

2023:PHHC:098662-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
262**

CWP-27755-2022 (O&M)

Date of decision: August 01, 2023

AMIT KUMAR

.....PETITIONER

Versus

AXIS BANK AND OTHERS

.....RESPONDENTS

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

Present: Mr. Deepak Arora, Advocate,
for the petitioner.

Mr. D.K. Singal, Advocate,
for the respondents.

LISA GILL, J. (ORAL)

1. Prayer in this writ petition is for setting aside notice dated 02.05.2022 (Annexure P-3) issued under Section 13 (2) and notice dated 20.07.2022 (Annexure P-4) issued under Section 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short-'SARFAESI Act') and a direction to respondents No. 1 and 2 to consider the proposal for One Time Settlement submitted by the petitioner.

2. Learned counsel for the petitioner is unable to deny that the petitioner has an alternative efficacious remedy for redressal of his grievance. Gainful reference in this regard can be made to judgments of

Hon'ble Supreme Court in *Union Bank of India Vs. Satyawati Tandon and others, 2010 (8) SCC 110, M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023 (1) RCR (Civil) 771, Varimadugu Obi Reddy Vs. B.Sreenivasulu and others, 2023 (1) RCR (Civil) 34* and Division Bench judgment of this High Court in CWP No. 10738 of 2022, titled M/s Harinder Fabrics Vs. Shriram City Union Finance Limited, decided on 04.05.2023. Hon'ble Supreme Court in 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.

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 commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

3. Furthermore, it is to be noticed that no ground for issuance of a direction to respondents for accepting a particular One Time Settlement, as has been proposed by the petitioner is made out in exercise of jurisdiction under Article 226 of the Constitution of India. Reference in this regard can be made to judgment of the Hon'ble Supreme Court in ***The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56.***

4. Faced with the above, learned counsel for the petitioner seeks to withdraw this writ petition with liberty to the petitioner to avail the remedy/remedies as available to the petitioner in accordance with law.

5. Writ petition is accordingly dismissed as withdrawn with liberty as aforesaid.
6. Pending miscellaneous applications, if any, also stand disposed of.

(LISA GILL)
JUDGE

August 01, 2023
pj

(RITU TAGORE)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether reportable: *Yes/No*