



CWP-884-2022
Date of Decision: October 19, 2024

Versus

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Property as mentioned in para 3 of the writ petition was mortgaged. Their

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accounts were declared Non-Performing Asset (NPA) on 31.01.2010 and 31.05.2011 statedly in an illegal manner. Arbitration award dated 30.10.2013, it is stated was passed for sum of Rs.4,74,669/-. Execution petition was filed. Complaint under Section 138 of Negotiable Instruments Act was also filed. In the said proceedings, amount in question was deposited and complaint was withdrawn. However, proceedings under SARFAESI Act were initiated by Kotak Mahindra Bank Limited to which debt had been assigned. Notice(s) under Section 13(2) and 13(4) of SARFAESI Act were issued on 17.05.2013 and 29.04.2014 respectively and order under Section 14 of SARFAESI Act was passed on 17.08.2016. Aggrieved therefrom, present writ petition has been filed.

3. As per the case of respondent – Bank, debt in question was assigned to it by Citi Finance Consumer Finance India Limited. Complaint under Section 138 of Negotiable Instruments Act was not withdrawn on account of receipt of amount in question or any kind of settlement with borrower. It was withdrawn simplicitor on statement on behalf of said complainant (City Finance Consumer Finance India Ltd.), which was closing (winding up) all its activities in India. There is nothing on record to indicate that amount in question was ever deposited by the borrower. It is submitted that present writ petition is not entertainable. Possession of the property had been taken by respondent – Bank in accordance with law but petitioner and her son forcibly wrested it back in respect to which FIR No. 92 dated 29.09.2022 under Sections 448, 506 IPC at Police Station Sanour, District Patiala has also been lodged. E-auction of the property had been successfully carried out on 11.11.2021 and sale certificate

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issued on 22.11.2021. Due to conduct of petitioner and her son, respondent is being subjected to undue harassment. Dismissal of the writ petition is sought.

4. We have heard learned counsel for parties and have gone through the file with their assistance, however, we do not find any ground to interfere in the matter. It is a settled position that interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters has to be minimal and actuated only in extra-ordinary and exceptional circumstances. Gainful reference in this regard 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 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 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

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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.”

5. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance which calls for interference by this Court. All pleas and arguments raised before us are very well within the realm of consideration by appropriate Forum as provided.
6. Accordingly, this writ petition is dismissed with liberty to petitioner to avail remedy(ies) as may be available to her in accordance with law.
7. There is no expression of opinion on the merits of matter.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

October 19, 2024
Rts

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