

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 1210 of 2015 (O&M)
Date of Decision: April 20, 2015

Mrs. Raman Khanghura

.....Petitioner

Versus

The Board of Directors, Punjab and & Sind Bank and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE LISA GILL**

Present: Shri Mathews J. Nedumpara, Advocate, for the petitioner.

Shri Pavan Malik, Advocate, for respondent Nos. 1 to 3.

Shri Raghav Goel, Advocate, for respondent No.4.

Shri Sukant Gupta, Addl. P.P., U.T., Chandigarh, for
respondent No.6.

1. Whether Reporters of local papers may be allowed to see the judgments?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Hemant Gupta, J.

Challenge in the present petition is to an order passed by the Debt Recovery Appellate Tribunal (for short `the Appellate Tribunal') on 19.5.2014 (Annexure P.4) and also to an order dated 12.11.2014 (Annexure P.5) passed by the Debt Recovery Tribunal, Chandigarh (for short `the Tribunal') whereby the concerned Tehsildar was directed to provide date and time within one week to facilitate delivery of possession in terms of the earlier order dated 16.7.2014 passed by the District Magistrate, under Section 14 of the Securitization and

Reconstruction of Financial Assets and Enforcement of the Security of Interest Act, 2002 (for short 'the Act'). The challenge is also to an order passed by the District Magistrate on 16.7.2014 (Annexure P.2).

The petitioner is a mortgagee of a loan advanced to M/s Majestic Hotel Limited having mortgaged her 4312 square yards House No. 237, Sector 9-C, Chandigarh, in favour of the Bank. The Majestic Hotel Limited, the principal borrower, of which Shri Jasbir Singh Khangura, the husband of the petitioner, a former Member of the Punjab Legislative Assembly, is the Managing Director and guarantor, availed different loans under five accounts of more than Rs.18 crores. Since the borrower failed to repay the amount as per the terms of the loan agreement, the Bank issued a notice under Section 13(2) of the Act on 15.10.2012. The Bank, thereafter, initiated the proceedings under Section 14 of the Act. An order was passed on 16.7.2014, directing the Tehsildar, Chandigarh, to take over the possession of the property in question by taking necessary steps including the breaking open the locks of the said premises.

The petitioner challenged the proceedings initiated under Section 13 of the Act before the Tribunal by filing an application as contemplated under Section 17 of the Act. The Tribunal passed an order on 1.3.2013 (Annexure P.3) granting an order of status quo and also directing the petitioner to pay the overdue amount within one month after supply of proper statement of accounts by the Bank. The said order passed by the Tribunal, was challenged by way of an appeal before the Appellate Tribunal by the Bank. Such appeal was decided on 19.5.2014, wherein it was observed that if the petitioner is still willing to pay the overdue amount of over ten crores (Rs.10,22,01,193.63p), it may do so within a period of two weeks from the date of the order and that the Bank, would be at liberty to proceed

with the recovery of the due amount in accordance with law. It is, thereafter, the District Magistrate, has passed the order on 16.7.2014.

Since an application under Section 17 of the Act was pending before the Tribunal, the Bank filed an application before the Tribunal seeking direction to Tehsildar and for executing the order for taking over the possession of the secured assets. Such application was, inter-alia, resisted on the ground that the Tehsildar is not a party to the proceedings before the Tribunal and therefore, no direction can be given to the Tehsildar to implement the order. However, the Tribunal noticed that the delaying tactics at the end of the concerned Tehsildar and the police authorities have exposed their nexus. The Tribunal observed as under:-

“.....The Tehsildar is delaying the same due to extraneous reasons, it was the duty of the Tehsildar to provide appropriate manpower as well as due orders of assistance to the respondent Bank but it has been seen repeatedly that the same Tehsildar who instead of helping the Banks is indulging in activities with extraneous reasons which are helpful to the defaulters. The officers of the Bank are not only officers of the institution but part of regulatory body of economy of India who are executing their duties for getting these freeze funds which are sticky and scattered, to the mainstream of India economy but they too seem to more interested in their self interest instead of the larger interest of the recovery because of few black sheep. The delay on the part of the particular Tehsildar against whom number of oral complaints are reaching to this Court, is writ at large.

So far as the powers of this Court are concerned, the spirit of the Act as well as the latest amendment made in the Act itself speaks that this Court has ample power to deal with such type of tactical delaying elements. Further, in the light of the judgment passed by the Hon'ble High Court title Smt. Simrata Kumari v. State of Punjab (CWP 11789 of 2013) is sufficient qua jurisdiction of this Court for issuance of such orders. Therefore, in the light of the above judgment, the Tehsildar is directed to provide appropriate assistance to the Authorised Officer of the Bank as sufficient orders have already been given by the District Magistrate.

In fact all the pleadings of the respondents/applicants who are now further impliedly protecting the concerned Tehsildar and Police authorities have exposed the nexus which have now become a tool of delay in the hands of these executing officers. It has further been observed that on the one hand side, Bank is trying hard to recover the public money whereas on the other hand side with whom the powers are vested to assist in making recovery in the dues is rather delaying the same on the one pretext or the other.”

The Tribunal further noticed that the requirement of permission from the District Magistrate is not mandatory for the authorized officer under the Act to take physical possession of the secured asset and that it is only required when the defaulter is resisting or creating law and order problem for the Bank to take the possession in a lawful manner from such defaulter. The Tribunal directed the Tehsildar to execute the orders passed by the District Magistrate within 15 days.

