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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1737/2013 & CM APPLs. 3841/2013 AND 5467/2013

ANUPA ABROL

..... Petitioner

Through: Petitioner in person.

versus

PUNJAB AND SIND BANK AND ORS

..... Respondents

Through: Mr. Suneel Kumar Atreya, Advocate for  
respondent No.1.

Mr. Abhinav Tyagi, Advocate for  
respondents No.2 and 3.

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Date of Decision: 12<sup>th</sup> September, 2013.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J (Oral):**

1. Present writ petition has been filed under Article 226 of the Constitution seeking a direction to the respondent No.1-Bank not to invoke the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'Act, 2002') on the ground that the alleged property bearing No. A-283, Shivalik, New Delhi-110017 admeasuring 197 sq. yds. does not fall within the definition of 'Financial Assets'.

2. Petitioner, who appears in person, draws this Court's attention to the letter dated 19<sup>th</sup> August, 2013 written by the Government of India, Ministry

of Urban Development, Land and Development Office, stating that the said office had not issued any Conveyance Deed dated 24<sup>th</sup> February, 2011 in respect of the aforesaid property in favour of predecessor-in-interest of respondents No.2 and 3. In fact, in the said letter, the Deputy, Land & Development Officer has stated that the Conveyance Deed dated 24<sup>th</sup> February, 2011 relied upon by the respondents is a fake Conveyance Deed and same is under investigation by the Economic Offences Wing, Crime Branch, New Delhi.

3. On the other hand, learned counsel for respondent No.1-Bank submits that the present writ petition is not maintainable as the petitioner has an alternative effective remedy by way of an appeal under Section 17 of the Act, 2002. Learned counsel for respondent No.1-Bank draws this Court's attention to the Kerala High Court's Full Bench judgment in ***N.P. Pushpangadan & Ors. vs. The Federal Bank Ltd. & Ors.***, AIR 2012 Ker 27, wherein it has been held as under:-

*“45. When an application is made under Section 17 of the Securitisation Act by a person claiming to be a tenant under the borrower or any person under whom the borrower claims title, the Debts Recovery Tribunal has jurisdiction to entertain the application and to enquire into the question whether the applicant had any right, title or interest or possession anterior to the creation of the security interest and to what extent such interest could be protected. If the claim made by the applicant is found to be genuine and legal, appropriate orders can be passed by the Tribunal holding that: (a) his actual possession shall not be disturbed; (b) only symbolic possession shall be taken; (c) any sale shall be subject to the rights of the applicant; and/or (d) any other order or direction which is required in the facts and circumstances of the case.*

*46. Since the petitioners have an adequate, alternative and efficacious remedy to make an application to the Debts Recovery Tribunal under Section 17 of the Securitisation Act, we decline the reliefs sought for in the writ petition. However, in the facts and circumstances of the case, the petitioners are permitted to file an application before the Tribunal under Sec. 17 of the Securitisation Act, within a period of one month from today. If such an application is filed within a month, the Debts Recovery Tribunal shall dispose of the same in accordance with law, treating the application as having been filed within the period of limitation.”*

4. Learned counsel for respondents No.2 and 3 vehemently denies that the Conveyance Deed dated 24<sup>th</sup> February, 2011 is fabricated. However, learned counsel for respondents No.2 and 3 fairly submits that petitioner is in actual possession of the aforesaid premises.

5. Having heard learned counsel for parties, this Court is of the opinion that Section 17 of the Act, 2002 gives right of appeal to any person who is aggrieved by any of the measures taken by the Bank under Section 13 of the Act, 2002. The Supreme Court in ***United Bank of India vs. Satyawati Tondon and Ors., AIR 2010 SC 3413*** has held as under:-

*“17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression ‘any person’ used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to*

*an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*

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*27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.*

6. Keeping in view the aforesaid mandate of law, it is apparent to this Court that petitioner has an alternative effective remedy by way of an appeal under Section 17 of the Act, 2002. Petitioner is granted six weeks to file an appeal before the Debt Recovery Tribunal.

7. However, keeping in view the letter dated 19<sup>th</sup> August, 2013 issued by the Government of India, Ministry of Urban Development, Land and Building Office, seeking cancellation of registration of Conveyance Deed dated 24<sup>th</sup> February, 2011, this Court directs the respondents to maintain *status quo* with regard to the property in question till the petitioner's appeal to be filed under Section 17 of the Act, 2002 is decided by the Debts Recovery Tribunal. In the event petitioner does not file an appeal under Section 17 of the Act, 2002 within the stipulated period, protection granted by this Court shall stand vacated. With the aforesaid observations, present petition and pending applications stand disposed of.

**MANMOHAN, J**

**SEPTEMBER 12, 2013**

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