IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.17124-CWP of 2023 in
CM No.17135-CWP of 2023 in/and
Civil Writ Petition No.29125 of 2022
Date of Decision: October 13 , 2023.

Satbir ...... PETITIONER (s)

Versus

M/s Ambit Finvest Pvt. Ltd. and others ...... RESPONDENT (s)

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

Present: Mr. Aditya Jain, Advocate for the petitioner.

Mr. Jatin Bansal, Advocate for respondent No.1.

Mr. Deepak Grewal, DAG Haryana .

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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. Applicant/petitioner seeks recall of order dated 20.07.2023, whereby this writ petition was dismissed in default and for non-prosecution. Relevant portion of order dated 20.07.2023 reads as under:-

> "2. Petitioner along with his father had availed loan facility from respondent No.1 in 2018 for a sum of Rs.25,74,930/-. On account of financial indiscipline loan account of the petitioner was declared Non-Performing Asset (NPA). Notice under Section 13(2) of SARFAESI Act was issued on 15.04.2021 and notice under Section 13(4) of the Act was issued on 07.08.2021. Application under Section 14 of the Act filed by respondent No.1 was allowed on 31.10.2022.
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> 3. Notice of motion was issued in this writ petition by coordinate Bench on 16.12.2022. It was directed that subject to the petitioner depositing Rs.5,91,000/- within one week and continuing

to pay future installments as and when they fall due, he would not be dispossessed from the secured assets.

4. There was non-compliance of order dated 16.12.2022. Further indulgence was granted by the co-ordinate Bench on 03.05.2023 enabling the petitioner to make necessary deposit within one month thereof and furnish an affidavit that he would pay the EMIs regularly, failing which, he can be proceeded against as per law.

5. Learned counsel for respondent No.1 informs that due compliance has still not been made.

6. Perusal of the file reveals that none had appeared on behalf of the petitioner on the last date of hearing. Today again there is no representation on behalf of the petitioner. Apart from non-compliance of earlier orders passed in this writ petition, we note that petitioner also has an alternate efficacious remedy for redressal of his grievance.

7. In view of the above facts and circumstances, this petition is dismissed in default and for non-prosecution."

2. Learned counsel for applicant/petitioner submits that as proper assistance was not made available, it could not be brought to notice of the Court that after passing of order dated 16.12.2022, petitioner was granted the indulgence for depositing ₹5 lakhs along with EMI by subsequent order dated 03.05.2023. Interim order in favour of petitioner was extended provided draft of ₹5 lakhs along with EMI for one month is furnished by petitioner on the next date of hearing since claim in notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was for ₹27,23,263/-. Though the amount was not deposited on 30.05.2023, however time for compliance thereof was extended till next the date of hearing i.e. 06.07.2023. The matter was not taken up on 06.07.2023 and was adjourned to 20.07.2023 when the writ petition was dismissed in default and for non-

prosecution. The sum of ₹5 lakhs could not be arranged within the stipulated period, but the same was ultimately deposited on different dates from 13.09.2023 to 21.09.2023 as detailed in para-6 of the application.

3. Delay of 48 days in filing this application i.e. CM-17135-CWP-2023, it is submitted, has occurred due to file of the main case being misplaced.

4. It is submitted that counsel could not appear on 20.07.2023 for reasons beyond his control. Therefore, this application be allowed and order dated 20.07.2023 be recalled.

5. We have heard learned counsel for the parties on the merits of the writ petition as well.

6. Admittedly, petitioner did not deposit the amount in question in terms of various orders passed in this writ petition. Various amounts were deposited on different dates from 13.09.2023 to 21.09.2023 as detailed in application dated 20.09.2023 accompanied by affidavit dated 26.09.2023. Said amount was admittedly deposited after dismissal of writ petition on 20.07.2023.

7. Be that as it may, it is undeniable that petitioner has an efficacious remedy for redressal of grievances qua proceedings initiated against him under SARFAESI Act. No exceptional circumstance is pointed out by learned counsel for the petitioner which calls for interference in exercise of jurisdiction under Article 226 of Constitution of India. Interference by High Court in such like matters has been frowned upon and deprecated. Gainful reference in this regard can be made to the judgment 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**.

8. Moreover relief claimed in this writ petition is qua a private Non-Banking Financial Institution. Therefore, writ petition, in any case is not maintainable. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in the case of **Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and others, 2022 (1) R.C.R. (Civil) 888**, wherein it has been 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 Vs. 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."

9. Keeping in view the facts and circumstances of the matter, it is apparent that no ground is made out for interference in the writ petition itself. As we have heard arguments in the writ petition itself, order dated 20.07.2023 is recalled. Application for restoration of writ petition is allowed. Question of condonation of delay in filing the application is rendered academic in the given circumstances, application is disposed of accordingly.

10. Writ petition is dismissed with liberty to petitioner to avail the remedy(ies) available to him for redressal of his grievance in accordance with law.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

October 13, 2023
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No