

CWP-22808-2023

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2023:PHHC:131798-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-22808-2023

Date of Decision: 10.10.2023

ASHISH MATHUR AND ANR

... Petitioners

VERSUS

ICICI BANK LTD. AND OTHERS

....Respondents

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

Present: Mr. Viren Jain, Advocate and
Ms. Komaljit Kaur, Advocate
for the petitioners.

Mr. Sandeep Suri, Advocate
for the respondent-Bank.

Mr. Sandeep Jain, Additional A.G. Punjab.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing notice dated 17.08.2020 (Annexure P-9) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002, notice(s) dated 12.03.2021 (Annexure P-10) and 14.07.2022 (Annexure P-14) under Section 13(4) of SARFAESI Act and notice dated 14.09.2023 (Annexure P-15) issued by Tehsildar, Ludhiana pursuant to order dated 23.08.2023, passed by District Magistrate, Ludhiana under Section 14 of SARFAESI Act.

2. It is submitted that petitioners had availed of three loan facilities in the year 2014 for a sum of Rs.97,83,000/-. Residential house as described in the writ petition was mortgaged with the respondent-

Bank. It is further submitted that due to outbreak of the pandemic Covid-19, petitioners suffered a financial crunch and there was delay in deposit of EMIs. Petitioners also had to face fraud being committed against them by one of their purchasers in respect of which FIR No.269 under Section 420 IPC was registered at Police Station Division No.3, Ludhiana. Petitioners represented before the respondent-Bank for rescheduling their account. Their request for restructuring was kept pending and behind their back, their account was illegally declared Non-Performing Asset (NPA) on 29.02.2020. Notice under Section 13(2) of SARFAESI Act was issued on 17.08.2020 (Annexure P-9) and notice(s) under Section 13(4) of SARFAESI Act was/were issued on 12.03.2021(Annexure P-10) and 14.07.2022 (Annexure P-14).

3. Petitioners filed CWP-5947 of 2022, seeking quashing of the said notice(s) as well as notice dated 14.09.2023 (Annexure P-15) issued by Tehsildar, Ludhiana on the ground that notices in question had not been served upon the petitioners and order dated 12.01.2022 under Section 14 had been obtained by the respondent-Bank in an illegal manner. Notice of motion was issued in CWP-5947-2022 by co-ordinate Bench on 24.03.2022 and said writ petition was ultimately disposed of on 15.05.2023 as notice dated 09.03.2021 issued under Section 13(4) of SARFAESI Act was withdrawn and it was stated on behalf of respondent-Bank that fresh proceedings under Section 13(4) of SARFAESI Act have been initiated.

4. Thereafter, notice dated 14.07.2022 (Annexure P-14) under Section 13(4) of SARFAESI Act was issued and notice dated 14.09.2023 (Annexure P-15) has been issued by Tehsildar, Ludhiana for handing

over possession in terms of order dated 23.08.2023 passed by District Magistrate, Ludhiana.

4. It is vehemently argued that the procedure yet again adopted by the respondent-Bank is absolutely illegal and in violation of provisions of law and principles of natural justice. The petitioners always being ready and willing to deposit the overdue amount had approached the respondent-Bank but respondent-Bank never reverted back. Tenure of the loan was not increased as had been requested by the petitioners.

5. Learned counsel for the respondent-Bank (on advance notice) while challenging entertainability of this writ petition itself, submits that total outstanding qua both accounts of the petitioners as on date is Rs.1,16,52,123/- and overdue amount is Rs.52,14,941/-. Petitioners, it is submitted are only interested in delaying the matters. Dismissal of writ petition is sought.

6. The amount as stated before us is disputed by learned counsel for the petitioners.

7. Heard learned counsel for the parties and have perused the file with their able assistance.

8. Petitioners seek to challenge proceedings under SARFAESI Act initiated against them by the respondent-Bank. Admittedly, SARFAESI Act is a complete code in itself, providing for remedies for any grievances which may arise in respect to steps taken thereunder. It has been held by Hon'ble the Supreme Court on various occasions that inference by High Courts in exercise of jurisdiction under Article 226 of the Constitution of India should be minimal in such cases. It is only in

exceptional or extraordinary circumstances that jurisdiction should be exercised. It has been held in judgment of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110**, as under:-

“17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal

of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

“18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation.

Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.”

9. The abovesaid has been reiterated in various subsequent judgments including Hon'ble the Supreme Court in **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771**, wherein it has been held as under:-

“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.”

10. Learned counsel for the petitioners is unable to point out any exceptional or extraordinary circumstance which calls for interference by this Court in this writ petition.
11. Reference to the earlier writ petition i.e. CWP-5947-2022 filed by petitioners to submit that the same was duly entertained, cannot in any manner be a ground for interference in the present writ petition in view of settled position of law.
12. Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in this writ petition. Writ petition is accordingly dismissed with liberty to the petitioners to avail the remedy/remedies as available to them in accordance with law. Needless to say parties are always at liberty to arrive at any mutually acceptable settlement. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

10.10.2023
Rimpal

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