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

**CWP-18481-2022 (O&M)**

Date of Decision:- 24.04.2024

**M/S GURU NANAK ENTERPRISES AND OTHERS**

....Petitioners

Vs.

**CANARA BANK AND OTHERS**

...Respondents

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

Present:- Mr. N.C. Kinra, Advocate for petitioners.

Mr. Amandeep Singh Samra and Mr. K.P.S. Dhillon, Advocate  
for respondent Bank.

Mr. Deepak Grewal, DAG, Haryana.

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**LISA GILL, J.**

1. Prayer in this writ petition is for quashing notice dated 02.06.2021 (Annexure P-1) issued under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and notice dated 01.08.2022 (Annexure P-5) issued by respondent No.5 whereby petitioners have been directed to get the possession delivered to respondent Bank.

2. Learned counsel for petitioners submits that petitioner No.2 is sole proprietor of Firm- petitioner No.1 whereas petitioner No.3, guarantor is father of petitioner No.2. Petitioner No.2 being sole proprietor of petitioner No.1 availed loan facility, on 15.07.2014, to the extent of Rs.9

lakhs was taken and ultimately enhanced to Rs.15 lakhs. Loan under GECL scheme was also allowed to petitioners on 01.07.2020 to repay loan amount in 36 installments. It is submitted that due to outbreak of pandemic of Covid-19 business of petitioner No.1 was paralysed leading to financial indiscipline on behalf of petitioners. Proceedings under SARFAESI Act were initiated with notice under Section 13 (2) being issued on 02.06.2021 raising demand of Rs.27,99,377.53. It is submitted that respondent Bank also instituted a civil suit seeking recovery before the Court of learned Additional Civil Judge (Sr.Divn.) Hansi, District Hisar. Order under Section 14 was passed by District Magistrate, Hisar for securing possession of properties and notice dated 01.08.2023 was issued seeking possession of the property in question.

3. Learned counsel for petitioners submits that entire proceedings under SARFAESI Act are absolutely illegal, arbitrary and in complete violation of applicable provisions and Fundamental Rights of petitioners have been violated. Outstanding loan amount of petitioner Nos.1 and 2 have been illegally clubbed and merged with housing loan of petitioner No.3, thereafter his account has been incorrectly classified as NPA on 04.03.2021. Moreover, once having opted to file a civil suit against petitioner No.1, it is not open to respondent – Bank to initiate proceedings under SARFAESI Act. Furthermore, mother of petitioner No.2 and wife of petitioner No.3 had a plot of 2 marlas while petitioner No.3 was also owner of plot of 3 marlas. Residential house comprising of one unit was constructed on both sites with a common site plan. Housing loan was obtained by petitioner No.3 for construction of the house. House in

question is an indivisible unit and cannot be fragmented. It is not open to respondent Bank to take over possession of this house which rests on plot of 2 marlas owned by mother of petitioner No.2 and wife of petitioner No.3 who has nothing to do with loan accounts. Various representations were submitted by petitioners but to no avail. Petitioners, it is contended, have been victimised at the hands of respondent Bank which has misused the powers vested in it. It is, thus, prayed that this writ petition be allowed.

4. *Per contra*, learned counsel for respondent – Bank while raising objection of entertainability of the writ petition submits that complete facts have not been mentioned by petitioners. Learned counsel points out to the ‘Schedule-B’ and ‘Schedule C’ attached with notice under Section 13 (2) of SARFAESI Act and submits that security interest in residential house in question has been created by petitioners themselves and now an absolutely incorrect and unjustified plea is being raised regarding indivisibility of residential house. It is further contended that there was outstanding of Rs.27.99 lakhs at the time of issuance of notice under Section 13 (2) of SARFAESI Act in June, 2021 and till date no amount has been deposited by petitioners. The amount in question has necessarily increased since. Dismissal of writ petition is sought.

5. Heard learned counsel for the parties and perused the file. It is pertinent to note that SARFAESI Act is complete code in itself providing for specific remedy (ies) for any grievance (s) which may arise on account of action taken thereunder. Interference in such like matters in exercise of jurisdiction under Article 226/227 of the Constitution of India has to be minimal and restricted to exceptional or extraordinary 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. While reiterating its earlier judgments, Hon'ble the Supreme Court in *M/s. South Indian Bank* has 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."

6. Learned counsel for petitioners is unable to point out any extraordinary or exceptional circumstances which call for any interference by this Court at this stage. All arguments as raised before us are very well within the realm of consideration by the appropriate Authority/Tribunal as provided under the Act.

7. Keeping in view the facts and circumstances, we do not find any ground for interference in this writ petition. Writ petition is accordingly dismissed with liberty to petitioners to avail remedy (ies) available to them in accordance with law.

8. As interim order dated 23.08.2022 in favour of petitioners has continued till date, it is directed that said order shall enure for a period of 15 days from the date of receipt of certified copy of this order, in order to enable petitioners to avail appropriate remedy (ies) as may be available to them in accordance with law. Question of continuance or otherwise of interim order in petitioners' favour shall necessarily be in the realm of consideration by the appropriate Forum/Tribunal in accordance with law,

without being influenced by any order, which may have been passed in this writ petition.

9. It is clarified that interim protection afforded to petitioners shall not enure beyond 15 days in the absence of appropriate order by competent authority/Tribunal in accordance with law. There is no expression of opinion on merits of the matter.

10. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

**(LISA GILL)**  
**JUDGE**

**(AMARJOT BHATTI)**  
**JUDGE**

**24.04.2024**

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Whether speaking/reasoned: Yes/No.

*Whether reportable:* Yes/No