2023:PHHC:147998-DB

128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26005-2023
Date of Decision: November 21, 2023

SUBHASH KUMAR BAWEJA AND OTHERS ...... Petitioners

Versus

STATE OF PUNJAB AND OTHERS ..... Respondents

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

Present: Mr. Virendra Pratap Singh, Advocate for the petitioners.

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LISA GILL, J.

1. Petitioners have challenged proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') initiated against them by respondents No. 2 and 3.

2. It is submitted that petitioners availed of financial assistance of ₹52 lakhs from respondents No. 2 and 3 i.e. CSL Finance Limited on 31.03.2022 for a period of ten years i.e. from 04.04.2022 to 04.04.2032. Sum of ₹33,710/- was deducted towards insurance premium charges but loan amount was never insured. Sixteen (16) blank signed cheques of petitioner No. 1 and co-borrowers i.e. petitioners No. 2 and 3 were also taken.

3. Learned counsel for petitioners submits that respondent – Finance Company has misused three of said security cheques. Petitioners had been depositing installments regularly till January, 2023 but installments for the months of February and March could not be deposited due to medical

emergency in the family. Written request was submitted by petitioners before Finance Company for adjusting two EMIs with already credited excess amount of ₹2,33,710/-. However, in an illegal and unjustified manner, loan account of petitioner was declared Non Performing Asset (NPA) and only seven (07) days were afforded for deposit of amount due instead of ninety (90) days in clear cut violation of mandate of SARFAESI Act. Notice under Section 13(2) was issued on 20.03.2023 in an unjustified and illegal manner. It is averred that blank signed cheques submitted by petitioners are being misused. It is contended that complaint under Section 138 of Negotiable Instrument Act has been filed against petitioners and proceedings under Arbitration and Conciliation Act have also been undertaken by the respondents, therefore, simultaneous initiation of proceedings under SARFAESI Act are not called for. It is, thus, prayed that this writ petition be allowed.

4. Heard, learned counsel for the petitioners and have gone through the file with his able assistance.

5. Petitioners have challenged initiation of SARFAESI proceedings against them by respondents No. 2 and 3 as well as order dated 26.09.2023 passed by learned Additional District Magistrate, Ludhiana on application under Section 14 of SARFAESI Act. Factum of complaint under Section 138 of Negotiable Instrument Act and pendency of arbitration proceedings are not a bar for proceeding under SARFAESI Act as is sought to be urged before us. Furthermore, it is undeniable 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 petitioners is unable to point out any extraordinary and exceptional circumstance, which calls for interference. All pleas raised before us are within the realm of consideration by appropriate Forum under the SARFAESI Act. 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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> xxx xxx xxx
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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. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail remedy/remedies available to them in accordance with law.

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

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 21, 2023
Rts

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