

CWP-24981-2023

:1:

2023:PHHC:141571-DB

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

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CWP-24981-2023

Date of Decision: 07.11.2023

M/S S. S. ENTERPRISES AND ANR

... Petitioners

VERSUS

UCO BANK AND ORS

....Respondents

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

Present: Mr. Amit Parashar, Advocate
for the petitioners.

Mr. Nonish Kumar, Advocate
for the respondent-Bank.

LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing notice dated 15.05.2023 (Annexure P-3) issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 and possession proceedings dated 17.10.2023 (Annexure P-10) whereby respondent No.2 is to take possession of residential house of the petitioner today i.e. on 07.11.2023.

2. Admittedly, petitioner No.1 has filed SA-217 of 2023 challenging proceedings under the SARFAESI Act initiated against it.

This SA is pending adjudication. Interim relief claimed by the petitioner

was declined by learned Debts Recovery Tribunal-II (DRT-II), Chandigarh vide order dated 29.09.2023 (Annexure P-9).

3. Heard.

4. It is undeniable that order dated 29.09.2023 (Annexure P-9) passed by learned Debts Recovery Tribunal-II (DRT) Chandigarh is an appealable order. It is a settled position that SARFAESI Act is a complete code in itself providing for remedies for any grievance arising out of proceedings thereunder. It has been held in a number of cases by Hon'ble the Supreme Court that inference in such matters has to be limited to extraordinary or exceptional cases. Gainful reference can be made to judgment of Hon'ble the Supreme Court in Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34 and 771, wherein it has been held as under:-

“34. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of predeposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of predeposit contemplated under 2nd proviso to Section 18 of the Act 2002.”

5. Learned counsel for the petitioner is unable to point out any

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exceptional or extra-ordinary circumstance to cause interfere in exercise of jurisdiction under Article 226 of Constitution of India. Argument that secured assest is a residential house, by itself, does not constitute an exceptional circumstance which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India.

6. Keeping in view the facts and circumstances of the matter, writ petition is dismissed with liberty to petitioners to avail/pursue statutory remedy(ies) available to them in accordance with law.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

07.11.2023
Rimpal

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