202

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23809-2022 (O&M)
Date of Decision: 02.05.2024

Kulwant Singh

...... Petitioner

Versus

Art House Finance (India) Ltd. and another .... Respondents

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

Present: Ms. Nancy Vashistha, Advocate
for Mr. Parminder Singh, Advocate
for petitioner.

Mr. Chirag Wadhwa, Advocate
for respondents.
(through Video Conferencing)

****

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 02.05.2022 (Annexure P-1) issued under Section 13(2) and notice issued under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. Learned counsel for petitioner submits that facility of home loan was availed of by petitioner from respondent-Financial Institution (for short 'F.I.'). Petitioner, it is stated was regularly paying the installments. Due to outbreak of Pandemic Covid-19, moratorium was to be granted.

Respondents, it is stated, arbitrarily increased the installment to Rs.16,000/- per month from Rs. 15,031/- and period of loan account was raised from 15 years to 24 years in a unilateral fashion. When the petitioner raised an objection, installment was reduced to Rs. 13,700/- per month, though, the period remained at 24 years. It is submitted that a fraud has been committed by respondents by misusing the cheques and blank papers which had been got signed from petitioner. Complaint under Section 406, 420, 477-A, 506 of IPC has been filed by petitioner, apart from a civil suit seeking rendition of accounts. Notice under Section 13(2) of SARFAESI Act was issued on 02.05.2022 and notice dated nil under Section 13(4) of SARFAESI Act was pasted on the house of petitioner. Petitioner came to know that order under Section 14 of SARFAESI Act has also been obtained by respondents. It is to be noted at this stage that in Para no. 4 of writ petition, it is stated that petitioner was regularly paying the loan amount and never defaulted in monthly installments, whereas, in the subsequent paras, it is stated that petitioner suffered huge losses due to death of some of the buffaloes he has kept.

3. Learned counsel for petitioner submits that petitioner is ready and willing to settle the matter with respondents who are not coming forward for the same as the F.I. only wants to seek possession of residential house. At this stage, learned counsel for petitioner further submits that matter regarding settlement is under consideration by respondents. It is thus prayed that present writ petition be allowed and in any case should be

adjourned till settlement is finalized.

4. Learned counsel for respondents has opposed this writ petition while firstly raising the objection of entertainability of this writ petition itself on the ground that writ is not entertainable qua non-banking housing finance company. It is further submitted that petitioner deposited only the first eight installments of loan facility which was availed of on 28.08.2018. Petitioner, thereafter, failed to service the loan account. Proceedings under the SARFAESI Act, it is submitted have been correctly initiated. It is further submitted that petitioner has not submitted any concrete proposal for One Time Settlement (OTS). Dismissal of writ petition is sought.

5. Heard learned counsel for parties and have perused the file.

6. Availing of financial credit by petitioner, subsequent financial indiscipline for reasons as may be, is a matter of record. Keeping in view the facts and circumstances of the matter, we do not find any ground whatsoever for interference in this writ petition. In so far as proceedings under SARFAESI Act are concerned, it is a settled position that petitioner has specific remedy(ies) provided under the Act itself which is a complete code in itself. Interference by this Court is not called for in such like matters except in extra-ordinary or exceptional circumstances in exercise of jurisdiction under Article 226 of the Constitution of India. Gainful reference in this respect can be made to the 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**

<u>Mathew Philip and another</u>, ***2023(2) RCR (Civil) 771***.

7. Moreover, relief claimed in this writ petition is qua a private non-banking housing finance company therefore, present writ petition in any case is not entertainable. Gainful reference in this respect can be made to judgment of the Hon'ble Supreme Court in ***Phoenix ARC Private Ltd. Vs. Vishwa Bharati Vidya Mandir and others 2022 AIR (SC) 1045,*** 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."

8. Learned counsel for petitioner is unable to point out any ground which calls for interference by this Court. There is also no merit in the prayer that writ petition should be kept pending to await settlement. Pendency or otherwise of this writ petition is irrelevant for the said purpose.

9. Keeping in view the above, this writ petition is dismissed with liberty to petitioner to avail the remedy(ies) available to him in accordance with law. It is always open to the parties to arrive at any mutually acceptable settlement. There is no expression of opinion on the merits of matter.

10. Pending miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

02.05.2024 **(AMARJOT BHATTI)**
lalit **JUDGE**

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