**128**

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-9002-2024**
Date of Decision:- 22.04.2024

**M/S KHAN TEXTILE AND DESIGNERS AND OTHERS**
....Petitioners

Vs.

**SARVA HARYANA GRAMIN BANK** ...Respondent

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

Present:- Mr. Tushar Gautam, Advocate for the petitioners

Mr. Bhushan Bhatia, Advocate for the respondent.

*****

**LISA GILL, J.**

1. Prayer in this writ petition is for quashing letter dated 08.11.2023 (Annexure P-2), notice dated 30.12.2023 (Annexures P-3) issued under Section 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), notice dated 31.12.2023 (Annexure P-4) and sale notice dated 15.02.2024 (Annexure P-6) issued by respondent – Bank.

2. Availing of financial facility by petitioners from respondent-Bank and mortgaging of the property in question as is detailed in para no.2 of petition is a matter of record. Financial indiscipline on the part of

petitioners for reasons as may be, is also undeniable leading to account of petitioners being declared NPA and notice (s) under Sections 13 (2) and 13 (4) of SARFAESI Act being issued on 08.11.2023 and 30.12.2023 respectively. Notice for auction of the property was issued on 15.02.2024 for auction to be carried out on 18.03.2024. However, said auction did not fructify. Petitioners have filed this writ petition challenging proceedings under SARFAESI Act initiated against them.

3. Learned counsel for petitioners submits that absolutely illegal and arbitrary action has been taken by respondent – Bank under the SARFAESI Act. Without taking possession of the property in question, respondent Bank is attempting to auction the property. Mandatory provisions under SARFAESI Act, it is contended, have not been followed. Petitioners are stated to be ready and willing to settle the loan account. However, respondent – Bank is not coming forward. It is submitted that petitioners are ready and willing to deposit a sum of Rs.3 lakhs and rest of the amount can be settled in about six months time. It is, thus, prayed that this writ petition be allowed.

4. Learned counsel for respondent - Bank, who appears on advance notice, has opposed this writ petition while firstly raising preliminary objection qua entertainability of this writ petition itself. It is submitted that total outstanding qua CC limit availed of by petitioners is above 29 lakhs as on date. There are no available stocks due to which petitioners' account cannot be regularised. Moreover, petitioners have never ever approached the respondent – Bank for any One Time Settlement 'OTS'). In case petitioners approach the Bank with any concrete proposal

with proper schedule for repayment, the same can be considered in accordance with applicable Rules/Regulations etc. The present writ petition, it is submitted, is only a tactic to delay the recovery proceedings.

5. Having heard learned counsel for the parties and perusing the file, we do not find any ground to interfere in this writ petition in exercise of jurisdiction under Article 226/227 of the Constitution of India. At this stage, it is relevant to note that SARFAESI Act is complete code in itself which brooks no interference by this Court at this stage except in exceptional or extraordinary circumstances. 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*** and ***M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.*** While reiterating its earlier judgments, Hon'ble the Supreme Court in ***M/s. South Indian Bank*** has 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.
>
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory

> violation. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 15. The object and reasons behind the Act 54 of 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 of 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.
>
> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
>
> 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."

6. Learned counsel for petitioners is unable to point out any extraordinary or exceptional circumstances which call for any interference by this Court at this stage. All arguments as raised before us are very well within the realm of consideration by the appropriate Authority/Tribunal as provided under the Act. Furthermore, parties are always at liberty to arrive at any mutually acceptable settlement.

7. Keeping in view the facts and circumstances, we do not find any ground for interference in this writ petition. Writ petition is accordingly

dismissed with liberty to petitioners to avail remedy (ies) available to them in accordance with law.

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

**(LISA GILL)**
**JUDGE**

**(AMARJOT BHATTI)**
**JUDGE**

**22.04.2024**
snd

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