

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

CWP-11431-2023
Date of Decision: March 18, 2024

M/S GURDIAL SINGH AND SONS AND ANOTHER Petitioners

Versus

**DEPUTY COMMISSIONER-CUM-DEPUTY MAGISTRATE, SIRSA
AND OTHERS** Respondents

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

Present: Mr. Shubham Pabbi, Advocate for
 Mr. Vivek Goyal, Advocate for the petitioners.

Mr. Deepak Grewal, DAG, Haryana.

Mr. D.K. Singal, Advocate for respondents No. 4 and 5.

LISA GILL, J.

1. Prayer in this petition is for setting aside proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 initiated against the petitioners.

2. Learned counsel for petitioners submits that petitioners are ready and willing to deposit the amount due. Request had been made for considering the case of petitioners for One Time Settlement but to no avail. It had been informed by learned counsel for respondent – Bank on 26.02.2024 that sum of Rs.10,15,897/- was due from petitioners as on that date. Learned counsel for petitioners had sought time to seek instructions.

3. Today learned counsel for petitioners submits that above is not the amount, which is due and calculations made by respondent are absolutely

incorrect. Detailed account statement has not been provided to petitioners, who are not liable to deposit the said amount. Arguments were thus heard.

4. Learned counsel for petitioner argued that proceedings under SARFAESI Act have been undertaken in an illegal and arbitrary manner in violation of applicable rules and circulars issued by RBI, thus this writ petition should be allowed.

5. After hearing learned counsel for parties, we do not find any ground to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India. It is a settled position 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 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.

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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.”

6. Learned counsel for the petitioners is unable to point out any exceptional or extraordinary circumstance, which calls for interference by this Court at this stage.

7. Keeping in view the facts and circumstances of the matter, this writ petition is dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law. Needless to say, detailed account statement be supplied to petitioners by respondent – Bank expeditiously and positively within fifteen days.

8. It is clarified that there is no expression of opinion on the merits of the matter and that parties are always at liberty to arrive at a mutually acceptable settlement.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

March 18, 2024

Rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No