

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

CM-16867-CWP-2023 in/and

CWP-21669-2023

Date of Decision: October 04, 2023

SHAM SUNDER BHATIA

..... Petitioner

Versus

ICICI BANK AND ANOTHER

..... Respondents

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

Present: Mr. Neeraj Yadav, Advocate for the applicant-petitioner.

Mr. Rahul Garg, Advocate for the respondent – Bank.

LISA GILL, J.

CM-16867-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 23.11.2023 for today itself.

Application is disposed of, accordingly.

CWP-21669-2023

1. Prayer in this writ petition is for setting aside possession notice dated 29.08.2023 (Annexure P3) under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’).

2. It is submitted that actual physical possession of the residential house of the petitioner has been taken by the respondent – Bank in complete violation of the procedure as laid down under the SARFAESI Act. Two loans against the property in question had been availed of by the petitioner in November, 2018. Due to financial indiscipline, petitioner's account was declared NPA. It is averred that symbolic possession of the house was taken. It is submitted that purported notice dated 30.08.2021 under Section 13(2) of SARFAESI Act and notice dated 29.08.2023 under Section 13(4) of SARFAESI Act were never received by the petitioners. Intent of the respondent – Bank throughout, it is submitted, was to take possession of the property and sell it through auction at meagre price. It is further submitted that petitioner is ready and willing to settle the matter and deposit the amount due with reasonable rate of interest in case reasonable time for the same is afforded to him. Learned counsel for the petitioner submits that petitioner is interested to sell the house in question after restoration of possession and repay the total outstanding.

3. Heard learned counsel.

4. Keeping in view the factual matrix of the matter, we do not find any ground to interfere in exercise of jurisdiction under Article 226 of the Constitution of India. Undeniably, petitioner has an efficacious remedy for redressal of his grievance qua proceedings initiated by the respondent – Bank under SARFAESI Act. Useful reference in this regard can be made to 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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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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15. The object and reasons behind the Act 54 of 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 of 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. Learned counsel for the petitioner is unable to point out any exceptional or extraordinary circumstances, which call for interference by this Court. Furthermore, petitioner does not have a vested right for a settlement. Direction to the respondent in this respect as urged by learned counsel for the petitioner is not called for.

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

7. It is clarified that there is no expression of opinion on the merits of the controversy and parties are always at liberty to settle on mutually acceptable terms.

**(LISA GILL)
JUDGE**

**(RITU TAGORE)
JUDGE**

October 04, 2023
rts

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