



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 14584/2022**

Date of Decision: **11.08.2023**

IN THE MATTERS OF:

SHRI GIRISH BANSAL
S/O LATE SHRI DHYAN CHAND PETITIONER NO.1

SMT. USHA BANSAL
W/O SHRI GIRISH BANSAL
BOTH R/O H.NO.B-388, GALI NO.18,
BHAJANPURA, DELHI-110053 PETITIONER NO.2

SHRI DEVENDER KUMAR
S/O LATE SHRI DHYAN CHAND
R/O B-405, GALI NO. 18,
BHAJANPURA, DELHI PETITIONER NO.3

Through: Mr.R.K.Chanda, Mr.P.N.Malhotra and
Mr. C.S. Rathore, Advocates.

Versus

SHRI YASHPAL SINGLA
S/O SHRI SATISH KUMAR SINGLA
R/O FLAT NO. 304, MANCHASTER-02,
SECTOR-78, MAHAGUN MODERN MANTHAN,
SCHOOL, NOIDA, GAUTAM BUDH NAGAR,
NOIDA, (UP) 201301RESPONDENT NO.1

HINDUJA LEYLAND FINANCE LTD.
THROUGH ITS AUTHORIZED OFFICER
MR. AMIT KUMARRESPONDENT NO.2

AMRIT MAAN
R/O 9/25, EAST PATEL NAGAR, NEW DELHI

.....RESPONDENT NO.3

**THE SUB-REGISTRAR-IV,
SEELAMPUR, DELHI**

.....RESPONDENT NO.4

**THE GOVT. OF NCT OF DELHI
THROUGH ITS SECRETARIAT
PANCSHEEL NATH MARG, DELHI**

.....RESPONDENT NO.5

Through: Mr.Vishal Khattar, Ms.Vandana
Kapoor and Ms.Aneesha
Sharma, Advocates for R-2.
Mr.Divyam Nandrajog, Panel
Counsel for GNCTD with
Mr.Jain Dua, Advocate for R-4
& 5.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioners in the instant writ petition are aggrieved by the order passed by the learned Chief Metropolitan Magistrate (CMM), KKD Court, Delhi on 22.09.2022 whereby, pursuant to an application filed by the respondent no.2-Hinduja Leyland Finance Ltd., a Non-Banking Financial Corporation (*hereinafter as 'NBFC'*), under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter as 'SARFAESI Act'*), a Receiver was appointed to take possession of the secured asset and forward it to the secured creditor.
2. Learned counsel appearing on behalf of the petitioners raised various objections against the said order. According to him, the impugned action is

without jurisdiction as the petitioners are neither the borrower nor the guarantor *qua* the mortgaged property. While pointing out various anomalies in the action taken by the respondents, he also submits that a fraud has been committed on the petitioners by respondent no.1.

3. Learned counsel appearing on behalf of the respondent no.2-NBFC opposes the submissions and he submits that the instant petition, at the stage of appointment of the Receiver, is not maintainable. According to him, in any case, if the petitioners are aggrieved by the action under the provisions of the SARFAESI Act, they need to take an appropriate remedy in accordance with Section 17(1) of the SARFAESI Act.

4. He has placed reliance on the decision of the Hon'ble Supreme Court in the case of *United Bank of India v. Satyawati Tondon & Ors.*¹ and *Phoenix ARC Private Ltd. v. Vishwa Bharati Vidya Mandir & Ors.*² to buttress his submissions. He, therefore, submits that in any case, the assumption for the sake of argument that the petitioner is neither a borrower nor the guarantor but still an aggrieved person, is against the action under the SARFAESI Act. Thus, the writ petition is not maintainable and the petitioners would have an effective remedy under Section 17(1) of the SARFAESI Act.

5. I have considered the submissions made by learned counsel for the parties and perused the record.

6. The impugned order passed by the learned CMM dated 22.09.2022 reads as under:-

1. *The application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest*

¹ (2010) 8 SCC 110

² (2022) 5 SCC 345

Act, 2002 (hereinafter referred to as "the Act") is taken up for consideration.

