AND ANOTHER

... Petitioners

VERSUS

BANK OF BARODA AND OTHERS

....Respondents

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

Present: Mr. Ved Parkash, Advocate
for the petitioners.

Mr. Rahul Garg, Advocate
for the respondents-Bank.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside notice dated 25.07.2023 (Annexure P-5) issued by respondent No.3 under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002.

2. It is submitted that petitioners are guarantors of the first loan which had been taken by respondent No.4. Subsequent loan facility had been taken by respondent No.4 but property of present petitioners was not mortgaged qua the said loan. Petitioners, it is further contended have already paid some amount towards the first loan as availed by respondent No.4.

3. During course of hearing, it was stated that petitioners are ready and willing to deposit the entire amount due, but subsequently it was stated by learned counsel for petitioners that petitioners are liable to

deposit only that amount which may be due qua the first loan account and not any other.

3. Having heard learned counsel for the parties, we do not find any ground for interference in this matter in exercise of jurisdiction under Article 226 of the Constitution of India. No exceptional or extraordinary circumstance has been pointed out by the petitioners which calls for interference. Merely because petitioners are guarantors of the loan account and not the borrower cannot be a ground for interference in this writ petition. Petitioners admittedly have an efficacious remedy under the SARFAESI Act for challenging the proceedings initiated thereunder by the respondents. Gainful reference in this respect can be made to judgments of 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) while reiterating its earlier judgments held that where an alternate efficacious remedy is available to the litigant before a Forum constituted under a statute, interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India should be restricted to exceptional cases It was held that :-

“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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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. Writ petition is accordingly dismissed with liberty to the petitioners to avail the remedy/remedies available to them in accordance with law.
5. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

13.09.2023
Rimpal

(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No