

CWP-18300-2022

2024:PHHC:135039-DB



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

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Date of Decision: October 15, 2024

Sudhir Kumar

..... Petitioner

Versus

Union of India and others

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Manish Verma, Advocate for the petitioner.

Mr. Sudhir Nar, Advocate for respondent No. 1.

Ms. Jasleen, Advocate for respondents No. 2 and 3.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice under dated 11.04.2022 under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) as well as notice dated 27.07.2022 under Section 13(4) of SARFAESI Act.

2. Availing of financial facility by petitioner from respondent - Bank, is a matter of record. Admittedly, there was financial indiscipline on the part of

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petitioner for reasons as may be, leading to his account being declared Non Performing Asset (NPA) on 12.03.2022. Notice under Section 13(2) of SARFAESI Act was issued on 11.04.2022 and notice under Section 13(4) of SARFAESI Act on 27.07.2022. Present writ petition was filed by petitioner challenging said proceedings initiated against him.

3. Notice of motion was issued in this writ petition by co-ordinate Bench on 22.08.2022 and it was directed that respondents No. 2 and 3 may not take any coercive steps against estate of the writ petitioner.

4. It is a settled position 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.

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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

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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.”

5. 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.

6. 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. However, keeping in view the fact that this writ petition has remained pending before this Court since long and interim order granted by Coordinate Bench on 22.08.2022 is continuing till date, the same shall enure for fifteen working days, especially keeping in view ensuing Diwali break from the date of receipt of certified copy of order to enable petitioner to file appropriate petition/application before the concerned Tribunal alongwith requisite application(s) seeking exclusion of period of delay/for interim relief.

7. Needless to say, question of grant/continuance of interim order or exclusion of period of delay beyond said period of fifteen days would be entirely in the realm of consideration of concerned Forum/Tribunal, which

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would decide the same in accordance with law without being influenced in any manner by any order(s) passed in this writ petition. It is clarified that this order would automatically stand vacated in the absence of order by appropriate authority.

(LISA GILL)
JUDGE

October 15, 2024
Rts

(SUKHVINDER KAUR)
JUDGE

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