

CWP-21081-2021

2024:PHHC:021835-DB

**102+233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-21081-2021 (O&M)
Date of Decision: February 13, 2024**

VISHAL GOYAL Petitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

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

Present: Mr. J.S. Ahlawat, Advocate for the petitioner.

Mr. Vikas Chatrath, Advocate for respondent No. 7.

Mr. J.S. Lalli, Advocate for respondent No. 9.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside order dated 17.11.2020 (Annexure P9) under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) passed by respondent No. 2 and notice dated 29.09.2021 (Annexure P15).

2. Brief facts as pleaded in the writ petition are that petitioner’s father, who was the sole and absolute owner of secured asset was beguiled to stand guarantee for loan facility afforded to respondent No. 8 by respondent No. 7.

Loan amount of Rs.1.47 crores was sanctioned in favour of respondent No. 8 on

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28.03.2019 for purchase of two excavator machines alongwith two rock breakers. Petitioner and his father had been persuaded by commitments and assurances of respondent No. 9, who somehow managed to gain their trust. It is contended that collusion between respondents No. 7, 8 and 9 is apparent from the fact that loan amount was released firstly in the current account of respondent No. 8 whereas normal practice is for disbursement of such loan amount in the account of one from whom the purchase is to be made. Disbursement of loan amount was effected merely on the basis of quotations without actual delivery of machines. Due to financial indiscipline on the part of respondent No. 8, proceedings under SARFAESI Act were initiated by the respondent – bank against borrower as well as guarantor i.e. father of present petitioner. Plaint filed by petitioner's father was rejected vide order dated 27.01.2021 by learned Civil Judge (Junior Division), Dera Bassi while allowing application under Order 7 Rule 11 CPC read with Section 34 of SARFAESI Act filed by respondent – Bank. Civil Revision No. 513 of 2021 was filed by petitioner's father for setting aside order dated 27.01.2021 which was dismissed as withdrawn on 06.04.2021 with liberty to approach learned DRT.

3. SA-105-2021 was thereafter filed by petitioner's father. Present petitioner was impleaded as legal representative vide order dated 08.06.2021 passed by learned DRT-II, Chandigarh on passing away of petitioner's father on 01.06.2021. Notice was issued to respondent – Bank in SA-105-2021 on 29.04.2021. It was observed that respondents shall not proceed further in the light of order passed by this Court in CWP-PIL-77-2021. Learned counsel for petitioner submits that due to outbreak of pandemic COVID-19, matter was, however, not taken up before learned DRT and was adjourned on multiple

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occasions with there being no Presiding Officer available to decide the matter thereafter. Ultimately, notice dated 29.09.2021 was issued by Field Kanungo, Mamdoli pursuant to order passed by learned Additional District Magistrate, SAS Nagar under Section 14 of SARFAESI Act. In this situation, present writ petition was filed by the petitioner and notice of motion was issued on 14.10.2021.

4. Learned counsel for petitioner submits that as writ petition was entertained, the matter should be decided by this Court itself especially due to factum of fraud being apparent on the face of it. FIR No. 14 dated 06.01.2021 under Sections 420, 120B, 467, 468, 471 IPC stands registered against respondents.

5. Learned counsel for respondent – Bank has opposed the writ petition while submitting that petitioner has efficacious remedy under SARFAESI Act and he has in fact availed the same. As Presiding Officer is very much in place, petitioner should pursue the said remedy and the very basis of filing this writ petition is no longer available. Dismissal of writ petition is sought.

6. We have heard learned counsel for parties and have perused the file.

7. Admittedly, SA-105-2021 filed by petitioner is pending adjudication. As of now, learned DRT-II, Chandigarh is functional. At this stage, it is relevant to note that SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise in respect to proceedings taken thereunder. 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.

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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 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. Keeping in view the facts and circumstances as above, we do not find any ground which calls for interference in exercise of jurisdiction under Article 226 of Constitution of India. Clearly, present writ petition was

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entertained as learned DRT was not functional at that point of time, which is admittedly not the case as of now.

9. At this stage, learned counsel for petitioner submits that interim protection afforded to petitioner vide order dated 14.10.2021 should be directed to continue during pendency of SA-105-2021 with consequent dispossession of petitioner from secured asset to remain stayed till culmination of said proceedings.

10. It is submitted that vide order dated 14.12.2021, it was directed that order dated 17.11.2020 under Section 14 of SARFAESI Act and notice dated 29.09.2021 seeking police assistance would remain stayed qua the petitioner only.

11. Keeping in view facts and circumstances of the matter, this writ petition is disposed of with liberty to petitioner to avail remedy(ies) available to him in accordance with law for redressal of his grievance(s). However, keeping in view the fact that interim order in favour of petitioners was granted on 14.10.2021 to the extent that he would not be dispossessed from secured asset and the same has enured till date, said interim protection shall continue for next ten working days from receipt of certified copy of this order to enable petitioner to avail remedy as may be available to him in accordance with law. In case, petitioner files appropriate application/petition, question of continuance or otherwise of interim order in petitioner's favour shall necessarily be within the realm of consideration by the appropriate Forum which will be considered in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

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12. Interim protection afforded to petitioner shall not enure beyond the period of said ten days in the absence of any order by appropriate authority/Forum.
13. It is clarified that there is no expression of opinion on the merits of the matter.
14. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

February 13, 2024
Rts

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No