

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

125

CWP-26676-2023

Date of Decision: February 14, 2024

Sapna Rani @ Sapna and another

.....Petitioner(s)

Vs.

Indian Bank and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Siddharth Gupta, Advocate
for the petitioner(s).

SANJEEV PRAKASH SHARMA.J. (ORAL)

In view of the alternative remedy available to the petitioner under SARFAESI Act as well as under the provisions of the DRT and as per judgment of Hon'ble the Supreme Court, which states as under, the instant petition is **dismissed**.

“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.

“16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative wit. In the absence of any legal right,

the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative. We wish to quote with profit a recent decision of this Court in Radha Krishan Industries v State of H. P., (2021) 6 SCC 771.

27. The principles of law which emerge are that

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person

27.3. Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution, (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction, or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

- 2. The petitioner is always free to move appropriate application for interim prayer before the authorities concerned.
- 3. All pending applications, if there are stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

February 14, 2024
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Whether speaking/reasoned:	Speaking
Whether reportable:	Yes / No