119

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3930-2024
Date of Decision:- 21.02.2024

Harinder Kanwal

....Petitioner

Vs.

State of Punjab and Ors.

...Respondents

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

Present:- Mr. Sardavinder Goyal, Advocate for the petitioner.

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LISA GILL, J.

1. Prayer in this writ petition is for quashing order dated 05.01.2024 (Annexure P-9) passed by Chief Judicial Magistrate, Jalandhar under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act).

2. Availing of financial credit by petitioner from respondents No.3 and 4 and subsequent financial indiscipline on her part leading to proceedings under the SARFAESI Act being initiated against her is a matter of record. Various arguments have been raised by learned counsel for petitioner including the one that an incorrect affidavit has been filed before the District Magistrate by respondent to the extent that no objections were filed by the petitioner which it is stated is incorrect. It is also submitted that respondent Financial Institution had levied interest at a rate higher than agreed in an unilateral manner. Moreover, it is argued that there is nothing on record to substantiate that property in question i.e. Secured Asset is

registered with Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI). At this stage it is relevant to note that there is no specific averment in the writ petition that property in question is not registered with CERSAI. At a pointed query in this regard, learned counsel for petitioner responded that it is for respondent Financial Institution to produce requisite registration with CERSAI and it is in absence thereof that averment has been made in the writ petition.

3. After hearing learned counsel for petitioner, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. It is the settled position of law that SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise in respect to proceedings taken thereunder. All averments and pleas as raised in this writ petition are very well within the realm of consideration that adjudication before the appropriate Forum/Tribunal provided under SARFAESI Act. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in **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 54of 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 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."*

4. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance, which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India. Moreover, it is to be noticed that relief claimed in this writ petition is qua a Private Non Banking Housing Finance Company, therefore, this writ petition is not entertainable in any manner. Gainful reference can be made to judgment of Hon'ble the Supreme Court in "**Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir and others, 2022 (1) R.C.R. (Civil) 888",**

5. Writ petition is, accordingly, dismissed with liberty to petitioner to avail remedy(ies) available to her in accordance with law.

6. It is clarified that there is no expression of opinion on the merits of the matter, lest there be prejudice to any of the parties.

7. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(LISA GILL)

JUDGE

(AMARJOT BHATTI)
JUDGE

21.02.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No