2023:PHHC:127932-DB

137 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-22238-2023
Date of Decision: October 03, 2023

Chanchal Bajaj and another ...... Petitioners

Versus

Asset Care and Reconstruction Enterprise Limited and another ..... Respondents

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

Present: Mr. Shubhnit Hans, Advocate for the petitioners.

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LISA GILL, J.

1. Petitioners seek quashing of order dated 26.07.2023 (Annexure P1) under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') passed by learned Chief Judicial Magistrate, Chandigarh. Challenge is also to notice dated 18.09.2023 (Annexure P8) issued pursuant thereto. It is submitted that order dated 26.07.2023 has been passed in an illegal arbitrary manner without granting due opportunity of hearing to present their case or even file reply. They were incorrectly proceeded ex-parte on 13.06.2023.

2. Learned counsel or the petitioners submits that son of the present petitioners was the principal borrower having secured loan of ₹2,97,00,000/- from Indiabulls Housing Finance Limited. Equitable

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mortgage of the property as described in the writ petition was created. Unfortunately, son of the petitioners passed away on 23.02.2019. Present petitioners though Directors of the Firm in question had no knowledge of day to day affairs of the company as the same were managed solely by their son and they had only appended their signatures on the asking of their son. Petitioners, it is further submitted came to know about the entire factual situation only when they received notice from the Court of learned Chief Judicial Magistrate, Chandigarh for 26.05.2023. Petitioners were incorrectly proceeded exparte despite the fact that they had engaged a lawyer. Power of attorney had been duly placed on record. Application for setting aside order dated 14.06.2023 whereby they were proceeded exparte was also filed but the same was not entertained. Impugned order dated 26.07.2023, it is submitted, has been incorrectly passed and subsequent notice dated 18.09.2023 (Annexure P8) illegally issued. It is, thus, prayed that this writ petition be allowed.

3. We have heard learned counsel for the petitioners and have gone through the file with his assistance.

4. Learned counsel for the petitioners is unable to deny that petitioners have an efficacious alternate remedy for redressal of their grievance as raised in this writ petition. Admittedly, the SARFAESI Act is a complete code in itself. Scope of interference in exercise of jurisdiction under Article 226 of Constitution of India is extremely limited. Gainful 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.**

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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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> 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.
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> xxx xxx xxx xxx
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> 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.
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> xxx xxx xxx
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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

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> 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 petitioners is unable to point out any exceptional or extraordinary circumstances, which call for interference by this Court at this stage.

6. Moreover, relief claimed in this writ petition is qua Asset Reconstruction 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

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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."

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

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 03, 2023
rts

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

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