2. It is stated in the application that the applicant is a secured creditor whereas the respondents are "borrowers" as defined in section 2(1)(f) of the said Act. According to the applicant, the **Plot bearing No. B- 388, out of Khasra No. 424, situated in the area of Village Ghonda, Gurjan Khadar, gall no 18, Bhajapura, Shahdara, Delhi area admeasuring 200 square yards which is bound by a street on the north side, property of other's on south and west side and property bearing no. B-388/1 on west side** (hereinafter referred to as "the asset") is a secured asset, since a "security interest" was created thereon by the borrowers to secure repayment of a loan. The borrowers are stated to have defaulted in repayment of the loan. It is further stated by the applicant that the loan account has been declared as 'non- performing asset. It is further averred that the secured creditor had issued statutory notice under section 13(2) of the Act but the respondents failed to discharge their liability in full within the stipulated period of sixty days from the date of notice. As the per applicant, there is no pending objection of the borrowers. It is stated in the application that possession of the asset needs to be taken and orders for that may be passed

3. Affidavit of the Authorized Officer of the secured creditor, as required by proviso of Section 14(1) of the Act, has also been filed. The affidavit discloses the extent of financial assistance granted and the claim of the Finance Company as on the date of filling the application. It reiterates the aforementioned pleas and fulfills the requirements of the said proviso.

4. Some of the original documents relied upon by the applicant were produced for the inspection of the court. After inspection, the original documents were returned. It is stated that the remaining documents were seized by the police in FIR No. 177/2019, PS EOW, The I.O of this case has submitted that these documents were sent to the FSL and have not been received back.

5. It is not clear as to why when the original documents will be received back from the FSL The present application cannot be kept pending Indefinitely The provisos to Section 14(1) of the Act provide a time limit for disposal of application under Section 14. This has been done so that possession of the secured Asset can be obtained by the secured Creditor expeditiously. In the case of Cholamandalam Investment and Finance Company Limited Vs. Rajeev Chawla and Ors. CM(M) No.716/2021 dated 22.10.2021, the Hon'ble High Court held that time is of essence in proceedings Initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It was held that the purpose behind the Act will be frustrated if there are delays in implementing orders passed under the Act

6. I have heard arguments advanced by the Ld. Counsel for the

secured creditor and have perused the application, affidavit of authorized officer, title deeds of the asset and other supporting documents.

7. Section 14 of the Act enjoins the Chief Metropolitan Magistrate to pass suitable orders for taking possession of the secured asset and to forward it to the secured creditor. It further vests the Magistrate with powers to take all necessary steps and to use force for compliance of its order.

8. The aforementioned assertions of the applicant, duly supported by affidavit and documents, demonstrate that the respondents had availed financial assistance from the applicant Finance Company, that the respondents had created security interest on the asset, that the respondents defaulted in repayment of the loan, that the loan account was declared non-performing asset, that the respondents failed to pay the outstanding loan amount even after receiving notice under section 13 (2) of the Act which afforded a period of sixty days to do so and that there is no pending objection or representation of the respondents.

9. Accordingly, the application of the secured creditor/applicant is allowed. **Ms. Jyoti Mittal Advocate, 14A/57 WEA, Karol Bagh, New Delhi-110005 having mobile no. 9910824488** is appointed to take possession of the asset and to forward it to the secured creditor.

10. It is directed that the Receiver will give a possession notice to the Authorised Officer of the Secured Creditor and to the borrowers within three days of receiving copy of this order. The possession notice shall also be affixed upon the main door or any other conspicuous portion of the secured Asset Photographs of the secured Asset with the passed possession notice shall be taken and filed by the Receiver along with her report.

11. For securing compliance of this order, the Receiver may obtain the assistance of the police and take such other steps and use such force as is found necessary. Police shall render assistance and provide adequate force for protection of the above named person and of the bank employees involved in recovery of the asset. **Ms. Jyoti Mittal Advocate**, is empowered to break open locks in case the asset is found locked and in that eventuality she shall prepare an inventory of the articles lying therein. She shall then hand over copy of the inventory, duly signed by her and witnesses, to the borrowers (if present on the site) and another copy so signed shall be filed in court with her report. While executing these directions, she shall observe caution not to violate orders of any court or for a in respect of the aforesaid property. Her fee is fixed at Rs.80,000/- which shall be paid within seven days from today. Miscellaneous expenses, If any, in carrying out this order shall be home by the secured creditor. All the aforesaid terms are acceptable to the applicant.

