2024:PHHC:079235-DB

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

CWP-14228-2024
Date of Decision: May 31, 2024

RANJIT KAUR ..... Petitioner

Versus

TATA CAPITAL HOUSING FINANCE LIMITED ..... Respondent

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

Present: Mr. Sumit Saddi, Advocate for the petitioner.

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<u>LISA GILL, J.</u>

1. Prayer in this writ petition is for setting aside order dated 17.02.2024 under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') passed by learned Chief Judicial Magistrate, SAS Nagar, Mohali.

2. Bare perusal of writ petition reveals that no specific details of loan facility availed of by petitioners are narrated detailed therein, though it is stated that loan facility was availed of by petitioners from respondent - private Non Banking Housing Finance Company against security. Learned counsel for petitioner submits that availing of financial facility from respondent is a matter

of record as is financial indiscipline on the part of petitioner. However, said indiscipline occurred due to severe problems faced by petitioner in her family affairs as well as in business. It is further submitted that respondent in a unilateral and arbitrary manner had revised the then rate of interest from 9.65% to 9.95% with increase of 18 installments w.e.f. 01.02.2019. It is further submitted that petitioner objected to the same but to no avail though it is to be noted at this stage that there is no document on record to indicate any such objection raised by the petitioner. It is argued that declaration of petitioner's loan account Non Performing Asset itself is illegal and arbitrary and in any case even if there are any deficiencies in the account, same would be curable. It is further submitted that as the mortgaged property is a residential house, petitioner is entitled to exemption of its sale in terms of Section 60(1)(c) CPC.

3. We have heard learned counsel for petitioner at length and have perused the file.

4. As noted earlier, complete facts are not mentioned with clarity in the writ petition. Be that as it may, availing of financial facility from respondent besides financial indiscipline for reasons as may be, leading to proceedings under SARFAESI Act is a matter of record. Insofar as any grievance which petitioner might have qua proceedings under SARFAESI Act including passing of order dated 17.02.2024 under Section 14 of SARFAESI Act, specific remedies have been provided under SARFAESI Act itself. Interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India is not called for. There is no such exceptional and extraordinary circumstance, which is pointed out by learned counsel for petitioner.

5. Gainful reference 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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> xxx xxx xxx
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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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> xxx xxx xxx
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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 petitioners is unable to point out any extraordinary and exceptional circumstance which calls for interference by this Court. All arguments, as raised before us, are in the realm of consideration by learned Tribunal.

7. Argument that petitioner is entitled to exemption from sale of residential house is clearly misconceived and in the teeth of specific provisions of SARFAESI Act itself. Bare perusal of Section 31 of SARFAESI Act itself is reflective of same. It is further to be noted that relief claimed is admittedly qua respondent - Tata Capital Housing 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."

8. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail statutory remedy(ies) available to her in accordance with law.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

May 31, 2024
rts

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