

CWP-13632-2022 (O&M)

2024:PHHC:057343-DB

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

**CWP-13632-2022 (O&M)
Date of Decision: April 25, 2024**

Pooja Jain

..... Petitioner

Versus

Authorized Officer, Indian Overseas Bank and others

..... Respondents

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

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

Mr. R.V. Mehra, Advocate for respondent – Bank.

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 the petitioner.

2. It is submitted that petitioner runs a small Hosiery business in the name and style of Laasani Knit Wears. She secured housing loan from respondent – Bank, which was sanctioned on 12.05.2015. Financial indiscipline on the part of petitioner for the reasons as may be is a matter of record, leading to her account being declared Non Performing Asset (NPA). Learned counsel for

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petitioner vehemently argues that notice dated 12.03.2020 was issued under Section 13(2) of SARFAESI Act wherein the amount was declared to be NPA w.e.f. 31.10.2019, which is opposed to the applicable Rules and Regulations. Thereafter, notice under Section 13(4) of SARFAESI Act was issued on 21.09.2020, which is also in contravention of Rule 8 of SARFAESI Rules. Order under Section 14 of SARFAESI Act was passed on 21.09.2020 (Annexure P2). It is argued that entire proceedings initiated by respondent – Bank are in absolute violation of provisions of SARFAESI Act and applicable Rules, thus, liable to be set aside. Petitioner had also offered to enter into One Time Settlement but to no avail. Notice under Section 13(2) of SARFAESI Act and declaration of account of petitioner as NPA being illegal, arbitrary and infact void, entire proceedings are vitiated.

3. This petition has been opposed by learned counsel for respondent No. 1 while raising plea of non entertainability of this petition itself. It is further submitted that petitioner has not approached this Court with clean hands. Material facts have been concealed and suppressed by petitioners. It is not disclosed that there are two other loan accounts, one obtained by M/s Laasani Knit Wears of which petitioner is proprietor and another home loan account. Civil Suit No. 1774 of 2020 had been filed by respondent – Bank in which petitioner had appeared on 02.11.2021, however, after availing several opportunities for filing written statement, she did not join proceedings thereafter and was proceeded exparte. Civil suit was decreed on 05.08.2023. Copy thereof is attached as Annexure R8 with reply filed on behalf of respondent – Bank. It is submitted that proceedings undertaken against petitioner under SARFAESI Act

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are in complete consonance with applicable provisions. It is, thus, prayed that this petition be dismissed.

4. We heard learned counsel for parties 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. Interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters has to be minimal and actuated only in extra-ordinary and exceptional circumstances. 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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15. The object and reasons behind the Act 54of 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

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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.”

5. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance, which calls for intervention by this Court at this stage. All pleas, as have been raised, are well within the realm of consideration by learned Tribunal as provided under the Act itself.
6. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail remedy(ies) available to her in accordance with law.
7. There is no expression of opinion on the merits of matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 25, 2024
rts

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