IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(125)

2024:PHHC:047409-DB
CWP-8059-2024
Date of Decision: 08.04.2024

Luxmi Devi & another --Petitioners

Versus

ICICI Home Finane Co. Ltd. & others --Respondents

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

Present:- Mr. Lupil Gupta, Advocate for petitioners.

Mr. Nitin Thatai, Advocate for respondents no.1 & 2.

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LISA GILL.J (Oral)

Prayer in this petition is for restraining the respondents from taking physical possession of residential house of petitioners slated for 22.03.2024 in compliance of order dated 18.12.2023 passed by District Magistrate, Sirsa under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short SARFAESI Act).

2. Admittedly, loan facility was availed of by petitioner no.2 with petitioner no.1 being the guarantor. It is submitted that petitioners at no point of time received any notice under Section 13(2) or 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short SARFAESI Act) and were shocked to receive notice dated 12.03.2024 wherein police help has been sought for taking possession of petitioners' residential house on 22.03.2024. It is further submitted that petitioners were never associated with proceedings under Section 14 of SARFAESI Act. Either entire proceedings under Section 14 of SARFAESI Act are claimed to be illegal.

Petitioners also filed an application before respondent no.3 to drop the possession proceedings as they are ready for settlement and deposit the outstanding amount.

3. Learned counsel for petitioners submits that respondents no.1 and 2 are not informing petitioners about the amount due and neither account statement is being supplied.

4. Learned counsel for respondents no.1 and 2, on advance notice, submits that only effort is to delay recovery proceedings. It is submitted that writ petition itself is not entertainable and that proceedings under SARFAESI Act have been correctly initiated against petitioners on account of financial indiscipline on their part. An amount of Rs.12,38,456/- is due from the petitioners as on today. Possession of the property could not be taken on 22.03.2024 as the concerned Tehsildar was not available. It is, thus, submitted that this petition challenging taking over of physical possession of the secured asserts on 22.03.2024 in any case is rendered infructuous. Dismissal of writ petition is sought.

5. We have heard learned counsel for the parties.

6. Availing of loan facility by the petitioners is a matter of record as is the question of financial indiscipline for reasons as may be, as it is clearly stated in the writ petition that petitioner no.2 could not deposit the installments regularly on account of outbreak of COVID-19.

7. In view of judgements of Hon'ble Supreme Court in ***Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110, Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) and M/s South Indian bank Ltd. and others v.***

Naveen Mathew Philip, another, 2023(2) RCR (Civil) 771, we do not find any ground for interference in this writ petition, at this stage.

8. Accordingly, present petition is dismissed with liberty to petitioners to avail statutory remedy(ies) available to them in accordance with law. There is no expression of opinion on merits of the matter.

(LISA GILL)
JUDGE

08.04.2024
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No