

2024:PHHC:033951-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3720 of 2024 (O&M)

Date of Decision:11.03.2024

Sandeep

.....Petitioner

Versus

Vastu Housing Finance Corporation Limited and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Sandeep Saini, Advocate
for the petitioner.

LISA GILL, J(Oral).

1. Prayer in this writ petition is for directing respondents to stay operation of notice dated 23.01.2024, Annexure P-1, whereby respondent seeks to take over possession of petitioner's only residential house allegedly without following the procedure contemplated under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. Availing of two loan facilities by petitioner from respondent no.1 i.e., Vastu Housing Finance Corporation Limited is a matter of record. It is further an admitted position that there was financial indiscipline on the part of petitioner. It is submitted that request for One Time Settlement had been submitted by petitioner. Counter offer was given by respondent no.1 and one of the accounts was closed. It is further averred in the writ petition that notice(s) under Section 13(2) and 13(4) of SARFAESI Act were issued to petitioner, though said notice(s) have not been attached with writ petition and neither is learned counsel for petitioner having copy thereof with him. It

is submitted that communication dated 23.01.2024, Annexure P-1, from

Tehsildar Julana to Superintendent of Police, Jind, for taking over possession of property in question is absolutely illegal, arbitrary displaying total non application of mind. Procedure established by law, it is contended has not been followed by respondents, therefore this writ petition be allowed.

3. We have heard learned counsel for petitioner and have perused the file with his able assistance.

4. Availing of financial credit by petitioner from respondent-Financial Institution, subsequent financial indiscipline for reasons as may be and initiation of SARFAESI proceedings against petitioner are a matter of record. Learned counsel for petitioner is unable to deny that in view of categorical provisions of law and as expounded by Hon'ble the Supreme Court in **Union Bank of India Vs. Satyawati Tandon and others, 2010(8) SCC 110, M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another, 2023(1) RCR (Civil) 771**, present writ petition is not entertainable. Interference by High Court in exercise of jurisdiction under Article 226 of the Constitution of India, has to be minimal in such like cases and is to be actuated only in exceptional or extraordinary circumstances. Hon'ble the Supreme Court in **Satyawati Tandon's** case (supra) has held as under:-

“17.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. 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 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, 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.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from

discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.”

5. Hon’ble the Supreme Court in **M/s South Indian Bank Limited and others Vs. Naveen Mathew Philip and another (supra)**, while reiterating its earlier decisions 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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.

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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 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.

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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. Learned counsel for petitioner is unable to point out any exceptional or extra ordinary circumstance which calls for interference in this case.

7. Apart from the fact that petitioner has efficacious remedy under SARFAESI Act itself, relief claimed in this writ petition is *qua* a Non Banking Financial Institution. Present writ petition in any case is not entertainable. Gainful reference can be made to judgment of Hon’ble the Supreme Court in **Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888**, wherein it has been held as under:-

“Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - 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 the cases of **Praga Tools Corporation v. Shri C.A. Imanual, (1969) 1 SCC 585** and **Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.”

8. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail the remedy(ies) available to him in accordance with law while taking up all available pleas. There is no expression of opinion on the merits of the matter. Pending application (s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

March 11, 2024.
s.khan

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