

241 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15429-2022 (O&M)
Date of Decision: April 30, 2024

PARAMJIT SINGH

..... Petitioner

Versus

ADDITIONAL DEPUTY COMMISSIONER JALANDHAR AND
ANOTHER

..... Respondents

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

Present: Mr. Ajit Singh, Advocate for
Mr. Harsh Chopra, Advocate for the petitioner.

Mr. Aditya Sharda, DAG, Punjab.

Mr. Pulkit Kumar, Advocate for
Mr. Roopak Bansal, Advocate for respondent No. 2.

LISA GILL, J.

1. Prayer in this writ petition is for quashing proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) initiated against the petitioner.

2. Learned counsel for respondent - Bank submits that apart from writ petition being not entertainable, petitioner has not even complied with order dated 20.07.2022 wherein while issuing notice of motion, it was directed that subject to petitioner depositing a sum of Rs.5 lakhs by 19.10.2022, no coercive steps shall be taken against him.

3. Learned counsel for petitioner submits that he does not have any instructions in this regard.

4. It is the case of petitioner in the writ petition that notice dated 05.02.2020 under Section 13(2) of SARFAESI Act besides notice under Section 13(4) of SARFAESI Act and order dated 11.05.2022 under Section 14 of SARFAESI Act have been issued/passed in complete derogation and violation of applicable provisions of law and regulations issued by RBI. Property in question is claimed to be agricultural. It is claimed that petitioner had availed of agricultural loan and he was in fact never apprised of the kind of facility extended at the time of sanction of credit facility.

5. Written statement on behalf of respondent – Bank has been filed wherein all allegations of proceedings under SARFAESI Act being undertaken in an illegal or incorrect manner are denied. It is stated that petitioner had availed of housing loan and had mortgaged his residential property, measuring 10 marlas in khasra No. 256 situated at village Gehlarh, District Jalandhar. It is denied that petitioner was not aware of the kind of financial facility which he was availing of. It is, thus, prayed that this writ petition be dismissed.

6. Heard learned counsel for the parties and have perused the file with their assistance.

7. It is undeniable 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; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34 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 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.”

8. 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.

9. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail remedy(ies) available to him in accordance with law.
10. There is no expression of opinion on the merits of matter.
11. Pending applications(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

April 30, 2024
rts

(AMARJOT BHATTI)
JUDGE

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