12. Report of compliance of the above stated directions shall be filed in the court within one month from today.

13. If the recovery proceedings are stayed by order of Debt Recovery Tribunal or other for a, and in case the stay order is subsequently vacated

or the applicant is granted liberty to recover possession of the property, the mandate of the Receiver to recover possession would stand extended and she shall be at liberty to recover possession of the secured asset and to hand it over to the applicant Finance Company notwithstanding the expiry of aforesaid period of one month. For this purpose, the applicant Finance Company may itself contact the Receiver and the Receiver shall recover possession on the same terms as are mentioned in this order. There shall be no need for the applicant Finance Company to approach this court for extension of time or other directions. However, if the applicant Finance Company, of its own, decides not to recover possession, it shall apply to this court to terminate the mandate of the Receiver and it shall not be lawful for it to itself instruct the Receiver to refrain from or to delay the recovery of possession. In case there is delay on the part of the applicant in compliance with this order, the same shall be explained by the applicant Finance Company by affidavit of the Authorized Officer.

14. Nothing stated in this order shall be construed as a finding of liability or a judicial determination of the issues in contention between the parties.

15. Since the directions sought by the applicant have been passed, nothing survives in the matter. Let file be consigned to record room after receiving compliance report. Copy of this order be given dasti to the Ld. counsel for the applicant. The Reader/Ahlmad shall send a copy of this order to the Receiver by e-mode within two working days from today."

7. It remains undisputed that the property in question is the secured asset and respondent no.2-NBFC is a secured creditor therein. The concerned property is admittedly mortgaged and if the petitioners have any grievance with respect to any of the measures being taken under Section 13(4) of the SARFAESI Act, the appropriate remedy would lie under Section 17(1) of the SARFAESI Act.

8. The aforesaid position has been reiterated by the Hon'ble Supreme Court in the case of **Satyawati Tondon (supra)**. Paragraph nos. 42 and 43 of the aforesaid decision reads as under:-

42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be

affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

9. It is also to be noted that the expression “any person” used in Section 17(1) of the SARFAESI Act is of wide importance. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14 of the SARFAESI Act.

10. In the case of ***Phoenix ARC (supra)***, the Hon’ble Supreme Court while adjudicating on the maintainability of writ petition *qua* the private financial institutions under Article 226 of the Constitution of India against the proposed action under Section 13(4) of the SARFAESI Act, has held as under:

18. Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the 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 Praga Tools Corpn. and Ramesh Ahluwalia relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.*

[Emphasis supplied]

11. So far as the argument regarding the action under Section 13(4) of the SARFAESI Act not being taken is concerned, it is to be noted that during the interregnum i.e., Section 13(2) and Section 13(4) of the SARFAESI Act, the High Court cannot create a separate category for entertaining a writ petition under Article 226 of the Constitution of India.

12. The mandate of law also requires that any action under the SARFAESI Act must go on uninterrupted without any legal intervention so as to ensure that the recovery proceedings are taken to their logical end. In the case of ***Shammy Kumar v. Bank of Baroda and Anr.***³, an argument was advanced that the remedy under Section 17 of the SARFAESI Act would not be maintainable on account of the petitioner being neither a borrower nor a guarantor. This court in paragraph nos. 10 to 15 has held as under:-

10. A bare perusal of Section 17 of the SARFAESI Act, indicates that any person (including a borrower) aggrieved by any of the measures referred to in Section 13(4) of the SARFAESI Act taken by the secured creditor or

³ 2023:DHC:1783

his authorised official under the relevant chapter may make an application along with such fees as may be prescribed to the Debt Recovery Tribunal having jurisdiction in the matter within 45 days and the date on which such measures have been taken. A bare reading of Section 17 of the SARFAESI Act clearly indicates that the remedy under Section 17 of the SARFAESI Act, is not restricted only to the borrower. The petitioner is essentially aggrieved by the measures taken under Section 13(4) of the SARFAESI Act, and therefore, any person who is aggrieved by any measure under Section 13(4) of the SARFAESI Act, has an efficacious alternative remedy under Section 17 of the SARFAESI Act.

