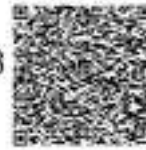


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2024:PHHC:134755-DB



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

CWP-27515-2024

Date of Decision: October 15, 2024

MADHU KAMRA AND ANOTHER Petitioners

Versus

STATE OF HARYANA AND OTHERS Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Akhilesh Vyas, Advocate for the petitioners.

LISA GILL, J.

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

2. Learned counsel for petitioners submits that petitioners are bonafide purchasers of property in question from one Yogesh Gupta and Smt. Richa Gupta. Property in question, it is submitted, was initially allotted to one Smt. Shanta Bhatia vide allotment letter dated 10.10.1973. Thereafter, it was transferred in favour of Smt. Parkash Rani vide allotment letter dated 14.08.1982 and thereafter in favour of Rakesh Kumar on 20.05.1985. Conveyance deed dated 19.07.1985 was executed in his favour. Rakesh Kumar sold the property vide sale deed dated 03.06.1987 to Kiran Sharma – respondent

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No. 8 and Santosh Sharma. Respondent No. 8 – Kiran Sharma and his wife Santosh Sharma executed sale deed dated 01.12.2004 in favour of Arun Kumar Sharma – respondent No. 6. Re-allotment letter dated 25.01.2005 was issued in his favour. Sale deed dated 01.12.2004 was, however, set aside/cancelled vide judgment and decree dated 28.09.2012 passed by learned Civil Judge (Junior Division), Panchkula in the civil suit filed by respondent No. 8 – Kiran Sharma and his wife Santosh Sharma. Said judgment and decree is stated to have attained finality. Public notice about sale deed dated 01.04.2004 being declared null and void was issued. Respondent No. 8 – Kiran Sharma and his wife Santosh Sharma executed sale deed dated 28.12.2020 in favour of Rakesh Gupta and his wife Smt. Richa Gupta, who are otherwise not arrayed as parties to the present writ petition. Property in question was sold to present petitioners by Yogesh Gupta and Rakesh Gupta vide sale deed dated 05.04.2021. Respondent No. 2 issued allotment letter dated 13.04.2021 in favour of present petitioners. Occupation certificate was also issued in their favour on 18.05.2022 besides non-encumbrance certificate dated 11.10.2022. Petitioners, it is submitted, are residing in this property with other members of family but to their surprise it came to knowledge that order dated 13.08.2024 has been passed under Section 14 of SARFAESI Act in respect to said property on account of some financial facility taken by Arun Kumar Sharma, Balwinder Kumar Sharma, Kiran Sharma and Marshall Engineering Private Ltd. etc. Learned counsel for petitioners submits that petitioners being bonafide purchasers should be protected in this matter and that proceedings initiated under SARFAESI Act qua the property being illegal and arbitrary should be set aside.

3. Various other grounds have been raised by learned counsel for petitioners, however, we do not find any ground to interfere in the matter after

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hearing learned counsel and perusing the file. This is so for the reason that specific remedies are provided under SARFAESI Act itself qua action which is taken thereunder.

4. It is a settled position that 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. 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; 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 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

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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. Learned counsel for petitioners is unable to point out any extraordinary and exceptional circumstance which calls for interference by this Court. All pleas and arguments raised before us are very well within the realm of consideration by learned Tribunal.
6. Accordingly, this writ petition is dismissed with liberty to petitioners to avail remedy(ies) as may be available to them in accordance with law.
7. There is no expression of opinion on merits of the matter.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

October 15, 2024
Rts

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