IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110 **CWP-21209-2023**
Date of Decision: 22.09.2023

MANJIT KAUR AND ANR
... Petitioners

VERSUS

RESERVE BANK OF INDIA AND ORS
....Respondents

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

Present: Mr. Parunjeet Singh, Advocate
for the petitioners.

Mr. Harsh Chopra, Advocate
for respondent No.2.

*****

<u>LISA GILL, J.(Oral)</u>

1. Petitioners in this writ petition seek restraint upon respondents from taking possession of the mortgaged assets pursuant to notice dated 18.08.2016 (Annexure P-1), 16.11.2016 (Annexure P-2) issued under Section 13(2) and 13(4) respectively of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 (SARFAESI Act) besides order dated 29.05.2018/19.06.2018 (Annexure P-3) under Section 14 of the SARFAESI Act as well as notice dated 30.08.2023 (Annexure P-14) issued by the Tehsildar-cum-Taxation Magistrate, Khanna, District Ludhiana. It is prayed that direction be issued for implementation of circular(s) dated 18.08.2023 (Annexure P-13) and 08.06.2023 (Annexure P-11) issued by Reserve Bank of India (RBI) as the same have statutory flavour. There is a further prayer for directing respondent

No.1 and 6 to decide representation/complaint dated 17.05.2021 (Annexure P-9) submitted by petitioners against respondent No.2.

2. Brief facts necessary for adjudication of the petition are that Jaswant Singh Mankoo-husband of petitioner No.1 alongwith both petitioners availed loan facility of Rs.60 lakhs on 31.12.2013 from Dewan Housing Finance Corporation (DHFC). Residential property as described was mortgaged. It is to be noted at this stage that it is only Jaswant Singh Mankoo who is averred to have taken the loan. However, in the notice dated 18.08.2016 (Annexure P-1) under Section 13(2) of SARFAESI Act, petitioners alongwith Jaswant Singh Mankoo and one Parminder Singh are mentioned to be co-borrowers. Due to financial indiscipline, account of the petitioners was declared Non-Performing Asset (NPA) and notice dated 18.08.2016 was issued under Section 13(2) by DHFC which thereafter stood acquired by respondent No.2-Piramal Capital and Housing Finance Limited. Notice dated 16.11.2016 was issued under Section 13(4) of the SARFAESI Act and ultimately order dated 19.06.2018 was passed under Section 14 of the Act.

3. It is submitted that petitioner No.1's husband along with the petitioners submitted a proposal for One Time Settlement (OTS) on 17.10.2018. SA No.232 of 2017 was filed by the petitioner and her husband challenging SARFAESI proceedings initiated against them taking up various pleas available to them. SA No.232 of 2017 was dismissed by learned Debts Recovery Tribunal, Chandigarh (DRT-III, Chandigarh) after hearing the parties on 15.03.2019.

4. It is averred that Jaswant Singh Mankoo i.e. husband and

father of petitioners No.1 and 2, respectively, unfortunately passed away on 12.10.2020. In the meanwhile, DHFC initiated proceedings for financial bankruptcy before NCLT, Mumbai and was acquired by Piramal Capital and Housing Finance Limited. Petitioners, it is submitted filed a complaint before the Insurance Regulatory and Development Authority (IRDA) of India, that erstwhile DHFC had claimed exorbitant and excessive interest from the petitioners. IRDA advised the petitioners to approach RBI upon which complaint was filed before RBI on 17.05.2021. Respondent No.2, it is contended on one hand was in negotiation with the petitioners for settlement of the loan account and on the other an application on its behalf was submitted before Tehsildar, Khanna for execution of order dated 19.06.2018 passed by the District Magistrate, Khanna, District Ludhiana.

5. Learned counsel for the petitioners vehemently argued that circulars issued by RBI have a statutory flavour as has been held by Hon'ble the Supreme Court in ***M/s Sardar Associates vs. Punjab and Sind Bank, 2009 (8) SCC 257***. Violation thereof is alleged in as much as excessive interest has statedly been charged from the petitioners in violation of circular dated 18.08.2023 and that respondent No.2 is under a mandate to follow the guidelines in respect to compromise settlements in terms of circular dated 08.06.2023 issued by RBI. It is thus prayed that this writ petition be allowed.

6. Learned counsel for respondent No.2 on advance notice has refuted the arguments as raised and prayed for dismissal of this writ petition while submitting that apart from the fact that petitioners have

efficacious alternate remedy for redressal of their grievances, present writ petition should not be entertained in view of judgment of Hon'ble the Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, 2022 (5) SCC 345.

7. It is further pointed out that SA No.232 of 2017 filed by petitioners was dismissed on 15.03.2019 and has attained finality as petitioners have not appealed against said decision, therefore, they are now not entitled to seek stay of proceedings under the SARFAESI Act in this manner. Another SA No.62 of 2019 filed by Gurpreet Singh, a person claiming to be a tenant is informed to be still pending adjudication before learned DRT, Chandigarh.

8. Heard learned counsel for the parties and have carefully perused the file.

9. It is a matter of record that earlier writ petition i.e. CWP-16351-2018 filed by the petitioners was allowed with the matter being remitted to learned DRT to decide the matter afresh in accordance with law. Thereafter, SA No.232 of 2017 challenging SARFAESI proceedings initiated against petitioners and Jaswant Singh Mankoo was admittedly dismissed on 15.03.2019. Present petitioners were clearly party before learned DRT as well, though wording of the writ petition suggests that it was only the late husband and father of petitioners No.1 and 2 respectively, who had filed the said SA. Order dated 15.03.2019 in SA-232-2017 has not been challenged by the petitioners.

10. It is a settled position that once efficacious remedy is

available to the petitioners, interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India has to be minimal and is to be invoked only in exceptional or extraordinary circumstances. Gainful reference can be made to the judgment of Hon'ble the Supreme Court in **Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34 and 771,** wherein it has been held as under:-

> *"34. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of predeposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of predeposit contemplated under 2nd proviso to Section 18 of the Act 2002."*

11. No such exceptional or extraordinary circumstance 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. The ingenuous argument that writ petition should be entertained at this stage due to violation of the RBI circulars is devoid of any merit. Total outstanding against the petitioners as per notice dated 16.11.2016 (Annexure P-2) under Section 13(4) was Rs.60,43,897/-.

12. Another fact to be noted is that relief claimed in this writ petition is primarily qua respondent No.2 which is a private non-Banking Housing Finance Company. Mere impleadment of RBI and district administration by itself cannot render the present writ petition

entertainable. The petitioner has ample efficacious remedy for requisite action to be taken against respondent No.2 for non-compliance of circulars of the RBI.

13. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in this writ petition which is accordingly dismissed with liberty to the petitioners to avail/pursue the remedy/remedies available to them in accordance with law for redressal of grievance(s) as raised by them.

(LISA GILL)
JUDGE

22.09.2023
Rimpal

(RITU TAGORE)
JUDGE

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