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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6449-2024
Date of Decision: 18.03.2024

Subhash Chand

..... Petitioner

Versus

Edelweiss Asset Reconstruction Company Limited and others

..... Respondents

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

Present: Mr. Krishan Singh, Advocate
for the petitioner.

Mr. Harsh Chopra, Advocate
for respondents No. 1 and 2.

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LISA GILL, J. (Oral)

1. Prayer in this writ petition is for quashing action of respondent-Bank qua auctioning the residential house of petitioner without following due process of law. There is a further prayer for restraining respondents from auctioning mortgaged property of petitioner.

2. Petitioner, admittedly availed of loan facility of ₹21,99,445/- from respondent-Bank on 21.04.2016. Financial indiscipline on the part of petitioner, for reasons as may be, is a matter of record. It is the case of petitioner that no notice under Section 13(2) or under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') has ever been received by petitioner and without following due process of law, possession of mortgaged property has been secured by respondents in an illegal and arbitrary manner and in complete contravention of provisions of

SARFAESI Act. Petitioner, it is submitted has requested respondent-Bank to accept amount in installments but to no avail.

3. Learned counsel for respondents No. 1 and 2, who is on advance notice, by raising objection qua entertainability of this writ petition itself informs that property in question has been sold on 12.03.2024, pursuant to auction notice dated 03.02.2024 and sale has been confirmed. It is submitted that notice dated 12.10.2020 under Section 13(2) of SARFAESI Act and notice dated 06.04.2021 under Section 13(4) of SARFAESI Act were duly issued to petitioner and action was taken in accordance with law. All the relevant documents, it is submitted can be again provided to learned counsel for petitioner, within next three working days. Dismissal of writ petition is sought.

4. Having heard learned counsel for parties, we do not find any ground whatsoever to interfere in the present matter. In so far as proceedings under SARFAESI Act are concerned, it is a settled position that petitioner has specific remedy(ies) provided under the Act itself which is a complete code in itself. Interference by this Court is not called for in such like matters except in extra-ordinary or exceptional circumstances in exercise of jurisdiction under Article 226 of the Constitution of India. Gainful reference in this respect can be made to the judgments of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others,** ***2010(8) SCC 110*** and **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another,** ***2023(2) RCR (Civil) 771***. Moreover, relief claimed in this writ petition is qua a private non-banking financial institution, therefore, present writ petition in any case is not entertainable. Gainful reference in this respect can be made to judgment of

the Hon'ble Supreme Court in ***Phoenix ARC Private Ltd. Vs. Vishwa Bharati Vidya Mandir and others 2022 AIR (SC) 1045 ,*** wherein it has been held as under:-

> "12. 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 and others, (1969) 1 SCC 585*** and ***Ramesh Ahluwalia vs. 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."

5. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail efficacious remedy(ies) available to him in accordance with law for redressal of his grievance(s).

6. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

18.03.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No