IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203 **CWP-22799-2022**
Date of Decision: 20.12.2023

KAPOORI PANCHAL @ KAPOORI DEVI PANCHAL

... Petitioner

VERSUS

IIFL HOME LOAN FINANCE LTD AND OTHERS

....Respondents

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

Present: Mr. Pardeep Goyal, Advocate
for the petitioner.

Mr. Vineet Sehgal, Advocate
for respondents No.1 and 2.

Mr. Fateh Singh Dhillon, Advocate for
Mr. Gagneshwar Walia, Advocate
for respondent No.3.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for setting aside notice (Annexure P-4) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 and possession notice dated 04.08.2022 (Annexure P-8) under Section 13(4) of SARFAESI Act as well as all subsequent proceedings undertaken by respondents No.1 and 2 in respect to loan accounts bearing No.823559 and 810696.

2. Loan facility, it is submitted, was availed of by petitioner's son on 30.11.2017 and 31.01.2018. Petitioner's daughter-in-law i.e. wife

of her son was the co-borrower alongwith petitioner's son in the loan accounts. Petitioner's son unfortunately passed away on 26.05.2021. Admittedly due to financial indiscipline account in question was declared Non Performing Asset (NPA) on 06.03.2022 with notice(s) under Section 13(2) and 13(4) of SARFAESI Act as mentioned in foregoing paras being issued to co-borrowers.

3. Petitioner thereafter filed Civil Suit dated 27.09.2021 seeking a declaration to the effect that she is the absolute owner in possession of property in question which had been mortgaged to secure the loans taken by her son and that transfer deeds No.789 and 790 dated 11.05.2017 and subsequent mutations thereof should be declared null, void and not binding upon her.

4. Present writ petition has been filed challenging proceedings under SARFAESI Act initiated by respondent financial institution. It is further submitted that Insurance Covers were obtained by the petitioner's son but liability was cleared partly only by concerned Insurance Company in an arbitrary manner. Complete outstanding amount was not cleared. Petitioner, it is further contended is not on talking terms with her daughter-in-law though it is conceded case of the petitioner that both of them alongwith grand-sons of petitioner are living at the same address/house though on different floors. Learned counsel submits that without prejudice to petitioner's pending Civil Suit, petitioner being Class I legal heir of her son, would in any case be entitled to at least her requisite share in her son's property. Thus, she is entitled to safeguard her interest therein. Proceedings initiated under SARFAESI Act it is submitted are in complete violation of applicable

provisions of law. It is thus prayed that this writ petition be allowed.

5. Writ petition is contested by respondents. Written statement on behalf of respondent-Financial Institution as well as Insurance Company is on record. Objection regarding entertainability of this writ petition has been raised while submitting that petitioner is neither borrower/co-borrower or guarantor of loan accounts. She is not owner of the secured asset mortgaged in favour of respondents No.1 and 2 being stranger to the lis has no cause of action in maintaining present proceedings. The borrower in this case, it is submitted has not approached this Court. Learned counsel for Insurance Company submits that entire amount as due has been released. Group Insurance Policies taken by deceased were Reducing Sum Assured Policies, thus, Insurance Company was not under obligation to clear entire outstanding loan amount, therefore, death benefits are payable according to the Reduction Schedules as provided in Certificates of Insurance. In this view of the matter, Insurance Company did not have any obligation to clear the entire outstanding amount. Learned counsel for respondent-Bank submits that entire proceedings have been undertaken in strict consonance with provisions of applicable law/rules and reputations. Dismissal of writ petition is thus sought.

6. Heard learned counsel for the parties.

7. Keeping in view facts and circumstances of the matter, we do not find any ground for interference at this stage. Gainful reference in this regard can be made 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**

<u>others v. Naveen Mathew Philip and</u> <u>another</u>, 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 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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> *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.*"

8. Moreover, it is to be noticed that relief claimed in this writ petition is qua a Private non-Banking Home Finance Company. It has

been held by Hon'ble Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345, in respect to entertainability of such writ petitions as under:-

> *"12. 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 (supra) and Ramesh Ahluwalia (supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."*

8. Keeping in view the facts and circumstances, we do not find any ground for entertaining the writ petition at this stage. Any dispute regarding settlement of insurance claim is not a ground for interference as argued. Writ petition is accordingly disposed of with liberty to

petitioner to avail the remedy/remedies as may be available to her in accordance with law for challenging proceedings under SARFAESI Act or any grievance in respect to settlement of claim by Insurance Company. There is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

20.12.2023
Rimpal

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