150 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18156-2023
Date of Decision: August 21, 2023

Pushpinder Kumar ..... Petitioner

Versus

Punjab and Sind Bank and others ..... Respondents

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

Present: Mr. Bhajan Singh Sodhi, Advocate for the petitioner.

Mr.Gaurav Goel, Advocate for respondent-Bank

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 09.06.2023 (Annexure P1) under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') issued by the respondent – Bank. It is contended that petitioner has not received any notice under Section 13(2) of SARFAESI Act, therefore, proceedings initiated by the respondent – Bank under the SARFAESI Act are illegal and should be set aside.

2. It is claimed that agreement to sell has been executed in the petitioner's favour by respondent No. 3. It is submitted that petitioner has deposited almost the entire consideration amount. Part payment of ₹3 lakhs is still due. Suit for specific performance has been filed by the petitioner against respondent No. 3.

3. Admittedly, petitioner lays the foundation of his claim on agreement to sell dated 07.06.2022 in his favour by respondent No. 3. However, without delving upon the merits of the matter, we find that petitioner has an alternate efficacious remedy for redressal of the grievance/s

raised in this writ petition. 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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> 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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> 15. The object and reasons behind the Act 54of 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 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. Keeping in view the facts and circumstances of the matter, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of the Constitution of India.

5. Writ petition is, accordingly, dismissed with liberty to the petitioner to avail remedy/remedies available to him in accordance with law.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

August 21, 2023
rts

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