

CWP-21695-2022

2024:PHHC:014784-DB

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

CWP-21695-2022

Date of Decision: February 01, 2024

Sanjay Kumar and another

..... Petitioners

Versus

UCO Bank and others

..... Respondents

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

Present: Mr. Arav Gupta, Advocate for the petitioners.

**Mr. Rampal Kohli, Advocate for
Mr. T.K. Joshi, Advocate for respondent No. 1.**

Mr. Deepak Grewal, DAG, Haryana.

LISA GILL, J.

1. Prayer in this writ petition is for quashing proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) initiated against the petitioners.

2. It is submitted that petitioners had availed of credit facility from respondent – bank on 07.06.2016 while mortgaging the property (residential house) as described in the writ petition. It is submitted that petitioners were regularly servicing the loan account till March 2020 but due to outbreak of pandemic COVID-19 their business was effected on account of which there was financial indiscipline. Petitioners’ account was declared Non Performing Asset (NPA) on 31.05.2021. Notice(s) under Sections 13(2) and 13(4) of SARFAESI

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Act were issued on 08/15.12.2021 and 25.08.2022, respectively. Notice by the Duty Magistrate-cum-Naib Tehsildar, Sohna pursuant to order dated 27.06.2022 passed by learned District Magistrate, Gurugram under Section 14 of SARFAESI Act was illegally affixed on their property. Petitioners, it is submitted, were ready and willing to deposit the entire overdue amount for regularization of their loan account but respondent proceeded in an absolutely arbitrary fashion.

3. Notion of motion was issued in this writ petition on 20.09.2022 by co-ordinate Bench while noting contention on behalf of petitioners regarding deposit already made by them and their willingness for depositing the amount required for regularization of their account. Subject to deposit as detailed in the said order, it was directed that no coercive action would be taken against the petitioners including their dispossession from secured asset.

4. Writ petition has been resisted by respondent – Bank while taking preliminary objection regarding entertainability of the writ petition. It is further submitted that no effort has been made by petitioners to even carry out assurance as placed before this Court on 20.09.2022. Action taken under SARFAESI Act is in strict compliance of provisions thereof. It is, thus, prayed that this writ petition be dismissed.

5. We have heard learned counsel for parties and have gone through file with their assistance.

6. Availing of loan facility, subsequent financial indiscipline and initiation of proceedings under SARFAESI Act are matter of record. It is a settled position that interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters has to be minimal

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and actuated only in extra-ordinary and exceptional circumstances. 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 54of 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 or 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.”

7. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance, which calls for intervention by this

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Court. It is pertinent to note, at this stage, that learned counsel for petitioners had been afforded an opportunity to seek instruction regarding deposit of overdue amount, however, no specific or categorical instructions are forthcoming.

8. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioners to avail remedy(ies) available to them in accordance with law. However, keeping in view the fact that interim order in favour of petitioners was granted on 20.09.2022 to the extent that they would not be dispossessed from secured asset, same shall continue for fifteen (15) working days to enable petitioners to avail remedy as may be available to them. In case, petitioners file appropriate application/petition, question of continuance or otherwise of interim order in petitioners' 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.

9. It is clarified that interim protection afforded to petitioners shall automatically stand vacated in the absence of any order by the appropriate authority.

10. It is clarified that there is no expression of opinion on the merits of matter.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

February 01, 2024
rts

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