2025:PHHC:039031-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.8047 of 2025
Date of Decision: 21.03.2025

M/s Jal Bajrang Traders and others

…Petitioners

Versus

M/s Anand Rathi Global Finance Limited and others

…Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Ms. Ananaya Nayyar, Advocate appearing for
Mr. Chandandeep Singh, Advocate, for the petitioners.

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SANJEEV PRAKASH SHARMA J.(Oral)

1. The petitioners have preferred this writ petition assailing the debt recovery proceedings initiated by the respondent-Bank relating to the loan availed by the petitioners for a sum of Rs.78 lacs and the order passed by the concerned District Magistrate, Faridabad (respondent No.2) dated 12.12.2024 (Annexure P-7) whereby the SARFAESI proceedings have been initiated and the possession of the property is being taken.

2. The provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') provides adequate remedy for redressal of grievances relating to recoveries made under the said Act. In ***M/S South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another 2023 INSC 379***, the Supreme Court has reiterated what it has already been continuously

saying since long. Relying on the earlier judgment of ***Phoenix ARC (P) Ltd. Vs. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345,*** held as under:-

> *"18. Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the 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* ***Praga Tools Corpn. v. C.A. Imanual, [(1969) 1 SCC 585]*** *and* ***Ramesh Ahluwalia v. State of Punjab, [(2012) 12 SCC 331: (2013) 3 SCC (L&S) 45: 4 SCEC 715]*** *relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.*
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> *21. Applying the law laid down by this Court in* ***State Bank of Travancore v. Mathew K.C., [(2018) 3 SCC 85: (2018)***

2 SCC (Civ) 41] *to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or 11 its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in*

exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

3. The Hon'ble Apex Court in the case of ***State Bank of Travancore vs. Mathew K.C., (2018) 3 SCC 85*** held as under:-

"5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in ***CIT v. Chhabil Dass Agarwal [(2014) 1 SCC 603], as follows: (SCC p. 611, para 15):*** *"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in* ***Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419], Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433: 1983 SCC (Tax) 131]*** *and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available*

to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

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8. The Statement of Objects and Reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the DRT Act") with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order.

9. Even prior to the SARFAESI Act, considering the

alternate remedy available under the DRT Act it was held in ***Punjab National Bank v. O.C. Krishnan [(2001) 6 SCC 569] that: (SCC p. 570, para 6)***

"6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

4. Further, in the case of ***M/S South Indian Bank Ltd. and others*** case (***supra)***, the Hon'ble Supreme Court held as under:-

"17. We shall reiterate the position of law regarding the interference of the High Courts in matters pertaining to the SARFAESI Act by quoting a few of the earlier decisions of this Court wherein the said practice has been deprecated while requesting the High Courts not to entertain such cases".

5. A three Judges Bench was against the said aspect in ***PHR Invent Educational Society vs. UCO Bank and others, 2024(4) SCR***

541, where, after considering the judgment passed in ***United Bank of India vs. Satyawati Tandon (2010) 8 SCC 110***, the Hon'ble Supreme Court held as under:-

> *"21 The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa (supra) were echoed in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others (1985) 1 SCC 260 in the following words:*
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> *"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill- suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."*
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> Further observed in para No.24 as under:-
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> *24. In City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala and others (2009) 1 SCC 168, the Court highlighted the parameters which are required to be kept in view by the High Court*

> *while exercising jurisdiction under Article 226 of the Constitution. Paragraphs 29 and 30 of that judgment which contain the views of this Court read as under:-*
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> *"29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution".*

6. We, thus, find that inspite of the judgments passed from time to time by the Hon'ble Supreme Court laying clearly without any ambiguity that a writ petition would not be entertained against the orders passed relating to recovery under the SARFAESI Act, yet the writ petitions are being filed.

7. The present writ petition is accordingly dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

March 21, 2025 **(MEENAKSHI I. MEHTA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No