

CWP-20194-2023

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2023:PHHC:120517-DB

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

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CWP-20194-2023

Date of Decision: 13.09.2023

HARPAL SINGH

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

....Respondents

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

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

Mr. Sandeep Jain, Additional A.G. Punjab.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside sale notice dated 08.04.2023 (Annexure P-9) issued by respondent No.3 under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002.

2. It is contended that petitioner is neither borrower or guarantor of the loan in question but is a victim of fraud. It is submitted that sale deed dated 07.04.2017 was executed by father of the petitioner in favour of respondent No.5. However, entire consideration amount had not been paid to his father though it is so mentioned in the sale deed. Respondent No.5, it is submitted had agreed to pay the remaining amount vide an agreement dated 16.06.2017. Unfortunately, petitioner's father passed away. After his death, civil suit in this regard was filed by the petitioner in which interim relief was afforded to the petitioner to the extent that alienation of the suit property is stayed.

3. However, proceedings under the SARFAESI Act were initiated by respondent No.3 in respect to loan taken by respondents No.4 to 6 qua said property after execution of the sale deed dated 07.04.2017. It is submitted that proceedings under the SARFAESI Act initiated by respondent No.3 qua the property in question are illegal and arbitrary. Therefore, this writ petition should be allowed and alienation of the property in question should be stayed till final decision of the civil suit.

4. Heard learned counsel for the petitioner and have gone through the file with his assistance.

5. No such exceptional or extra ordinary circumstance has been pointed out by learned counsel for the petitioner which would entitle him to by pass the statutory remedy available to him under the SARFAESI Act for redressal of the grievance raised by him.

6. In the given factual matrix, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. It is reiterated that no exceptional or extra ordinary circumstance has been pointed out in this writ petition which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India. Gainful reference in this regard can be made to the judgments of Hon'ble the 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) 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 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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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. Furthermore, it is to be noted at this stage that relief claimed in this writ petition is qua a private non-Banking Financial Institution, therefore, in any case, no ground is made out for entertaining this writ petition keeping in view the judgement of Hon’ble the Supreme Court in

Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others, 2022 (5) SCC 345.

8. Writ petition is accordingly dismissed with liberty to the petitioner to avail the remedy/remedies as available to him in accordance with law. There is no expression of opinion on the merits of the matter.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

13.09.2023
Rimpal

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