2024:PHHC:077064-DB

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

CWP-13371-2024
Date of Decision: May 29, 2024

GAURAV GUPTA AND ANOTHER ..... Petitioners

Versus

ICICI HOME FINANCE COMPANY LTD. ..... Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Bhavdeep Singh Mamli, Advocate for the petitioners.

Mr. Nitin Thatai, Advocate for the respondent.

****

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 was indeed availed of by petitioners from respondent – Financial Institution in March, 2019. Admittedly, there was financial indiscipline on the part of petitioners for reasons as may be. Notice(s) under Section 13(2) and 13(4) of SARFAESI Act were issued on 10.11.2022 and 13.10.2023, respectively. Order dated 16.04.2024 under Section 14 of SARFAESI Act was passed by learned Chief Judicial Magistrate, Gurugram. It is submitted that amount in question could not be

deposited by petitioners due to personal difficulties and financial losses suffered by them. Request has been addressed to the respondent – Bank for deposit of amount in installments but to no avail. Learned counsel for petitioners is, however, unable point out any document on record to indicate that any such request had ever been made by petitioners or that any objections were filed after issuance of notice under Section 13(2) of SARFAESI Act seeking deposit of outstanding of Rs.39,67,548/- as on 09.11.2022.

3. Be that as it may, it is to be noted at this stage the petitioners have efficacious alternate remedy under SARFAESI Act itself for redressal of grievances, which they may have qua action undertaken under SARFAESI Act against them. It has been held by Hon'ble the Supreme Court in a catena of cases that 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. 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.** 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.
>
> xxx xxx xxx
>
> 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

CWP-13371-2024

along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.

xxx xxx xxx xxx

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.

xxx xxx xxx

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. The same has been affirmed and reiterated by Hon'ble the Supreme Court in its later judgments including **PHR Invent Educational Society vs. UCO Bank and others 2024 AIR (Supreme Court) 1893.** Learned counsel for petitioners is unable to point out any exceptional or extraordinary circumstance which calls for interference in present proceedings

5. It is further to be noted that relief claimed is admittedly qua respondent, 'ICICI Home Finance Company 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. Argument by learned counsel for petitioners that respondent should be directed to settle the account or restructure the account in a particular manner, is devoid of any merit as the borrower does not have any vested right for restructuring/settlement though it is always open to the parties to arrive at any mutually acceptable settlement. Therefore, this argument is rejected.

7. Learned counsel for respondent, however, submits that in case a concrete proposal is submitted by petitioners within one week from today, same shall be considered in accordance with law.

8. 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 under SARFAESI Act for any grievance in respect to action taken thereunder and it is always open to the parties to arrive at any mutually acceptable settlement.

9. There is no expression of opinion on the merits of the case.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

May 29, 2024
rts

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