2024:PHHC:028587-DB

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

CWP-4600-2024
Date of Decision: 28.02.2024

Aman Lohchab

..... Petitioner

Versus

ICICI HFC Limited and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rajender Kumar, Advocate for the petitioner.

Mr. Sandeep Suri, Advocate for respondent No.1.

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<u>LISA GILL J. (ORAL)</u>

Prayer in this writ petition *inter alia* is for setting aside order dated 12.09.2023 (Annexure P-7) passed by District Magistrate, Sonipat under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') and quashing of letters dated 27.10.2023 (Annexure P-8) and 12.12.2023 (Annexure P-9) issued by Tehsildar Gohana.

2. Availing of financial credit by the petitioner from respondent No.1 is a matter of record. Allegation raised by the petitioner is that tenure

of the loan was settled at 180 months at an adjustable rate of interest with monthly installment being Rs.22,084/-. It is submitted that petitioner was depositing the installments regularly till 10.12.2022, however, respondent No.1 in a unilateral manner increased the term of loan. It is thus submitted that action taken by respondent No.1 under the SARFAESI Act is absolutely illegal and arbitrary. It is further contended that order dated 12.09.2023 (Annexure P-7) passed under Section 14 of the SARFAESI Act has been passed in complete violation of the applicable provisions of law.

3. Having heard learned counsel for the parties, we do not find any ground for interference in the writ petition. It is a settled position 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. 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. 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.*
>
> *xxx xxx xxx*

> *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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> *xxx xxx xxx xxx*
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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.*
>
> *xxx xxx 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.*"

4. Learned counsel for the petitioner is unable to point out any exceptional or extraordinary circumstance, which call for interference by this Court at this stage.

5. Moreover, relief claimed in this writ petition is qua private Home Finance Company, therefore, in any case, no ground is made out for interference especially keeping in view the judgment of Hon'ble the Supreme Court in ***"Phoenix ARC Private Limited versus 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.*"

6. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail the remedy/remedies available to him in accordance with law.

7. It is clarified that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

28.02.2024
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No