

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

CWP-23710-2023

Date of Decision: October 18, 2023

SUNIL KUMAR

..... Petitioner

Versus

ICICI BANK LTD. AND OTHERS

..... Respondents

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

Present: Mr. V.K. Sharma, Advocate for the petitioner.

Mr. D.K. Singal, Advocate for respondent No. 1.

LISA GILL, J.

1. Petitioner claims to be lessee of the property, which is the asset secured by borrowers i.e. respondents No. 3 and 4, who had availed loan facility from the respondent – Bank. Lease agreement between petitioner and respondents No. 3 and 4 is stated to have been executed on 17.03.2023. It is submitted that petitioner filed a civil suit seeking permanent injunction for restraining respondents No. 3 and 4 from dispossessing him. Said suit was decreed by learned Additional Civil Judge (Senior Division), Kurukshetra on 01.05.2023 restraining the said respondents from dispossessing the petitioner except in due course of law.

2. Admittedly, respondents No. 3 and 4 have availed of loan facility from respondent – bank. Due to financial indiscipline on the part of respondents No. 3 and 4, their account was declared Non Performing Asset

(NPA) on 26.03.2023. Notice under Section 13(2) of SARFAESI Act was first issued on 18.05.2023, which was withdrawn due to some technical defect and thereafter notice under Section 13(2) of SARFAESI Act has been issued on 14.09.2023. Petitioner being aggrieved of abovesaid proceedings under the SARFAESI Act has filed the present writ petition.

3. Having heard learned counsel for the petitioner, we do not find any ground whatsoever to interfere in this writ petition. Reliance by learned counsel for the petitioner on judgment and decree dated 01.05.2023 is clearly misplaced as the Bank is not a party thereto and it is clearly mentioned therein that compromise will not affect the rights, if any, of third parties in respect to suit land. It is a matter of record that property in question stands mortgaged with the respondent – Bank. SARFAESI Act is a complete Code in itself providing for remedy(ies) in respect to grievance(s), if any, qua proceedings taken thereunder. It is always open to the petitioner, if so aggrieved by abovesaid proceedings, to avail necessary remedies thereunder itself. It has been held by Hon'ble the Supreme Court in number of cases that High Court should refrain from interfering in such like matters. 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. 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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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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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.”

4. Learned counsel for the petitioner is unable to point out any exceptional or extraordinary circumstance, which calls for interference in exercise of jurisdiction under Article 226 of the Constitution of India at this stage.

5. 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.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 18, 2023

Rts

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