2023:PHHC:143748-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116 **CWP-24373-2023 (O&M)**
Date of Decision: 07.11.2023

Shailender Arora and another

... Petitioners

Vs.

ICICI Home Finance Company Limited and others

....Respondents

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

Present: Mr. Gagan Puri, Advocate
for the petitioners.

Mr. Raghav Garg, Advocate
for the respondents.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing notice dated 12.05.2023 (Annexure P-2) issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 and possession notice dated 05.08.2023 (Annexure P-3) issued under Section 13(4) of SARFAESI Act.

2. It is submitted that loan facility was availed of by petitioners but there was financial indiscipline on their part due to unavoidable circumstances. However, settlement was arrived at as sanctioned on 01.09.2022 (Annexure P-1) by the respondent. Learned counsel for petitioners submits that it was only an amount of Rs.60 lakhs which could be deposited by the petitioners instead of Rs.1,17,50,687/-

by 06.05.2023 in terms of abovesaid settlement. Subsequently, petitioners account was declared NPA on 06.05.2023. Proceedings under SARFAESI Act were initiated with issuance of notice under Section 13(2) of SARFAESI Act on 12.05.2023 (Annexure P-2) and under Section 13(4) of SARFAESI Act on 05.08.2023 (Annexure P-3). Application under Section 14 of SARFAESI Act was filed by respondents in which notice has been issued to the petitioners. It is submitted that proceedings under SARFAESI Act are in complete violation of the provisions thereof. Petitioners were not even intimated of the account being declared NPA. It is further submitted that petitioners have been approaching respondents for a settlement/extension of time for depositing the amount in question but to no avail. Hence present writ petition has been filed.

3. Learned counsel for respondents (on advance notice) apart from raising the question of entertainability of this writ petition submits that petitioners failed to deposit the amount in terms of OTS sanctioned in their favour for a sum of Rs.1,17,50,687/- instead of the dues of Rs.1,45,37,389/-. No ground for extension of time to deposit OTS amount is made out. Subsequently, proceedings under SARFAESI Act have been taken in strict accordance with provisions of law. Dismissal of writ petition is sought.

4. Heard learned counsel for the parties and have gone through the file with their able assistance.

5. It is undeniable that petitioners have an efficacious remedy for redressal of grievances as raised by them in this writ petition in respect to proceedings undertaken under SARFAESI Act by the

respondents. Interference by the High Court in such like matters except in exceptional and extraordinary circumstances is not called for. 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:-

> "*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."

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

7. Furthermore, it is to be noted that relief claimed in this writ petition is qua a private non-Banking Home Finance Company, thus is not entertainable in any case. In this respect gainful reference can be made to judgment of Hon'ble the Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa 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."*

8. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioners to avail the statutory remedy(ies) available to them. Needless to say it is always open to the parties to arrive at a mutually acceptable settlement.There is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

07.11.2023
Rimpal

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