IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4808-2023
Date of Decision: May 31, 2024

Suman and another ..... Petitioners

Versus

Chief Judicial Magistrate and others ..... Respondents

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

Present: Mr. Gaurav Tyagi, Advocate for the petitioners (through VC).

Mr. Deepak Grewal, DAG, Haryana.

Mr. Manbir Singh, Advocate for respondents No. 3 and 4.

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') initiated against petitioners.

2. Learned counsel for petitioners submitted that term loan of Rs. 15 lakhs was sanctioned by respondent – Bank on 02.11.2016 for construction of school building. Petitioners were allegedly made to append their signatures on blank cheques at the time of sanctioning of loan amount. Property as detailed in para 2 of the writ petition was mortgaged. It is submitted that petitioners were

earlier running the said school on adjoining land of their relatives/brother but after sanction of loan amount, school was shifted and building constructed on land in question with school running successfully. Loan in question, it is stated, was being serviced regularly, however, with outbreak of pandemic COVID-19 working of school took a severe hit resulting in financial hardship to the petitioners. Petitioners received summons in complaint No. NAC/588/2021 with regard to dishonor of cheque dated 25.02.2021 for a sum of Rs. 14,62,603/-. Respondent – Bank took a plea that petitioners had issued cheque in discharge of their liability towards entire loan amount. Petitioners were taken aback by its illegal act on the part of respondent – Bank. Nonetheless installements were deposited even after initiation of complaint under Section 138 of Negotiable Instruments Act though no confirmation of deposit or receipt of cash deposit was provided to petitioners. It is submitted that petitioners made all efforts to inquire about any pending amount but no details were disclosed by respondent – Bank. To the shock of petitioners, they received copy of order dated 24.02.2023 passed by learned Chief Judicial Magistrate, Panipat under Section 14 of SARFAESI Act. Vide notice dated 03.03.2023, physical possession of the property was sought to be taken on 13.03.2023. Aggrieved therefrom, present writ petition was filed.

3. Learned counsel for petitioners vehemently argued that respondent – Bank at no point of time ever served notices under Section 13(2) or 13(4) of SARFAESI Act. Petitioners' right to file objections to notice under Section 13(2) of SARFAESI Act was seriously prejudiced. Furthermore, property, as detailed in order dated 24.02.2023 passed by learned Chief Judicial Magistrate, Panipat, did not pertain to property of petitioners or loan account of petitioners, rather it was addressed to a number of people who had no concern with petitioners. Order

under Section 14 of SARFAESI Act has been passed at the back of petitioners without disclosing true facts. Moreover, once complaint under Section 138 of Negotiable Instruments Act was filed, there was no occasion for initiating proceedings under SARFAESI Act. Irrational and illegal miscellaneous charges have been levied by respondent – Bank alongwith penalty. It was, thus, submitted that present writ petition be allowed.

4. Writ petition has been opposed by learned counsel for respondent – Bank. Preliminary objection regarding entertainability of writ petition itself was raised. It was submitted that petitioners have intentionally and willfully mis-stated the facts in the writ petition inasmuch as notice under Sections 13(2) and 13(4) of SARFAESI Act, respectively was duly served upon petitioners. Reference was made to notice dated 07.12.2022 under Section 13(4) of SARFAESI Act attached as Annexure P6 with the writ petition to submit that notice issued under Section 13(2) of SARFAESI Act to another joint loanee namely Santro wife of Surjeet Singh and Surjit Singh in which petitioner No. 1 - Joginder Singh is guarantor has been attached.

5. Learned counsel for respondent – Bank submitted that copy of application seeking loan is attached as Annexure 3/4 with written statement. Sanction letter is attached as Annexure 3/5. Individual notices under Section 13(2) of SARFAESI Act were issued to both borrowers i.e. Joginder Singh and Suman wife of Joginder Singh with copies to sureties vide letter dated 20.04.2021. Copies of notices are attached as Annexures 3/7 to 3/9, respectively. Postal receipts have also been attached alongwith. No reply/objections were filed after receipt of notice under Section 13(2) of SARFAESI Act. Thereafter notice under Section 13(4) of SARFAESI Act was issued in compliance with provisions of law. Publication was also carried out in two newspapers having

sufficient circulation in the area besides carrying out affixation thereof on the property. All three properties are duly registered under CERSAI as required under Section 26(d) of SARFAESI Act. Petitioners, it is submitted, only wish to delay the recovery proceedings. Therefore, this writ petition should be dismissed.

6. We heard learned counsel for parties and have gone through file.

7. Availing of financial facility by respondent, subsequent financial indiscipline on the part of petitioners for reasons as may be leading to initiation of proceedings under SARFAESI Act is apparent from record. It is the case of petitioners that they were never served with notices under Section 13(2) and 13(4) of SARFAESI Act with order under Section 14 of SARFAESI Act having been passed behind their back. These averments are controverted by respondent – Bank while referring to documents as attached as written statement. Clearly, disputed questions of fact are involved in this writ petition, which cannot be the subject matter of adjudication in the present proceedings. Moreover, SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise in respect to proceedings taken thereunder. Gainful 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, 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."

8. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance which calls for interference by this Court. In the given factual matrix, all arguments raised by learned counsel for petitioners are within the realm of consideration by learned Tribunal. Therefore, we do not consider it necessary or appropriate to delve upon the merits of the controversy.

9. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail statutory remedy(ies) available to them in accordance with law.

10. However, keeping in view the fact that interim order in favour of petitioner was granted on 13.03.2023 to the extent that further action pursuant to order dated 24.02.2023 would remain stayed, same shall continue for fifteen (15) working days. Question of continuance or otherwise of interim order in petitioners' favour shall necessarily be within the realm of consideration by the appropriate Forum which be considered in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

11. It is clarified that interim protection afforded to petitioners shall automatically stand vacated in the absence of any order by the appropriate authority.

12. There is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 31, 2024
rts

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