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

CWP-22583-2022 (O&M)

Date of Decision:- 18.05.2024

ANIL KUMAR MALHOTRA

...Petitioner

Vs.

RESERVE BANK OF INDIA AND ANOTHER

...Respondents

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

Present:- Mr.Akhilesh Vyas, Advocate for the petitioner.

Ms. Madhu Dayal, Advocate for respondent No.2.
(Through V.C.)

LISA GILL, J.

1. Prayer in this writ petition is for quashing notice (s) dated 28.08.2021 (Annexure P-2) issued by respondent Bank under Section 13 (2), 16.12.2021 (Annexure P-9) issued under Section 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and sale notice dated 09.09.2022 (Annexure P-13).

2. Learned counsel for petitioner submits that credit facility was availed of by the company namely Stan Autos Private Limited. Petitioner, is one of the erstwhile Director, Mortgagor and Guarantor of the properties in question. In the present writ petition, challenge is to declaration of the loan account as non-performing assets ('NPA') on 28.07.2021 as well as notice (s) under Sections 13 (2) and 13 (4) of SARFAESI Act. It is pleaded that company in question was registered as MSME Unit under the Micro, Small and Medium Enterprises Development Act, 2006. Declaration of



petitioner's account as NPA itself is stated to be illegal and arbitrary and in complete violation of the circulars and guidelines issued by the Reserve Bank of India. It is further pleaded that notices in question were issued in total derogation of the applicable provisions of law. Sale notice dated 09.09.2022 was also issued in an absolutely illegal arbitrary manner. Petition under Insolvency and Bankruptcy Code (for short 'IBC') was filed by the company. Therefore, proceedings are in complete violation of the provisions of law.

3. Learned counsel for respondent State Bank of India submits that due to pending proceedings under IBC, proceedings under SARFAESI Act against the company in question are not being pursued but the Bank is at liberty and has a right to pursue the said remedy qua the personal/guarantor and petitioner is admittedly one. Moreover, in the present case, sale did not fructify, thus no ground whatsoever is made out in petitioner's favour.

4. Heard learned counsel for the parties and perused the file. It is pertinent to note that SARFAESI Act is a 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."

5. In so far as challenge to sale notice is concerned, same is rendered infructuous in as much as sale pursuant thereto did not fructify. In respect to challenge to rest of the proceedings, petitioner indeed has his remedy under SARFAESI Act. All arguments as raised before us are very well within the realm of consideration by the appropriate Authority/Tribunal as provided under the Act. Learned counsel for petitioners is unable to point out any extraordinary or exceptional circumstance which calls for any interference by this Court at this stage.

6. 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 (ies) as available to him in accordance with law.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

18.05.2024

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Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No