*11. The Hon'ble Supreme Court in the case of **Kanaiyalal Lalchand Sachdev & Ors. v. State of Maharashtra & Ors.** held that SARFAESI Act contemplates an efficacious remedy for borrower or any person affected by action under Section 13(4) of the SARFAESI Act by providing appeal before DRT. Paragraph No.23 of the judgment has been reproduced as under :-*

*“23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: *Sadhana Lodh Vs. National Insurance Co. Ltd. & Anr.* (2003) 3 SCC 524; *Surya Dev Rai Vs. Ram Chander Rai & Ors.* (2003) 6 SCC 675; *State Bank of India Vs. Allied Chemical Laboratories & Anr.* 2006 (9) SCC 252).” Therefore, the submission made by learned counsel appearing on behalf of the petitioner has no substance and the same deserves to be rejected.*

Therefore, the submission made by learned counsel appearing on behalf of the petitioner has no substance and the same deserves to be rejected.

*12. Even otherwise, the writ jurisdiction being equitable is discretionary in nature, and should not be exercised unless there are exceptional circumstances as has been held in a catena of cases such as **Commissioner of Income Tax & Ors. v. Chhabil Dass Aggarwal , GM, Sri Siddeshwara Co-op. Bank v. Iqbal & Ors. and Mardia Chemicals Ltd. v. Union of India.***

13. In view of the above, under the facts of the present case where, the petitioner is claiming certain household articles from the mortgaged property in dispute which has been taken over by the respondent No.1-Bank in exercise of power under the provisions of the SARFAESI Act, and the respondent No.1-Bank is disputing the ownership of the petitioner with respect to those household articles, the issue involving adjudication of facts

cannot be gone into writ jurisdiction.

14. Accordingly, this court does not find any substance to entertain the present petition and the same is therefore dismissed.

15. The petitioner is at liberty to take appropriate recourse in accordance with law. Nothing expressed in this order would be construed to be an expression on the merits of the case.

13. A similar view has been taken by this court in the case of **Smt. Madhu Bhandari v. Piramal Capital & Housing Finance Ltd. & Ors**⁴ vide order dated 22.02.2023. Paragraph nos. 9 to 12 reads as under:-

"9. The submission raised by the learned counsel for the petitioner is that the instant property has never been mortgaged and the entire action according to him is being taken against the person who has no concern with NBFC. However, the fact remains that the learned CMM has passed the order in exercise of the power vested under the SARFAESI Act, therefore, the petitioner has the remedy to agitate his grievance before the appropriate forum under the SARFAESI Act. Whether or not the disputed property is subjected to mortgage, as claimed by the petitioner, is a question of fact, which requires proper adjudication under the provisions of the SARFAESI Act.

*10. The Hon'ble Supreme Court recently in the case of **Balkrishna Rama Tarle & Anr. v. Phoenix ARC Private Limited & Ors** . has held that the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial steps and the said Section does not involve any adjudicatory process qua points raised by the borrower against the secured creditor taking possession of the secured assets. It has been held that once all requirement under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an Advocate appointed by the Advocate Commissioner.*

11. In the instant case, if the financial institutions are called upon to explain and to indicate as to which is the secured asset and on what basis the appropriate steps have been taken under the SARFAESI Act, against the secured asset, the same would amount to by passing the remedies available under the SARFAESI Act, which is a course that a writ court

⁴ 2023:DHC:1447

ordinarily avoid except in exceptional circumstances. Since the legal position, as has been explained by the various pronouncements of the Hon'ble Supreme Court, clearly states that any action arising out of exercise of power under the provisions of the SARFAESI Act may not ordinarily be amenable to writ jurisdiction, this court declines to entertain the instant petition.

*12. So far as the principles of law laid down in the decision relied upon by learned counsel for the petitioner in the case of **Radha Krishnan (supra)** is concerned, there is no dispute with respect to the same. However, the same is not applicable under the facts of the present case.*

14. In view of the aforesaid decisions and under the facts of the instant case, it is clear that the petitioners have the statutory remedy under the SARFAESI Act, therefore the instant writ petition should not be entertained.

15. It is, thus, seen that the petitioners will have to take recourse in accordance with Section 17 of the SARFAESI Act. At this stage, this court is not inclined to entertain the instant writ petition. The same is accordingly dismissed.

16. All contentions are left open. This court has not expressed any opinion on the merits of the case.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 11, 2023/MJ