2023:PHHC:150226-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-27908 of 2022
Date of decision : November 23, 2023

Jagdish

...... Petitioner

Versus

Poonawala Fincorp Limited (Formally known as Magma Fincorp Finance Ltd.)

...... Respondents

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

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Present :-Mr. B. S. Beniwal, Advocate
for the petitioner.

Mr. Raghav Garg, Advocate for the respondent.

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LISA GILL, J. (ORAL)

1. Prayer in this petition is for setting aside proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act) initiated against the petitioner by respondent Poonawala Fincorp Limited (Now known as Magma Fincorp Finance Ltd.).

2. It is submitted that loan of Rs. 35 lacs was availed of by petitioner for expansion of his business on 24.08.2014 from Poonawala Fincorp Limited now known as Magma Fincorp Finance Ltd. It is submitted that petitioner's account was declared Non-Performing Asset (NPA) w.e.f. 01.10.2021 in an illegal and arbitrary manner even though last installment was received on 30.09.2021. Notice dated 20.11.2021 was issued under Section 13 (2) of

SARFAESI Act seeking deposit of Rs.33,65,402/- due as on 19.11.2021 along with interest @15.8% per annum. Notice under Section 13 (4) of SARFAESI Act was issued on 16.06.2022. Learned counsel for petitioner submits that order dated 09.11.2022 was erroneously passed under Section 14 of SARFAESI Act. It is stated that tenure of loan account of the petitioner was w.e.f. 07.09.2014 to 07.12.2030 and that petitioner is ready to deposit the amount due after deduction of incorrect rate of interest and penalty which has been levied by the respondent-Bank. Moreover, respondent, it is asserted, is not entitled to proceed against the petitioner under SARFAESI Act. It is, thus prayed that this writ petition be allowed.

3. Learned counsel for respondent while raising an objection regarding entertainability of the writ petiton itself, submits that order dated 05.12.2022 passed in this writ petition has also not been complied with by petitioner. All proceedings under SARFAESI Act, it is asserted, have been undertaken in consonance with applicable provisions. Dismissal of writ petition be sought.

4. At this stage, learned counsel for the petitioner submits that written statement has not been filed on behalf of the respondent, therefore this writ petition should be adjourned. He further submits that calcuation as to how amount of Rs. 12,95,000/- has been sought for regularisation of loan account has not been furnished to petitioner till date. It is contended that respondent has proceeded against the petitioner under SARFAESI Act without even extending the courtesy of giving details/account statement of the petitioner. However, learned counsel for the respondent submits that there is no necessity of filing reply in this writ petition keeping in view the settled position of law and non-compliance of order dated 05.12.2022 by the petitioner and that detail account statement shall be provided to the petitioner within one week.

5. Heard learned counsel for the parties and perused the file with their assistance.

6. In the given factual matrix, intervention by this Court in exercise of jurisdiction under Article 226 of Constitution of India is not made out. It is a settled position of law that SARFAESI Act is a complete code in itself wherein remedy(ies) for any grievance on account of proceedings undertaken therein are specifically provided. Intervention by this Court has to be minimal and restricted to extraordinary and exceptional circumstances. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance, which calls for interference. Furthermore, it is to be noticed that petitioner has admittedly not deposited sum of Rs. 12,95,000/- on or before 05.01.2023 in terms of order dated 05.12.2022 passed by this Court. Infact no amount has been deposited by the petitioner till date. Moreover petitioner is claiming relief qua respondent, 'Poonawala Fincorp Limited', which is admittedly a private Housing Financial (Non-banking) institution, therefore, no ground is made out for interference in the present writ petition in any case. Gainful reference in this regard can be made to the judgment of the Hon'ble 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 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 petitioner to avail remedy/remedies available to him 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

November 23, 2023
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Whether speaking/reasoned Yes/No
Whether Reportable : Yes/No