2023:PHHC:128255-DB

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

CM-16768-CWP-2023 in/and
CWP-20811-2023
Date of Decision: October 04, 2023

PREETINDER SINGH AND ANR ...... Petitioners

Versus

PEERAMAL CAPITAL AND HOUSING FINANCE LIMITED AND ANOTHER ..... Respondents

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

Present: Mr. Nandan Jindal, Advocate for the petitioners.

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LISA GILL, J.

CM-16768-CWP-2023

Prayer in the application is for preponement of hearing of this petition.

For the reasons mentioned in the application as well as arguments addressed, hearing of the petition is preponed from 02.11.2023 for today itself, at request of learned counsel.

Application is disposed of, accordingly.

CWP-20811-2023 (O&M)

1. Petitioners in this writ petition are aggrieved of proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') initiated against them by the respondent. Petitioners seek quashing of order

dated 11.07.2023 under Section 14 of SARFAESI Act passed by the learned Additional District Magistrate, Sangrur.

2. It is vehemently argued that petitioners never received any notice under section 13(2) of SARFAESI Act or any other notice and even order dated 11.07.2023, it is submitted, was obtained by the petitioners through an application under Right to Information Act, 2005. It is submitted that though there was financial indiscipline inasmuch as 37 instalments were not deposited, however, petitioners are ready and willing to deposit the amount due. Proceedings under SARFAESI Act, it is submitted, are absolutely illegal and in violation of provisions of law. It is, thus, prayed that this petition be allowed.

3. Heard learned counsel for the petitioners.

4. Account of the petitioners was declared Non Performing Asset (NPA) on 01.01.2020. Notices under Sections 13(2) and 13 (4) of SARFAESI Act were also issued though case set up by the petitioners is that they never received said notices.

5. Be that as it may, it is undeniable that petitioners have efficacious remedy for redressal of their grievance as raised in this writ petition. SARFAESI Act is a complete code in itself. No extraordinary or exceptional ground has been pointed out by learned counsel for the petitioners, which calls for interference in exercise of jurisdiction under Article 226 of Constitution of India. Hon'ble the Supreme Court has consistently deprecated the practice of interference by writ courts at this stage. Gainful reference 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 and **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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> 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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> xxx xxx 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."

6. It is further to be noted that relief claimed in this writ petition is qua Piramal Capital and Housing Finance company. In view of the judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888**, present writ petition, in any case, is not entertainable. Hon'ble the Supreme Court in the case of **Phoenix ARC** (supra) 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."

7. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioners to avail statutory remedy/remedies available to them in accordance with law.

8. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 04, 2023
rts

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