2023:PHHC:094738-DB

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

CWP-26645-2021
Date of Decision: July 25, 2023

DALBIR SINGH DHALIWAL AND ANOTHER ...... Petitioners

Versus

UCO BANK AND ANOTHER ..... Respondents

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

Present: Mr. Amit Jaiswal, Advocate for the petitioners.

Mr. Gaurav Goel, Advocate for the respondents.

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LISA GILL, J.

1. Prayer in this petition is for quashing notice dated 08.12.2021 (Annexure P1) under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') on the ground that secured asset is agricultural land.

2. It is submitted that petitioners had availed credit facilities. Due to financial indiscipline, account of the petitioners was declared Non Performing Asset (NPA), notice under Section 13(2) was issued on 28.04.2021 and notice Section 13 of SARFAESI Act was issued to the petitioners on 08.12.2021 by respondent – Bank. Learned counsel for the petitioners has raised various arguments to challenge the proceedings under

the SARFAESI Act initiated by the respondent – Bank including the plea that the land in question is an agricultural land.

3. Learned counsel for the respondents while referring to the written statement filed on behalf of the respondent – Bank submits that first and foremost land was never mortgaged at the time of availing the loan facility as agricultural property. Moreover, rooms and sheds have been constructed on the mortgaged property whereon the business of dairy farming has been carried out as reflected in the photographs attached with the written statement.

4. Be that as it may, after hearing learned counsel for the petitioners, we find no ground to interfere in this writ petition in exercise of jurisdiction under Article 226 of the Constitution of India. This is so for the reason that the petitioners admittedly have an efficacious alternate remedy/remedies for redressal of their grievance under the SARFAESI Act. It is a settled position that as a general rule, interference by this Court would be declined in view of availability of efficacious alternate remedy to the litigant until and unless exception circumstances are pointed out.

4. 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** and Division Bench judgment of this High Court in **CWP No.10738 of 2022 (M/s Harinder Fabrics v. Shriram City Union Finance Ltd.)** decided on 04.05.2023. 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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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.

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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15. The object and reasons behind the Act 54of 2002 are very clear as observed by this Court in **Maria 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."

5. It is reiterated that no exceptional or extraordinary circumstance has been pointed out by learned counsel for the petitioner calling for interference by this Court under Article 226 of the Constitution of India. All the pleas and arguments as raised before us can needless to say be adjudicated upon by the Debit Recovery Tribunal, in accordance with law.

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

7. It is clarified that there is no expression of opinion on the merits of the case.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

July 25, 2023
rts

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