

2024:PHHC:041450-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4940-42-CWP-2024 in/and
CWP-32839-2019

Date of Decision: March 21, 2024

SEEMA KUMARI

..... Petitioner

Versus

DISTRICT MAGISTRATE, LUDHIANA AND OTHERS Respondents

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

Present: Mr. Ashish Soi, Advocate for the applicant-petitioner.

Mr. R.S. Pandher, Sr. DAG, Punjab.

Mr. P.S. Sobti, Advocate for respondent – Bank.

LISA GILL, J.

CM-4940-CWP-2024

1. Prayer in the application is for preponement of hearing of this writ petition, which is listed for 08.04.2024.
2. Learned counsel for respondent – Bank does not raise any objection thereto.
3. At request and with consent of learned counsel for parties, hearing of this writ petition is preponed from 08.04.2024 for today itself.
4. Application is, accordingly, disposed of.

CWP-32839-2019

5. Petitioner in this writ petition has challenged proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – ‘SARFAESI Act’) initiated against her.

6. It is submitted that petitioner and her husband obtained two loan facilities from respondent – Bank for a sum of Rs.22 lakhs and Rs.20 lakhs with amount to be returned in a period of thirty (30) years in total monthly instalments of Rs.35,000/-. It is submitted that instalments were being deposited regularly though there may have been meagre deficiency of accounts. Notice under Section 13(2) of SARFAESI Act was issued on 17.04.2019 after declaration of petitioner's account Non Performing Asset. However, before the petitioner could submit her objections, notice under Section 13(4) of SARFAESI Act was issued on 16.05.2019 before expiry of sixty (60) days, which is absolutely in violation of specific provisions of law. It is submitted that respondent – Bank thereafter submitted application under Section 14 of SARFAESI Act, which is also not in accordance with provisions of law with affidavit not giving the necessary details, which is the requirement of law. In an illegal manner, order dated 05.08.2019 was passed by learned District Magistrate, Ludhiana, under Section 14 of SARFAESI Act leading to filing of present writ petition.

7. Learned counsel for petitioner vehemently argues that present writ petition should be entertained as extraordinary and exceptional circumstances are carved out which call for exercise of jurisdiction of this Court despite availability of alternate remedy to the petitioner, though it is not denied that in para 16 of writ petition it is declared that petitioner is left with no other alternate remedy of appeal or revision but to approach this Court. It is contended that it was incumbent upon respondent – bank to have waited for period of 60 days before issuance of notice under Section 13(4) of SARFAESI Act. On this count itself, present writ petition should be allowed. It is also contended that though District Magistrate is not to exercise any adjudicatory powers this fact should have been

looked into and taken into account and order under Section 14 of SARFAESI Act for handing over of possession should not have been passed. It is, thus, prayed that this writ petition be allowed.

8. Learned counsel for respondent has controverted the arguments as above. It is submitted that present writ petition itself is not entertainable in view of alternate remedy available to the petitioner. Learned counsel submits that though it is not clearly stated in the reply filed on behalf of respondent No. 3 but notice under Section 13(4) of SARFAESI Act was issued on 17.06.2019 and was duly received by relative of petitioner. Due publication in newspapers was also carried out in accordance with law. Learned counsel has furnished copy of said notice and publications carried out. Copy thereof has been supplied to learned counsel for petitioner as well. Same are taken on record subject to just exceptions. It is further submitted that present writ petition is only a method or tactic employed by the petitioner to delay recovery proceedings. Petitioner has not deposited single paisa since 2019. It is, thus, prayed that this writ petition be dismissed.

9. We have heard learned counsel for parties and have gone through the file with their able assistance.

10. Notice of motion was issued in this writ petition on 14.11.2019 with respondents being restrained from alienating the property in dispute. Actual physical possession of the property was admittedly taken in September, 2019.

11. As none had been appearing on behalf of petitioner on two occasions, it was observed in order dated 31.08.2023 that in case there is no representation on behalf of petitioner on the next date of hearing, interim order would automatically stand vacated. When matter was taken up for hearing

thereafter, none appeared on behalf of the petitioner due to which interim order in her favour was vacated.

12. In the given factual matrix, we do not find any ground whatsoever to interfere in this writ petition. This is so for the reason 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. 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, 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.”

13. We do not find any merit in the argument raised by learned counsel for petitioner that present case displays extraordinary and exceptional circumstances as propounded by Hon’ble the Supreme Court in **Whirlpool Corporation versus Registrar of Trade Marks, Mumbai, 1998 (8) SCC 1**, which calls for interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India. Apart from the fact that there are disputed questions of fact involved in this writ petition all averments and arguments raised before us are clearly within the realm of consideration by the learned Tribunal.

14. This writ petition is, accordingly, dismissed with liberty to the petitioner to avail remedy(ies) available to her in accordance with law.

15. Pending application(s), if any, stand(s) disposed of.

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

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

March 21, 2024
Rts

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