2023:PHHC:132905-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23048 of 2023 (O&M)
Date of Decision: 12.10.2023

AJAY KUMAR @ AJAY SHARMA AND ANOTHER ...... Petitioner(s)

Versus

AADHAR HOUSING FINANCE LTD. ..... Respondent(s)

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

Present: Mr. Kuldip Singh, Advocate
for the petitioner.

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 22.07.2023 (Annexure P-9), issued by the respondent-financial institution namely Aadhar Housing Finance Ltd. under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act).

2. It is submitted that petitioners alongwith Naresh Kumar i.e. father and husband of petitioners no.1 and 2, respectively, availed of loan facility while mortgaging the property in question on 24.05.2019. Petitioner no.1, it is submitted, unfortunately met with an accident on 18.01.2020 having suffered head injuries. He was afflicted with permanent disability of 20% on account of brain damage. Petitioner no.1 was thus unable to carry on with his job. Thereafter, Naresh Kumar, father of petitioner no.1 also passed away on 23.12.2022. Account of petitioner was declared Non Performing Asset (NPA), though date thereof is not mentioned. Proceedings under the SARFAESI Act

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were initiated by the respondent. It is to be noted that notice under Section 13(2) of SARFAESI Act has not been attached and neither is learned counsel for the petitioner able to disclose details thereof. Notice under Section 13(4) of SARFAESI Act was issued on 22.07.2023.

3. Learned counsel for the petitioner argues that it is due to unfortunate circumstances beyond the control of petitioners that amount in question could not be deposited within the stipulated period. It is also submitted that impugned notice dated 22.07.2023 is in contravention of the provisions of law inasmuch as one of the borrowers had since died. It is further submitted that petitioner has filed a claim under the Motor Vehicles Act, 1988, which is pending before learned Motor Accident Claims Tribunal, Chandigarh. Petitioners, it is submitted, are sanguine about the success of their claim, therefore, proceedings under the SARFAESI Act should be deferred to await the outcome thereof so that petitioners may deposit the loan amount thereafter.

4. We heard learned counsel for the petitioners but do not find any ground to interfere in this writ petition in exercise of jurisdiction under Article 226 of the Constitution of India. Petitioners admittedly have an efficacious remedy for redressal of their grievance in respect to proceedings initiated against them under the SARFAESI Act. It is a settled position of law that it is only in exceptional or extraordinary circumstances that interference by this Court is made out. This position has been reiterated by the Hon'ble Supreme Court in ***Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110*** 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:-

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"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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.

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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

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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. No such exceptional circumstance has been pointed out by learned counsel for the petitioners, which calls for interference. Moreover, it is also to be noted that this writ petition has been filed seeking relief qua a private non-banking housing finance company i.e. Aadhar Housing Finance Ltd., therefore, interference by way of this writ petition is not called for in any manner. Hon'ble the Supreme Court in ***Phoenix ARC Private Limited. Vs. Vishwa Bharati Vidya Mandir and others, 2022 AIR (SC) 1045***, has 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

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> 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 Vs. 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 of the matter, writ petition is accordingly dismissed with liberty to the petitioners to avail the remedy/remedies as may be available to the petitioners, in accordance with law.

8. There is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

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

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