IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 33627 of 2019

Date of Decision: October 10 , 2023.

The National Rubber and Chemical Industries

...... PETITIONER (s)

Versus

Andhra Bank and another ...... RESPONDENT (s)

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

Present: Mr. Deepak Jaglan, Advocate for
Mr. Ashish Chaudhary, Advocate
for the petitioner.

Mr. V.K.Jindal, Senior Advocate with
Mr. Saurabh Bhardwaj, Advocate and
Mr. Pankaj Gautam, Advocate
for the respondents.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

1. Prayer in this writ petition is for quashing notice dated 01.02.2019 (Annexure P2) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'SARFAESI Act'), possession notice dated 09.07.2019 (Annexure P4) and sale notice dated 16.09.2019 (Annexure P5).

2. It is submitted that petitioner had availed four loan facilities, i.e. three term loans and one cash credit limit as detailed in Para 2 (iii) of the writ petition. Due to financial indiscipline, all accounts of the petitioner were declared Non-Performing Asset (NPA) on 17.12.2018. Proceedings under the SARFAESI Act were initiated against the petitioner with issuance of notice dated

01.02.2019 under Section 13(2) of the SARFAESI Act (Annexure P2) seeking deposit of ₹4,44,28,182.94/- as on 01.02.2019. Notice under Section 13(4) of the SARFAESI Act was issued on 09.07.2019. Learned counsel for the petitioner submits that action undertaken by the respondents under the SARFAESI Act is absolutely illegal and arbitrary inasmuch as objections dated 22.04.2019 filed by the petitioner pursuant to notice under Section 13(2) of the SARFAESI Act were not decided before issuance of notice under Section 13(4) of the SARFAESI Act. It is thus prayed that this writ petition be allowed.

3. Learned counsel for the respondents while raising objection about entertainability of this writ petition in view of settled position of law, submits that huge amount of ₹7,01,66,491.20 as on 03.08.2023 is outstanding towards the petitioner. Moreover, it is submitted that purported objections dated 22.04.2019 were never received by the respondent-Bank. Petitioner should be put to strict proof of the same. Dismissal of writ petition is sought.

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

5. Availing of the loan facility/cash credit limit by the petitioner is a matter of record. Liability of the petitioner is not denied. Ground taken before us is that procedure adopted by the respondent-Bank is illegal and arbitrary inasmuch as objections/representation submitted by the petitioner on 22.04.2019 was not decided prior to issuance of notice under Section 13(4) of the SARFAESI Act. No other argument has been raised before us.

6. Notice of motion was issued in this writ petition on 20.11.2019 by the coordinate Bench while noticing contentions on behalf of the petitioner as well as reliance placed by the petitioner on the decision of Hon'ble Supreme

Court in **Mardia Chemicals Ltd. etc. v. Union of India and others etc.,** ***2004(2) RCR Civil 665***. Further proceedings under the SARFAESI Act were stayed. The matter remained pending before this Court since then.

7. It is to be noted, at this stage, that petitioner has an efficacious remedy to challenge the proceedings under the SARFAESI Act. Hon'ble the Supreme Court in a catena of judgments has held that the High Court should desist from interference in such matters under the SARFAESI Act in exercise of jurisdiction under Article 226 of the Constitution of India. In the case of **Mardia Chemicals Ltd.'s case** (supra) itself, it has been held as under:-

> "50. It has also been submitted that an appeal is entertainable before the Debt Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debt Recovery Tribunal or the appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr. Salve one of the counsel for respondents that there would be no bar to approach the civil court. Therefore, it cannot be said no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debt Recovery Tribunal or appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say the prohibition covers even matters which can be taken cognizance of by the Debt Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken

cognizance of by the Debt Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13."

8. While referring to said judgment in **Mardia Chemicals Ltd.'s case** (supra) and other judgments, Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others**, ***2010(8) SCC 110*** held that when a Tribunal is constituted under the Act, it is expected to consider the issues of law and fact(s) involved. Interference in matters under the SARFAESI Act, except under extraordinary and exceptional circumstances has been frowned upon and deprecated. It was 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. 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."

9. The said judgment has been reiterated consistently by the Hon'ble Supreme Court in subsequent cases including in **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***.

10. No exceptional or extra-ordinary circumstance has been pointed out by learned counsel for the petitioner which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India for setting aside the proceedings initiated by the respondent-Bank under the SARFAESI Act. Learned counsel for the petitioner fairly concedes that the petitioner has not deposited any amount, whatsoever, since 2018. In the given factual matrix, we do not find any ground for intervention in this case

11. Writ petition is, accordingly, dismissed with liberty to the petitioner to avail the remedy/remedies as may be available to him in accordance with law to challenge the proceedings under the SARFAESI Act.

12. Keeping in view the fact that this writ petition has remained pending before this Court since November, 2019, period of two weeks is afforded to the

petitioner to file appropriate petition/application before the concerned Forum/Tribunal alongwith requisite application seeking interim relief/exclusion of the period of delay etc. It is made clear that this interim order shall not enure beyond the period of two weeks in the absence of any order being passed by the appropriate Forum/Tribunal.

13. Needless to say, question of grant/continuance of interim order or exclusion of period of delay would be entirely in the realm of consideration of learned Debt Recovery Tribunal, which would decide the same in accordance with law without being influenced in any manner by interim order(s) earlier passed in this writ petition.

14. It is made clear that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 10 , 2023.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No