2024:PHHC:021966-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4903 of 2023(O&M)
Date of Decision:15.02.2024

Jitender Kumar

......Petitioner

Versus

District Magistrate, Panchkula and others

...... Respondents

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

Present: Mr.Yoginder Nagpal, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG., Haryana.

Mr. Kartik Khicher, Advocate
for respondents no.3 to 5.

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LISA GILL, J(Oral).

1. Prayer in this writ petition is for setting aside impugned order dated 14.02.2023, Annexure P-9, passed by District Magistrate, Panchkula, under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act) and notice dated 22.02.2023, Annexure P-10, issued by Tehsildar, whereby taking over of physical possession of secured asset/mortgaged property of petitioner was ordered.

2. It is submitted that petitioner availed of home loan facility from HDFC in the year 2017. Though, was not clearly stated in the writ petition, learned counsel for petitioner on a pointed query informs that loan in

question was ported to the respondent-Finance Company. It is however submitted that in an illegal manner, home loan was converted into a loan against property which is impermissible. Financial indiscipline on the part of petitioner for the reasons as may be, is a matter of record. Various arguments have been raised to submit that action of respondents in declaring petitioner's account Non Performing Asset (NPA) and thereafter initiation of proceedings under SARFAESU Act are absolutely illegal, arbitrary and in complete contravention of the applicable provisions. It is thus prayed that this writ petition be allowed.

3. Written statement on behalf of respondent has been filed raising a preliminary objection qua entertainability of this writ petition itself. It is submitted that in view of judgment of Hon'ble the Supreme Court in **Federal Bank Limited Vs. Sagar Thomas, (2003) 10 SCC** and **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022(1) RCR (Civil) 888,** present writ petition is not entertainable. Moreover, petitioner has efficacious remedy(ies) for redressal of his grievance(s) as raised in this writ petition. It is further submitted that proceedings under SARFAESI Act have been undertaken in strict consonance with the provisions thereof. It is thus prayed that this writ petition be dismissed.

4. We have heard learned counsel for the parties and have gone through the file with their able assistance.

5. Notice of motion was issued in this writ petition by a Coordinate Bench on 13.03.2023 while noting submission on behalf of petitioner that a sum of Rs.5.7 Lakhs was due. Dispossession of petitioner was stayed subject to deposit of Rs.3.5 Lakhs within two days. It was subsequently brought to notice of the Court on 13.07.2023 that outstanding

amount from petitioner was about Rs.63,00,000/- and not Rs.5,70,000/- as had been projected before the Court. Writ petition was adjourned at request of learned counsel for petitioner. Interim order in favour of petitioner was ultimately vacated on 21.12.2023.

6. Relief claimed in this writ petition is qua a Private Non Banking Financial Company, therefore present writ petition in any case is not entertainable. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Federal Bank Limited Vs. Sagar Thomas (supra)** and **Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others (supra).** It has been held by Hon'ble the Supreme Court in **Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others (supra)** 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."

7. Petitioner has specific remedy(ies) provided to him under SARFAESI Act itself, which is a complete Code in itself. All arguments raised in this writ petition are well within the realm of consideration by the Appropriate Forum. Argument raised by learned counsel for petitioner, at this stage that another opportunity should be afforded for an amicable resolution of the dispute, is not a ground for continuation of present proceedings. Pendency or otherwise of present petition is irrelevant for this purpose as parties are always at liberty to arrive at any mutually acceptable settlement.

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

February 15, 2024
s.khan

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