2023:PHHC:115928-DB

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

CWP-19433-2023
Date of Decision: September 04 , 2023

MANOJ KUMAR ...... Petitioner

Versus

ICICI HOME FINANCE LTD. AND OTHERS ..... Respondents

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

Present: Mr. Surinder Garg, Advocate for the petitioner.

Mr. D.K. Singal, Advocate for respondents No. 1 to 5.

Mr. Sandeep Jain, Addl.AG, Punjab.

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LISA GILL, J.

1. Petitioner has challenged proceedings initiated and action taken by respondents No. 1 and 2 under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act'), in view of default in the loan account of the petitioner.

2. Petitioner's account was declared NPA on 06.03.2021. Proceedings under SARFAESI Act were initiated against the petitioner with possession of secured asset i.e. house of the petitioner being taken. Though date of taking over of the possession is not mentioned but it is informed to be 14.07.2023 by learned counsel for respondents No. 1 to 5. Certain allegations regarding fraud having been committed by the petitioner have

also been raised. Learned counsel for the petitioner while refuting the same submits that declaration of petitioner's account NPA, is itself illegal and in violation of the provisions of the SARFAESI Act. It is submitted that certain default had occurred but the same was regularized by the petitioner thereafter.

3. Be that as it may, it is undeniable that the petitioner has an efficacious remedy/remedies for redressal of grievances as 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 extra ordinary or 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.** 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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> xxx xxx xxx
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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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> 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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> xxx xxx xxx xxx
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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. Moreover, petitioners are claiming relief qua respondent, 'ICICI House Finance Company Limited', which is admittedly a private Housing Financial (Non-banking) institution, therefore, no ground is made out for interference in the present writ petition, in any case. Gainful reference in this regard can be made to the judgment of the Hon'ble Supreme Court in **Pheonix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888,** wherein it has been held as under:-

> " Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial

transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of **Praga Tools Corporation v. Shri C.A. Imanual, (1969) 1 SCC 585** and **Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

5. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail statutory remedy/remedies as 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

September 04 , 2023
rts

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