

CWP-28102-2022

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2023:PHHC:161394-DB

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

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CWP-28102-2022

Date of Decision: 14.12.2023

KAVITA DUNG AND ANR

... Petitioners

VERSUS

ICICI BANK LTD AND ORS.

....Respondents

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

Present: Mr. Dalip Kumar Tuteja, Advocate
for the petitioners.

Mr. Karan Gaba, Advocate for
Mr. Sandeep Suri, Advocate
for respondent No.1.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing impugned possession notice dated 20.03.2022 (Annexure P-2) issued by respondent-Bank and order dated 02.09.2022 (Annexure P-3) issued by District Magistrate, Rohtak-respondent No.2 on application under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 filed by respondent Bank.

2. Admittedly, loan facility was availed of by petitioners. Due to financial indiscipline, account was declared Non-Performing Asset (NPA) and proceedings under SARFAESI Act were initiated against

petitioners. Notice(s) under Sections 13(2) and 13(4) of the SARFAESI Act were issued, though it is stated in the writ petition that notice under Section 13(2) of the Act was never served upon the petitioners. Various grounds have been raised on behalf of petitioners to challenge proceedings initiated under SARFAESI Act. It is stated that said proceedings are in violation of provisions of the Act itself and applicable rules. It is thus prayed that this writ petition be allowed.

3. Preliminary objection has been raised by learned counsel for respondent-Bank regarding entertainability of writ petition. It is further submitted by learned counsel for respondent that petitioners failed to deposit the amount in terms of order dated 13.12.2022, 19.12.2022 and 03.11.2023. Therefore, this writ petition should be dismissed. .

4. Heard learned counsel for the parties.

5. It is to be noted that notice of motion was issued in this writ petition by co-ordinate Bench on 13.12.2022. It was directed that subject to petitioners depositing a sum of Rs.6,26,000/- with respondent No.1 within one week and continuing to pay future installments as and when they fall due without default, they shall not be dispossessed from the secured asset and in default interim order would stand vacated. Period of one week was substituted with a period of one month vide order dated 19.12.2022. Said conditional orders, it is pointed out were not complied with and on 03.11.2023, following order was passed:-

“Learned counsel for respondent No.1-bank, on instructions from Mr. Ayesha Negi, Manager Legal, submits that in case overdue amount of Rs. 5,19,219/- is deposited by 30.11.2023, account of petitioners can be regularised/made standard. Learned counsel for petitioners

submits that petitioners undertake to deposit the said overdue amount on or before 30.11.2023 and further undertake that they would deposit the instalments as they fall due on the stipulated date(s). An undertaking to this effect would be given by the petitioners before the respondent-bank before 30.11.2023.

At request adjourned to 14.12.2023.

In case the amount in question is not deposited by petitioners on or before 30.11.2023, this writ petition may be dismissed without any further reference.”

6. Learned counsel for petitioners fairly states that amount in question has still not been deposited by petitioners as they were unable to aggregate the said amount. There is a request for an indulgence to the petitioners for deposit of the amount within next three months.

7. Having learned counsel for the parties, we do not find any ground for continuance of present proceedings. It has been held by Hon'ble Supreme Court in a catena of cases that interference by this Court in such matters should be minimal and actuated only in extraordinary or exceptional circumstances. 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, 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.”

8. No such exceptional or extraordinary circumstance has been pointed out by learned counsel for petitioners which calls for interference by this Court. It is a matter of record that petitioners despite indulgence having been shown have not deposited the amount in question. We do not find any ground whatsoever to cause interference.

9. Keeping in view the facts and circumstances of the matter,

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(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

Rimpal

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