2023:PHHC:144089-DB

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25261-2023
Date of Decision: November 14, 2023

DEEPAK KUMAR ...... Petitioner

Versus

AADHAR HOUSING FINANCE LIMITED AND OTHERS
..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Yadav, Advocate for the petitioner.

Mr. Sameer Mahajan, Advocate for the respondent – Bank.

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LISA GILL, J.

1. Prayer in this writ petition is for quashing notice dated 20.10.2023 (Annexure P2) issued by respondent No. 2 pursuant to order dated 26.09.2023 passed by District Magistrate, Jhajjar under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act').

2. Learned counsel for the petitioner submits that loan of ₹19,31,369/- was taken by the petitioner in the year 2017 for a tenure of 180 months with EMI of ₹26,147/-. Admittedly, there was financial indiscipline on part of the petitioner. However, it is submitted that same was due to unavoidable circumstances and specifically due to outbreak of pandemic

COVID-19. It is submitted that petitioner came to know about proceedings initiated by the respondent – bank under SARFAESI Act only on receipt of notice dated 20.10.2023 issued in pursuance to order dated 26.09.2023 passed by learned District Magistrate, Jhajjar. Learned counsel for petitioner submits that petitioner did not receive any notice under Sections 13(2) and 13(4) of SARFAESI Act. Order passed under Section 14 of SARFAESI Act is absolutely illegal and arbitrary. Moreover, proceedings could not have been initiated against the petitioner in view of notification dated 12.02.2021.

3. Learned counsel for respondent (on advance notice) raises preliminary objection regarding entertainability of this writ petition itself and further submits that entire proceedings have been undertaken in accordance with law. Postal receipts regarding notice(s) issued to the petitioner are available. Moreover, petitioner being a private Housing Finance Company, is not amenable to writ jurisdiction especially in view of judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888.** Dismissal of the writ petition has been sought.

4. Heard, learned counsel for the parties.

5. Liability of the petitioner is not denied. In the given factual matrix, intervention by this Court in exercise of jurisdiction under Article 226 of Constitution of India is not made out. It is a settled position of law that SARFAESI Act is a complete code in itself wherein remedy(ies) for any grievance on account of proceedings undertaken therein are specifically provided. Intervention by this Court has to be minimal and restricted to

extraordinary and exceptional circumstances. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance, which calls for interference. Gainful reference 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** 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) 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.
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> 15. The object and reasons behind the Act 54of 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 or 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. It is further to be noted that relief claimed in this writ petition is qua private Housing Finance Company, therefore, present writ petition is not entertainable. Hon'ble the Supreme Court in the case of **Phoenix ARC** (supra) held as under:-

" 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 v. Shri C.A. Imanual, (1969) 1 SCC 585** and **Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

7. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail statutory remedy/remedies available to him in accordance with law.

8. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

November 14, 2023
rts

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