2024:PHHC:062898-DB

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

CWP-10564-2024
Date of Decision: May 07, 2024

VINOD KUMAR AND ANOTHER ..... Petitioners

Versus

BAJAJ FINANCE LIMITED AND OTHERS ..... Respondents

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

Present: Mr. Rishu Garg, Advocate for the petitioners.

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LISA GILL, J.

1. Prayer in this writ petition is for setting aside proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') initiated against petitioners.

2. Learned counsel for petitioners submits that loan facility of ₹24,60,000/- was availed of by petitioners from respondent – Financial Institution on 18.10.2016. It is submitted that petitioners had been regularly depositing installments as they fell due. Respondent – Financial Institution, it is stated, increased EMI from ₹27,961/- per month to ₹31,696/- unilaterally while increasing rate of interest as well. Tenure of loan was increased by one year and six months i.e. with additional 18 installments. Petitioners contacted respondent

– Financial Institution in September, 2020 and they were assured of rectification of rate of interest etc. Petitioners deposited EMIs from July 2022 at increased amount of ₹31,696/- per month. Petitioners' account was incorrectly classified Non Performing Asset (NPA) on 31.05.2023 and notice under Section 13(2) of SARFAESI Act was issued on 17.06.2023. Objections were filed by petitioners but no response was received. Notice under Section 13(4) of SARFAESI Act was issued on 13.09.2023, statedly in complete and utter violation of applicable Rules. Order under Section 14 of SARFAESI Act was also passed on 13.10.2023 by learned Chief Judicial Magistrate, SAS Nagar (Mohali).

3. Learned counsel for petitioners vehemently argues that entire proceedings undertaken by Financial Institution are illegal, arbitrary and in complete violation of applicable provisions of law. It is also submitted that there is no registration of security interest under CERSAI as well. Furthermore, RBI guidelines have been blatantly violated. It is submitted that One Time Settlement (OTS) was also not afforded to petitioners. Petitioners, even as of now, are ready and willing to settle the account but respondent is only interested in grabbing petitioners' property. It is submitted that respondent – Financial Institution has not even supplied the complete accounts statement, showing details of amount already deposited by petitioners and the manner in which interest has been levied. Learned counsel for petitioners fairly states that there is no written application seeking details of account. It is prayed that this writ petition be allowed.

4. We have heard learned counsel for petitioners and have perused the file. However, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. This is so for the reason that SARFAESI Act is a complete code in itself

providing for specific remedies for any grievances which may arise in respect to proceedings taken thereunder. 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; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34,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) 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.
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> 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.
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> xxx xxx xxx xxx
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> 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 or 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.
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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."

4. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance which calls for interference by this Court. It is further to be noted that relief claimed is admittedly qua respondent, 'Bajaj Finance Limited', which is a private Non-Banking Financial Institution, therefore, no ground, in any case, is made out for interference in the present writ petition. Gainful reference in this regard can be made to the judgment of Hon'ble the Supreme Court in **Phoenix ARC Private Limited versus Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888,** wherein it has been held 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.”

6. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail statutory remedy(ies) available to them in accordance with law. We are sanguine that in case, petitioners seek statement of accounts as well as manner of levy of interest etc. same would be provided by respondent – Financial Institution immediately in accordance with law.

7. It is clarified that there is no expression of opinion on the merits of the case.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 07, 2024
rts

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