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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18700-2020
Date of Decision:- 20.02.2024

VISHAL KUMAR ....Petitioner

Vs.

STATE OF PUNJAB AND OTHERS ...Respondents

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

Present:- Mr. Sandeep Arora, Advocate for petitioner.

Mr. Avnish Mittal, Addl. AG, Punjab.

Mr. Aman Kumar, Advocate for Mr. Harsh Chopra, Advocate for respondent No.4.

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

1. Prayer in this writ petition is for quashing notice dated 29.10.2019 (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 05.08.2020 (Annexure P-3) issued under Section 13 (4) of SARFAESI Act.

2. It is submitted that petitioner availed housing loan facility of Rs.15,43,422/- on 22.10.2017 from respondent No.4 by mortgaging

property bearing Khasra No.19/6, Sharma Colony, Village Herpur, Jalandhar. Subsequently, petitioner fell ill due to which his business was shut down and he was unable to pay installments regularly. Later-on, petitioner tried to settle the dispute with respondent – financial institution but to no avail. Due to non-payment of loan amount as well as interest accrued thereon, loan account of petitioner was classified as Non-Performing Asset (NPA). Petitioner was served with notice dated 29.10.2019 issued under Section 13 (2) of SARFAESI Act for deposit of Rs.16,19,532/-. Subsequently, petitioner was served with notice dated 05.08.2020 issued under Section 13 (4) of SARFAESI Act.. .

3. Learned counsel for petitioner argues that on account of ill health, petitioner could not deposit the amount due towards respondent No.4 though he was regularly paying the instalments earlier. Petitioner, it is stated, has always been ready and willing to discharge his liability but it is only due to non-cooperative attitude of respondent No.4 which has led to the present situation.

4. Heard learned counsel for the parties.

5. Notice of motion was issued in this writ petition on 06.11.2020 while noting that petitioner undertakes to deposit some reasonable amount and seeks some time. Learned counsel for petitioner, on pointed query, informs that no amount has been deposited by petitioner since November, 2020 till date. It is a settled position that SARFAESI Act is complete code in itself which brooks no interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India

except in exceptional or extraordinary circumstances. Interference in such like matters has to be minimal as has been held by Hon'ble the Supreme Court in a number of matters including ***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.*** Learned counsel for petitioner is unable to point out any extraordinary or exceptional circumstances which calls for interference by this Court for exercising jurisdiction under Article 226 of the Constitution of India.

6. It is also to be noted, at this stage, that relief claimed in this writ petition is qua a Private Non-banking House Finance Company, therefore, the present writ petition, in any case, is not entertainable. Therefore, reference, in this regard, can be made judgment of Hon'ble Supreme Court in ***Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888*** wherein it has been held as under:

> *"12. 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 and others, (1969) 1 SCC 585 and Ramesh Ahluwalia vs. 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."*

7. All pleas as raised in this writ petition are available to petitioner before the appropriate Forum and are within the realm of consideration by the said Forum/Tribunal.

8. 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 petitioner to avail remedy/remedies available to him in accordance with law.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

20.02.2024
snd
Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No