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

CWP-12042-2022 (O&M)
Date of Decision: 06.05.2024

M/s Kohinoor Sales and another **....Petitioners**

versus

Learned District Magistrate-cum-Deputy Commissioner, Malerkotla and others **..... Respondents**

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

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Present: Mr. Sunny K.Singla, Advocate for the petitioners.

Mr.Aditya Sharda, DAG, Punjab.

Mr.Rakesh Gupta, Advocate for respondents No.2 to 4.

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LISA GILL, J. (ORAL)

1. Prayer in present writ petition is for directing respondents to regularise the accounts of petitioners on the ground that they are ready and willing to deposit the overdue instalments. Petitioners have also challenged possession notice dated 19.04.2021 (Annexure P-8) issued by the respondents-bank under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. Learned counsel for petitioners submits that Cash Credit Limit was availed of in the year 2006 for a sum of Rs, 25,00,000/- from respondents No. 2 and 3. Property (residential house) as detailed in para 2 of writ petition was mortgaged with the respondents-bank. In the year 2019 Cash Credit Limit was converted to loan against property for the loan

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amount of Rs.24,50,000/-. Due to outbreak of Covid-19 pandemic petitioners suffered losses which resulted into financial indiscipline. Learned counsel for petitioners submits that petitioners are ready and willing to have their accounts regularised but the respondents-bank, in an illegal manner, proceeded to declare the accounts Non Performing Asset (NPA) on 24.09.2020. Notice under Section 13(2) of SARFAESI Act was issued on 04.02.2021 and under Section 13(4) of the Act on 19.04.2021. Proceedings under SARFAESI Act, it is submitted, are in absolute derogation of the applicable provisions of law and mandate of various circulars issued by RBI. High penal interest and other expenses have illegally been levied upon petitioners. It is thus prayed that this writ petition be allowed.

3. Learned counsel for respondents has opposed the writ petition. Preliminary objection qua entertainability of the writ petition has been raised in view of alternate remedy available to petitioners under Section 17 of SARFAESI Act. All allegations about violation of applicable rules have been denied while submitting that entire action taken under SARFAESI Act is in complete consonance with provisions of law and RBI circulars. In fact, it is petitioners' attempt to delay recovery proceedings at every step. Petitioners have admitted their default in communication dated 07.03.2022 but have not even come forward to give any timeline for deposit of the overdue amount. A sum of Rs. 30,40,000/- was due from petitioners as on 08.02.2024. No amount has been deposited by petitioners after a sum of Rs. 2 lakhs in terms of order dated 30.05.2022. It is thus prayed that this writ petition be dismissed.

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4. Having heard learned counsel for the parties, we do not find any ground what-so-ever to interfere in exercise of jurisdiction under Article 226 of the Constitution of India. Petitioners admittedly have an efficacious remedy under SARFAESI Act for redressal of their grievances. SARFAESI Act is a complete Code in itself, providing for remedies in case of any grievance arising from proceedings taken thereunder. Interference in the same in exercise of writ jurisdiction has to be minimal and restricted to exceptional or extraordinary circumstances. Gainful reference in this regard 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.** Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) while reiterating its earlier judgments held that where an alternate efficacious remedy is available to the litigant before a Forum constituted under a statute, interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India should be restricted to exceptional cases. It was held as under:-

> "*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,*

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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."

5. Keeping in view the facts and circumstances of the matter, writ petition is dismissed with liberty to the petitioners to avail the statutory remedy/remedies in accordance with law in respect to proceedings initiated against them. Needles to say, it is always open to parties to arrive at any mutually acceptable settlement. There is no expression of opinion on the merits of the matter.

6. Pending miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

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Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No

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