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

**CWP-25535-2023(O&M)
Date of Decision: 09.11.2023**

M/s Sharma Poultry Farm and another .... Petitioners

Versus

Canara Bank and another ...... Respondents

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

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Present: Mr. J.S.Cooner, Advocate for the petitioners.

Mr.Sartaj Singh Gill, Advocate for respondent No.1.

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LISA GILL, J.(Oral)

1. Prayer in this writ petition is for quashing recall notice dated 22.05.2023 (Annexure P-1), notice dated 29.08.2023 (Annexure P-2) under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act and sale notice dated 04.10.2023 issued by respondent-Bank. There is further prayer to consider request/representation dated 21.03.2023 (Annexure P-8) submitted by proprietor of petitioner No.1 (i.e. petitioner No.2), to the effect that he is unable to deposit EMI's with interest and he required one year or 6 months to improve the condition and deposit the same.

2. Learned counsel for petitioners submits that loan facility(ies) had admittedly been availed of by the petitioners but due to set back suffered by the petitioner in its business there was financial indiscipline. However,

without considering the financial hardship faced by petitioners due to adverse affect of Covid-19 Pandemic and two successive outbreaks of bird flu in the region, coercive measures were illegally adopted by respondents under SARFAESI Act for recovery of the loan amount. Notice under Section 13(2) was issued on 03.06.2023 and under Section 13(4) on 29.08.2023. Thereafter sale notice dated 04.10.2023 has been issued for auction of the petitioners' property on 13.11.2023.

3. Learned counsel for petitioners argues that proceedings undertaken under SARFAESI Act against the petitioners without considering their proposal for One Time Settlement (OTS) of the outstanding loan amount and for extension of time in deposit of dues is absolutely illegal and arbitrary. At the time of hearing it is submitted that petitioners are ready and willing to deposit a sum of Rs. 5 lakhs today and rest of the amount due within one year.

4. Learned counsel for the respondent-bank (on advance notice) while refuting the arguments as raised by learned counsel for petitioners, submits that present writ petition itself is not entertainable keeping in view the efficacious alternate remedy/remedies available to the petitioners for redressal of their grievances. It is further submitted that as on 03.06.2023 the total outstanding amount due from petitioners is Rs. 43, 27, 449/- and sole intention of petitioners is to delay proceedings. No concrete proposal has ever been submitted by petitioners. It is thus prayed that this writ petition be dismissed.

5. Having heard learned counsel for the parties, we do not find any ground what-so-ever to interfere in exercise of jurisdiction under Article 226

of the Constitution of India. Petitioners admittedly have an efficacious remedy under SARFAESI Act for redressal of their grievances. SARFAESI Act is a complete Code in itself, providing for remedies in case of any grievance arising from proceedings taken thereunder. Interference in the same in exercise of writ jurisdiction has to be minimal and restricted to exceptional or extraordinary circumstances. Gainful reference in this regard can be made to the judgments 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.** 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."*

7. It is relevant to note that One Time Settlement (OTS) is not a vested right available to a borrower/ a guarantor. It is to be noticed that in the given factual matrix proposal offered by petitioners during the course of hearing to deposit a sum of Rs. 5 lakhs with the assurance to deposit the rest of the amount due within one year cannot be a ground to stall proceedings under the SARFAESI Act at this stage.

8. Keeping in view the facts and circumstances of the matter, writ petition is dismissed with liberty to the petitioners to avail the statutory remedy/remedies in accordance with law in respect to proceedings initiated against them in accordance with law. Needles to say, it is always open to parties to arrive at any mutually acceptable settlement.

9. Pending miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

09.11.2023
sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No