IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203 **CWP-5318-2021**
Date of Decision: 03.05.2024

LOKESH SINGH

... Petitioner

VERSUS

HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED AND ANR

....Respondents

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

Present: Mr. Rahul Rana, Advocate
for the petitioner.

Mr. Shekhar Verma, Advocate with
Ms. Maninee, Advocate for
for respondent No.1.

Mr. Jawahar Narang, Advocate
for respondent No.2.

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<u>LISA GILL, J.(Oral)</u>

1. Prayer in this writ petition is for quashing impugned notice(s) dated 01.11.2018, 11.06.2019, 06.08.2020, 01.09.2020 and 25.02.2021 (Annexures P-11 to P-14 and P-17) issued under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act.

2. Learned counsel for the petitioner submits that marriage between the petitioner and respondent No.2 was solemnized in the year 2011. However, due to differences between them divorce was sought and

granted on 04.05.2017. It is submitted that petitioner and respondent No.2 during subsistence of their marriage had availed of housing loan facility from respondent non-Banking Financial Housing Corporation for purchase of property in question which was kept as collateral. Installments were regularly deposited by the petitioner on his own till the month of March 2020. Admittedly, financial indiscipline did occur for various reasons, including matrimonial dispute between the petitioner and respondent No.2. Account(s) were declared NPA on 31.01.2019, notice under Section 13(2) was issued on 04.04.2019 and notice(s) under Section 13(4) of SARFAESI Act were issued on 11.06.2019 (Annexure P-12) and 06.08.2020 (Annexure P-13) respectively. Order under Section 14 of SARFAESI Act was passed on 10.11.2020. Proceedings under SARFAESI Act have been challenged in this writ petition on various grounds including non-compliance of applicable positions of law. Petitioner, it is contended had a ready buyer but respondent No.1-financial institution was not coming forward for any kind of settlement. It is thus prayed that this writ petition be allowed.

3. Learned counsel for respondents has opposed this writ petition firstly raising the question of entertainability of this writ petition itself. It is further submitted that proceedings undertaken under SARFAESI Act are in complete consonance with the provisions thereof. All allegations of contravention or violation of applicable rules are denied being factually incorrect. Learned counsel for respondents submits that at the time of issuance of notice of motion on 05.03.2021, it was projected before the Court that petitioner has a buyer who is ready

to purchase the property in question for a sum of Rs.83 lakhs however, till date, no such purchaser has come before respondent No.1 and neither has any proposal been set forth by petitioner who is enjoying the interim order since March 2021. The total outstanding amount as on date is Rs.40,12,474/-. Neither petitioner nor respondent No.2 have deposited any amount to discharge their liability. It is thus prayed that this writ petition be dismissed.

4. Heard learned counsel for the parties and have perused the case file.

5. Availing of financial facility by petitioner, subsequent financial indiscipline for reasons as the case may be leading to initiation of proceedings under SARFAESI Act are a matter of record. In the given factual matrix,we do not find any ground whatsoever to interfere in exercise of jurisdiction under Article 226 of Constitution of India at this stage. 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.

XXX

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. Furthermore, it is to be noted at this stage that relief claimed in this writ petition is qua a private non-Banking Financial Institution, therefore, in any case, no ground is made out for entertaining this writ petition. Gainful reference in this respect can be made to judgement of Hon'ble the Supreme Court in ***Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir and others***, ***2022 (5) SCC 345***.

7. Writ petition is accordingly dismissed with liberty to the

petitioner and respondent No.2 to avail the remedy(ies) as available to them in accordance with law qua proceedings under SARFAESI Act besides any grievance *inter se*. There is no expression of opinion on the merits of the matter.

8. Pending applications, if any, also stand disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

03.05.2024
Rimpal

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