IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2023:PHHC:161844-DB

(103+208) **CWP-24129-2022(O&M)**

Date of Decision: 16.12.2023

Sanjay Bansal --Petitioner

Versus

District Magistrate & another --Respondents

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

Present:- Mr. Amit Chaudhary, Advocate for petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Ms. Ridhi Bansal, Advocate for respondent no.2.
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<u>LISA GILL.J (Oral)</u>

1. Prayer in this petition is for setting aside sale notice dated 19.09.2022 (Annexure P-3) and for setting aside all proceedings undertaken under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short SARFAESI Act) against the petitioner.

2. It is submitted that loan facility of Rs.3,50,99,338/- was extended to M/s Asian Plywood Industries (petitioner being a partner therein) by M/s Diwan Housing Finance Corporation Ltd. (DHFL) in March, 2017. Property belonging to petitioner and his wife as detailed in para 4 of the writ petition was mortgaged to secure the loan. Due to dispute with some other partners there was financial indiscipline. It is submitted that petitioner along with his wife shifted to Yaounde in Cameroon (West Africa) in December, 2018. In their absence proceedings under the SARFAESI Act were initiated against the petitioner by DHFL. Notice under Section 13(2) of SARFAESI Act was issued on 31.07.2019 calling

upon the petitioner and his wife to deposit a sum of Rs.3,63,54,655/-. Said notice was, however, not received by them. In the meanwhile, DHFL merged with M/s Piramal Capital & Housing Finance Ltd. i.e. respondent no.2 on 30.9.2021. Physical possession of property was taken on 20.07.2022 on the basis of order in favour of DHFL under Section 14 of SARFAESI Act passed in an illegal manner. Thereafter sale notice dated 19.09.2022 was issued with reserve price of property to be fixed as Rs.4.50 crore. Auction, as per the sale notice was to be conducted on 20.10.2022. Present writ petition was then filed.

3. Notice of motion was issued in this writ petition on 19.10.2022 by Coordinate Bench. It was stated before Coordinate Bench on 28.03.2023 that property in question had been successfully auctioned for a sum of Rs.4,21,00,000/-. Sale certificate dated 20.01.2023 was issued in favour of successful bidder. Learned counsel for respondent no.2 was asked to explain as to how sale amount less than reserved price of Rs.4.50 crore was accepted.

4. Written statement on behalf of respondent no.2 has been filed. Learned counsel for respondent no.2 points out that as no bid was received pursuant to sale notice dated 19.09.2022, a second sale notice was issued on 17.11.2022 with reserve price being reduced to Rs.4,10,00,000/-. Copy of the said sale notice is attached as Annexure R-2/2 with the written statement. Therefore, there is no question of property being sold at less than reserve price. Sale certificate dated 19.9.2022 stands issued. The said position, it is submitted has not been brought forth by the petitioner. Furthermore, it is contended that present petition is also not entertainable against respondent no.2 keeping in view the judgement of Hon'ble Supreme

Court in ***Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022(1) RCR (Civil) 888.***

5. It is pertinent to note at this stage that SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise qua action taken thereunder. Interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India is called for only in exceptional or extraordinary circumstances. Gainful reference in this regard can be made to judgment 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 and M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.***

7. Learned counsel for petitioner is unable to point out any exceptional or extraordinary circumstance which calls for interference in this matter. It is further not in dispute that claim in this petition is qua private non-banking housing finance company. In this respect Hon'ble the Supreme Court in ***Phoenix ARC Private Limited's*** case (supra) has 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 ismaintainable 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."*

8. Keeping in view the facts and circumstances above, learned counsel for petitioner is unable to point out any ground for interference in this matter.

9. At this stage, it is brought to our notice by learned counsel for respondents that CM-14810-2023 has been filed by respondents for directing the petitioner to remove their moveable articles which were lying in the secured asset as petitioner had failed to remove the same. Consequently said articles were removed and have been placed at a warehouse by respondent no.2. Necessary inventory in this regard has been duly prepared. It is submitted that petitioner should be directed to remove the same as unnecessary expenditure on storage of the said articles is being incurred.

10. Learned counsel for petitioner submits that articles in question shall be removed by the petitioner within a period of 15 days of receipt of certified copy of this order subject to his right to raise any objection in case all the articles are not available.

11. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail remedy/(ies) available to him in accordance with law.

12. Pending application(s), if any, shall also stand disposed of.

(LISA GILL)
JUDGE

16.12.2023 **(RITU TAGORE)**
lucky **JUDGE**