

CWP-25139-2022

2023:PHHC:124514-DB

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25139-2022

Date of Decision: September 21, 2023

UMED SINGH AND ANOTHER Petitioners

Versus

DISTRICT MAGISTRATE AND ORS. Respondents

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

Present: Mr. H.S. Jagdev, Advocate for the petitioners.

Mr. Sukhdeep Parmar, Sr.DAG, Haryana.

Ms. Puja Chopra, Advocate for respondent No. 2.

Mr. Amit Sharma, Advocate for respondent No. 4.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside sale notice dated 27.02.2021 (Annexure P9), sale certificate dated 19.04.2021 (Annexure P10); order dated 07.06.2022 (Annexure P13) under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') passed by respondent No. 1 as well as order dated 29.08.2022 (Annexure P17) passed by learned DRT-II, Chandigarh

2. It is submitted that petitioners availed term loan for a sum of Rs.64 lakhs repayable in 180 equated monthly instalments of ₹78,881/- commencing from 05.09.2016 till 05.10.2031. Residential house of petitioners was mortgaged for the same. Petitioners faced some financial

CWP-25139-2022

difficulties in the year 2017 on account of which their account was declared Non Performing Asset (NPA). Arbitration proceedings were initiated at Chennai by respondent No. 2 and Award dated 28.03.2018 was passed by the Arbitrator, statedly in an illegal manner. Account of petitioners was declared NPA on 17.02.2020 statedly after passing of award with liability of Rs.83,60,745.09. Notices dated 20.03.2020 and 23.01.2021 under Section 13(2) and under Section 13(4) of SARFAESI Act, respectively were issued. Petitioners submitted representation dated 12.02.2021 before respondent No. 2 offering to settle the loan account for Rs.62 crores and clearing the same within 1½ months. Sale notice dated 27.02.2021 was, however, issued for sale of the mortgaged property on 31.03.2021. Pursuant thereto, respondent No. 4 was, however, declared the highest bidder and sale certificate dated 19.04.2021 was issued.

3. Petitioners filed SA-44-2022 before learned DRT-II, Chandigarh on 10.12.2021. CWP-12189-2022 was filed by respondent No. 2 seeking compliance of order dated 07.06.2022 passed by the District Magistrate under Section 14 of SARFAESI Act. CM-10623-CWP-2022 was filed by the present petitioners in CWP-12189-2022, where after petitioners were arrayed as respondents No. 3 and 4 in the above said writ petition. Same was disposed of on 25.07.2022 while directing learned DRT-II to decide interim application filed by the petitioner in SA-44-2021 on the date fixed, with a further direction that till then order dated 07.06.2022 under Section 14 of SARFAESI Act should not be implemented.

4. Prayer for interim relief by the petitioners was declined by learned DRT vide order dated 29.08.2022. Said order was challenged by the petitioners by way of CWP-22742-2022 in which initially notice of motion

CWP-25139-2022

was issued. Application seeking withdrawal of writ petition was filed by the petitioners with liberty to file afresh with better particulars. Said writ petition was, accordingly, dismissed as withdrawn on 31.10.2022 with liberty aforesaid. Subsequent thereto, petitioners filed present writ petition through another counsel.

5. Notice of motion was issued in this writ petition on 01.11.2022 while restraining 4th respondent from creating any third party interest or changing physical features of the secured asset purchased by them pursuant to sale certificate dated 19.04.2021 issued in their favour by respondent No. 2.

6. Learned counsel for the petitioners argued that entire process under SARFAESI Act as undertaken by respondent No. 2 is illegal and arbitrary. Sale in favour of respondent No. 4 should be set aside, *inter alia*, on the ground that publication of sale notices was done through two newspapers, which do not have sufficient circulation at Faridabad. Physical possession of the property was taken on 03.10.2022 pursuant to notice dated 19.09.2022, therefore, requirement of fifteen (15) days clear notice was not complied with. No inventory or panchnama was provided to the petitioners. One Time Settlement proposal submitted by the petitioners was not decided before carrying out sale of the property and that order under Section 14 of SARFAESI Act has been incorrectly passed by the learned District Magistrate without complying with mandatory provisions of the said Act. Furthermore, interim relief has been incorrectly denied to petitioners by learned DRT. Thus, this writ petition be allowed.

7. Reply on behalf of respondents No. 1, 2 and 4 has been filed. Averments as raised by the petitioners are denied. It is further urged by

CWP-25139-2022

learned counsel for respondent No. 2 that order dated 29.08.2022 passed by learned DRT declining interim relief is an appealable order, therefore, present writ petition should not be entertained. Moreover, SA-44-2022 filed by the petitioners was dismissed in default on 13.02.2023. No steps have been taken by the petitioners for restoration of the same. It is, thus, prayed that this petition be dismissed.

8. We have heard learned counsel for the parties.

9. Admittedly, petitioners had approached learned DRT for challenging proceedings under SARFAESI Act initiated against them. Order dated 29.08.2022 wherein interim relief was denied to the petitioners is admittedly appealable under Section 18 of the SARFAESI Act before learned DRAT. It is further not denied that no action has been taken by the petitioners to revive the proceedings before learned DRT-II, Chandigarh.

10. It is a settled position of law that SARFAESI Act is a complete code in itself with specific remedies provided thereunder. Admittedly, scope of interference therein is negligible. It has been held by Hon'ble the Supreme Court in a number of cases that there should be no interference in such matter except in extraordinary and exceptional cases. Gainful reference in this regard can be made to the judgment 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.

xxx xxx xxx

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.

xxx xxx xxx xxx

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.

xxx xxx xxx

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.”

11. Learned counsel for the petitioners is unable to point out any exceptional or extraordinary circumstances, which call for interference by this Court. Merely because SA-44-2022 filed by petitioners has in the interregnum been dismissed in default is not a ground to entertain this writ petition as urged.

12. Another aspect to be noted is that relief claimed in this writ petition is qua a private non-banking finance company, therefore, in any case, no ground is made out for interference especially keeping in view 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**, wherein it has been 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.”

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

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 21, 2023

rts

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