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

118 **CWP-22862-2023**
Date of Decision: 10.10.2023

RAJPAL TONGAR AND ANOTHER

... Petitioners

VERSUS

IIFL HOME FINANCE LTD AND ANOTHER

....Respondents

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

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

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for directing respondent No.1 to restore possession of residential house of the petitioners and to re-calculate the amount due, as an extremely high rate of interest has been imposed in violation of the provisions of law.

2. Petitioners, it is submitted had obtained a housing loan in the month of October 2018. Due to financial indiscipline, account of petitioners was declared Non-Performing Asset (NPA) and notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 was issued on 06.11.2019 (Annexure P-2) seeking deposit of Rs.14,44,062/-

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as the total amount due and outstanding as on 06.11.2019. Notice under Section 13(4) of SARFAESI Act was issued on 22.01.2020 (Annexure P-3) and order under Section 14 of SARFAESI Act was passed on 08.06.2023 (Annexure P-4). Possession of the property in question had been taken on 20.09.2023 with Police help in an absolutely illegal manner and petitioners were not even permitted to remove their belongings including school bags of the children. It is contended that in case the respondent-Financial Company had not levied the arbitrary and illegal rate of interest of 21.25%, petitioners' account would not have been declared NPA. Levy of this rate of interest is absolutely illegal. It is thus prayed that this writ petition be allowed.

3. Heard learned counsel for the petitioner and have gone through the file with his able assistance.

4. It is undeniable that SARFAESI Act is a complete code in itself. Petitioners have the statutory remedy for redressal of the grievances as raised by them in this writ petition. Gainful reference in this regard can be made to the judgments of Hon'ble the 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) while reiterating its earlier judgments held that where an alternate efficacious remedy is available to the litigant before a Forum constituted under a statute, interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India should be restricted to exceptional cases. It was held as under:-

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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.*
>
> *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.*"

5. No exceptional or extra ordinary circumstance has been pointed out by learned counsel for the petitioner in this writ petition which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India.

6. Furthermore, it is to be noted that relief claimed in this writ petition is qua a private non-Banking Housing Finance Company. In this respect gainful reference can be made to the judgment of Hon'ble the Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa***

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Bharati Vidya Mandir and others, 2022 (5) SCC 345, wherein it has been held as under:-

> *"12. 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 (supra) and Ramesh Ahluwalia (supra) 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 disposed of while relegating the petitioners to their remedy under the SARFAESI Act with liberty to raise all pleas as are available to them including the plea regarding allowing the petitioners to remove the household articles. There is no expression of opinion on the

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merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

10.10.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No

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