**103 + 212**

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

**CWP-4458-2021 (O&M)**
Date of Decision:- 28.05.2024

**ANITA MAHAPATRA AND ANR** ...Petitioners

Vs.

**BANK OF BARODA (ERSTWHILE VIJAYA BANK) AND ANR** ...Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**
**HON'BLE MS. JUSTICE AMARJOT BHATTI**

Present:- Mr. B.S. Tewatia, Advocate for the petitioners.

Mr. C.S. Pasricha, Advocate
(Through V.C.) and Mr. Sushil K. Bhardwaj, Advocate for respondent – Bank.
Mr. Deepak Grewal, DAG, Haryana.

*****

**LISA GILL, J.**

1. Prayer in this writ petition is for setting aside notice dated 03.06.2019 (P-1) issued under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and order dated 28.01.2021 (P-2) issued by District Magistrate under Section 14 of SARFAESI Act.

2. It is submitted that petitioners sought housing loan facility for a sum of Rs.28.80 lakhs and Rs.9.50 lakhs as is detailed in para No.2 of the writ petition. Flat purchased by petitioners was mortgaged as described in para No.2 of the petition itself. Learned counsel for petitioners submits that monthly installments were deposited regularly by petitioners without any

kind of default. However, some of the installments could not be deposited from March, 2020 due to outbreak of pandemic of COVID-19. Account of petitioners was incorrectly declared Non-Performing Asset ('NPA') on 31.05.2019. Notice under Section 13 (2) was issued seeking recovery for a sum of Rs.36,82,947.35 stated to be due as on 31.05.2019. Order dated 28.01.2021 was passed by District Magistrate, Faridabad. Petitioners, it is submitted, had no knowledge about passing of order. Petitioners, who were regularly depositing the monthly installments except 10 installments from March, 2020 to December, 2020, have been put to peril unnecessary. Learned counsel for petitioners further submitted that pursuant to order dated 25.02.2021 whereby notice of motion was issued to respondents, the amount of 10 EMIs had been deposited and thereafter petitioners are depositing installments regularly. He, thus prayed that this writ petition be allowed.

3. Learned counsel for respondent – Bank has opposed this writ petition firstly raising an objection qua entertainability of this writ petition, while submitting that an efficacious alternate remedy is available to petitioners for redressal of grievance (s) which they may have. Learned counsel for respondent further submits that petitioners have not disclosed that petitioner No.1 is also proprietor of Firm namely Apripz Overseas which has also taken loan facility from the respondent No.1. Account of Apripz Overseas was declared NPA and outstanding amount in the said account as on 31.01.2018 was Rs.34,00,678.80. Property mortgaged in the said loan account was auctioned for a sum of Rs.34 lakhs on 22.03.2021 and sale certificate was issued to the auction purchaser on 20.04.2021.

However, possession of the said property could not be given to the auction purchaser as petitioners had successfully created third party interest in the said property in an illegal manner. After sale of the property in question, the entire amount due in the account of M/s Apripz Overseas could not be recovered and a sum of Rs.3,69,063.33 as on 31.12.2021 was still due in terms of Clauses 4.2.7 and 4.2.5 of the Master Circular dated 01.07.2015 issued by Reserve Bank of India wherein it is provided that asset classification is to be borrower-wise and not facility-wise. The present account in question was also declared NPA. In case, petitioners seek upgradation of the account there has to be a settlement of both the accounts in question.

4. Learned counsel for petitioners submits that there is no question of any concealment. Property in question had already been sold, therefore, there was no occasion for mentioning the same therein. It is prayed that this writ petition be allowed as prayed for.

5. We have heard learned counsel for the parties and have gone through the file with their assistance. In the given factual matrix, we do not deem it appropriate to consider, delve upon the controversy or adjudicate on the merits of the matter. This is so because SARFAESI Act is a complete code in itself wherein specific remedy (ies) for any grievance (s) which any person may have in respect to proceedings undertaken therein are clearly provided. Interference in said matters by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India has to be minimal and actuated only in exceptional and extraordinary circumstances. Availing of financial facility by petitioners from the respondent, subsequent financial

indiscipline for reasons as may be, with proceedings under SARFAESI Act being initiated are a matter of record. Useful 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*** and ***M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771*** deprecating interference by the High Court in such like matters. While reiterating its earlier judgments, Hon'ble the Supreme Court in ***M/s. South Indian Bank*** has 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.
>
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.
>
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 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.
>
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 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. Learned counsel for petitioners are unable to point out any exceptional or extraordinary circumstance which calls for any interference by this Court at this stage. All arguments as raised before us are very well within the realm of consideration by the appropriate Authority/Tribunal as provided under the Act.

7. Keeping in view the facts and circumstances, it is reiterated that we do not consider it necessary or appropriate to delve upon the merits of matter. Writ petition is, accordingly, dismissed with liberty to petitioners to avail remedy (ies) available to them in accordance with law while taking up all available pleas. There is no expression of opinion on the merits of matter or its entertainability.

8. However, as interim order dated 25.02.2021 passed in favour of petitioners in this petition has continued till date, it is directed that said order shall enure for a period of 15 days from the date of receipt of certified copy of this order. Question of continuance or otherwise of interim order in

petitioners' favour shall necessarily be in the realm of consideration by the appropriate Forum/Tribunal in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

9. It is clarified that interim protection afforded to petitioners shall not enure beyond 15 days in the absence of appropriate order by competent authority/Tribunal in accordance with law. There is no expression of opinion on merits of the matter.

10. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

**(LISA GILL)**
**JUDGE**

**(AMARJOT BHATTI)**
**JUDGE**

**28.05.2024**
snd
Whether speaking/reasoned: Yes/No.
*Whether reportable: Yes/No*