

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

Date of Decision: January 15, 2024.

..... PETITIONER (s)

Deutsche Bank

..... RESPONDENT (s)

Present: Mr. Aalok Jagga, Advocate
for the petitioners.

Mr. Rahul Tyagi, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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1. Prayer in this writ petition is for setting aside sale notice dated 20.06.2022 (Annexure P13) claimed to have been issued in complete violation of Rule 9 of the Security Interest (Enforcement) Rules, 2002.

2. It is submitted that petitioners alongwith one M/s Sanka India Private Limited had availed of three loan facilities from respondent-Bank, details of which are narrated in para 3 of writ petition. Petitioners, it is submitted, were regularly depositing the amount due, however, loan account was declared NPA on 18.07.2018 in an absolutely illegal manner. Proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'SARFAESI' Act) were initiated with notice under Section 13(2) of the said Act being issued. A single notice qua all the three loan accounts

was issued. Petitioners objected to maintainability of proceedings initiated under SARFAESI Act and filed their objections. However, a non-speaking reply was given by the respondent, upon which petitioners again objected. It is submitted that in an illegal manner notice under Section 13(4) of SARFAESI Act (Annexure P9) was issued.

3. Petitioners thereafter filed SA No.36 of 2019 titled 'Sanka India Private Limited v. Deutsche Bank AG and others'. In the meantime, order dated 08.03.2019 (Annexure P12) was passed under Section 14 of SARFAESI Act and physical possession was taken by respondent-Bank on 24.04.2019. Impugned sale notice dated 20.06.2022 was issued. Auction was carried out and the successful bidder deposited earnest money on 14.07.2022. Present writ petition was thereafter filed before this Court.

4. Learned counsel for petitioners submits that present writ petition was filed during pendency of SA No.36 of 2019 filed by petitioners because as per the practice followed, learned DRT-II, Chandigarh does not hear the matter regarding validity of subsequent sale without amendment in the SA. In case an amendment application was to be filed, decision thereon would take time and by that time, respondent would have confirmed the sale illegally, thus causing manifest injustice to petitioners, therefore, the present writ petition. It is vehemently argued by learned counsel for petitioners that sale notice is in complete and utter violation of applicable provisions, therefore, this writ petition should be allowed.

5. Learned counsel for respondent-Bank has opposed this writ petition while firstly raising objection qua entertainability of this writ petition itself. Averments on merit are also denied while submitting that action taken by respondent-Bank is in complete consonance with applicable provisions of law. It

is, thus, prayed that this writ petition be dismissed.

6. Having heard learned counsel for parties and perusing the file, we do not find any ground to interfere in this matter.

7. Admittedly SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise on account of proceedings undertaken thereunder. Gainful reference in respect to the minimal intervention by High Courts in such like matters can be made to judgment of the Hon’ble Supreme Court in Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110. Interference in matters under the SARFAESI Act, except under extraordinary and exceptional circumstances has been frowned upon and deprecated. It was 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. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.

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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."

8. This view has been reiterated consistently by the Hon'ble Supreme Court in subsequent cases including in **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.**

9. In the present matter, petitioners have admittedly filed SA No.36 of 2019 before learned DRT, Chandigarh challenging SARFEASI proceedings initiated by respondent-Bank against them and the same is pending adjudication. Argument that there might be delay in the process which would be followed by learned DRT-II, Chandigarh, therefore, there should be intervention by this Court, is untenable, hence rejected. Learned counsel for petitioners is unable to point any ground, whatsoever, which would justify continuation of parallel proceedings in the manner as suggested. Learned counsel for petitioners is

unable to point out any exceptional or extra-ordinary circumstance which calls for interference by this Court at this stage in exercise of jurisdiction under Article 226 of Constitution of India for setting aside the proceedings initiated by respondent-Bank under SARFAESI Act. All arguments as have been raised before us are very well within the realm of consideration by the learned Tribunal. There is no pure question of law or jurisdictional issue which has been raised for consideration in this writ petition.

10. At this stage, learned counsel for petitioners submits that interim order in favour of petitioners be directed to continue till final decision by concerned Tribunal where petitioners may file/initiate appropriate proceedings.

11. Keeping in view the fact that this writ petition has remained pending before this Court with interim order being granted by Coordinate Bench on 02.08.2022, it is directed that the same shall enure for period of twenty (20) days from the date of receipt of certified copy of order to enable petitioners to file appropriate petition/application before the concerned Tribunal/Forum alongwith requisite application(s) seeking exclusion of period of delay/for interim relief. It is made clear that this interim order shall not enure beyond the period of said twenty (20) working days in the absence of an order passed by appropriate Forum/Tribunal.

12. Needless to say, question of grant/continuance of interim order or exclusion of period of delay would be entirely in the realm of consideration of concerned Forum/Tribunal, which would decide the same in accordance with law without being influenced in any manner by any order(s) passed in this writ petition.

13. Writ petition is, accordingly, dismissed with liberty to petitioners to avail remedy(ies) as may be available to them in accordance with law.
14. It is made clear that there is no expression of opinion on the merits of the controversy.

(LISA GILL)
JUDGE

January 15 , 2024.
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(AMARJOT BHATTI)
JUDGE

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