The petitioner filed an application on 24.12.2014 (Annexure P.8) to recall the order dated 12.11.2014 passed by the Tribunal. On 19.12.2014, the Tribunal passed an order, noticing the negligent and careless attitude of concerned Tehsildar, Deputy Commissioner and the SHO. Their behaviour was noticed to have been found contemptuous and against the spirit of the enactment of law for playing into the hands of the defaulters. The Bank was granted liberty to proceed before the competent Court for the contempt for disobedience of the orders passed by the Tribunal. The Bank thereafter filed a contempt petition COCP No. 3454 of 2014 before this court, which is stated to be pending for 24.8.2015.

In the written statement, it was stated that the petitioner has been making false commitments that the petitioner wishes to regularize the loan as it was only in view thereof that this Court directed to maintain status quo in respect of the secured assets.

However, no effort was made to contact the Bank regarding the regularization of the loan. It was pointed out that a sum of Rs.25,73,99,458.63p is outstanding as on 31.1.2015 and an amount of Rs.16,72,00,000 is required to be deposited immediately to regularize the account. It is also pointed out that the Bank had initially invoked the provisions of Section 19 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993 (for short 'the Recovery Act'). It is also pointed out that in terms of the order passed by the Tribunal in proceedings under Section 17 of the Act on 1.3.2013; the statements of accounts were supplied on 14.3.2013 and 15.3.2013. But the amount was not deposited even after the lapse of one month. Therefore, an appeal was filed by the Bank before the Appellate Tribunal. It is also pointed out that the Tribunal on 5.3.2014 even before the listing of the matter before the Lok Adalat, directed the petitioner to pay the overdue amount. Still further, a perusal of the order passed by the Tribunal on 21.3.2014 would show that the Bank has supplied the complete statement of accounts. Therefore, the matter was put up before the Lok Adalat on 22.3.2014, but the petitioner did not deposit any amount nor the matter could be settled before the Lok Adalat. It is also pointed out that the ulterior motive to stall the proceedings was the proxy litigation initiated through Shri one Onkar Singh on the basis of lease agreement dated 25.3.2008, which is false and forged. It is also pleaded that the petitioner has not made any reference to the lease deed in an application filed under Section 17 of the Act pending before the Tribunal nor on the valuation report any part of the building is said to be in occupation of the tenant. Rather the same was reflected to be self occupied. The petitioner has filed a rejoinder controverting the assertions taken by the Bank in the written statement.

We have heard learned counsel for the parties at some length, but do not find any merit in the present petition.

First of all, we may notice that there are serious but mischievous allegations levelled against the Presiding Officer of the Appellate Tribunal by the petitioner, inter-alia, pointing out that the petitioner's paternal grandfather and the maternal grandfather of the son-in-law of the Presiding Officer of the Tribunal, were brothers. Thus, there is a clear conflict of interest and the Presiding Officer should have recused himself of the matter at the very first opportunity. However, during the course of arguments, learned counsel for the petitioner did not press for any of the allegations levelled against the Presiding Officer of the Appellate Tribunal.

Learned counsel for the petitioner has vehemently argued that the Appellate Tribunal was seized of an appeal filed by the Bank against an interim order passed by the Tribunal. The learned Appellate Tribunal could allow the appeal and set aside the order passed by the Tribunal, but could not issue any directions to the Tribunal to initiate the recovery proceedings in a particular manner. Still further, the Tribunal has no jurisdiction to issue any direction to the District Magistrate and/or Tehsildar to exercise the power conferred under Section 14 of the Act and that the order passed by the District Magistrate on 16.7.2014 is an ex-parte order without giving any notice to the petitioner and thus, it violates the principles of natural justice. It is also argued that the petitioner is ready and willing to pay the entire loan amount in four months' time.

We find that the offer of the petitioner to repay the entire loan amount within four months lacks bona-fide. The notice under Section 13(2) of the Act was issued on 15.10.2012. But even after more than 30 months, the petitioner has not deposited any amount. The Tribunal had initially granted time to the petitioner to pay the amount

on 1.3.2013. The Appellate Tribunal, while passing the order dated 19.5.2014, had also granted time to the petitioner to make payment of the entire outstanding dues. Even before this Court, the willingness of the petitioner to regularize the loan was noticed in the order dated 23.1.2015. But still no attempt has been made to deposit any amount. Thus the words and actions do not match in as much as even during the last more than two years, not even a single penny has been deposited although the total outstanding amount is stated to be Rs.25,73,99,458.63p as on 31.1.2015 out of which an amount of Rs.16,72,00,000/- is required to be deposited immediately to regularize the loan. It shows that the statement of the petitioner that she is ready and willing to deposit the loan amount in four months' time, is an attempt to gain time without having any intention to pay the loan amount. If the petitioner was really truthful towards her commitment, some reasonable amount could have been deposited in all these months. Therefore, we find that the offer to regularize the loan account is not intended to be acted upon.

An appeal to the Appellate Tribunal is not circumscribed by any limitation in respect of the exercise of the jurisdiction by the Appellate Tribunal in terms of Section 18 of the Act. An appeal is continuation of the lis initiated at the first instance. Therefore, the Appellate Tribunal can pass all such orders as the Tribunal could pass in terms of Section 17 of the Act. The order passed by the Appellate Tribunal is to the effect that the interim order passed by the Tribunal amounts to allowing the main prayer in an application under Section 17 of the Act. We do not find that such order cannot be said to be unjustified in any manner. We find that the Appellate Tribunal was justified in issuing directions to the Bank to initiate the proceedings for recovery of the loan amount while entertaining the appeal filed by the Bank against the interim order passed by the Tribunal.

In Standard Chartered Bank v. Noble Kumar, (2013)9 SCC 620, the Supreme Court held that there are three methods to take possession of the secured assets. The first would be where the secured creditor gives the requisite notice under Rule 8(1) in the absence of any resistance. The second situation is where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) and in such eventuality; the secured creditor is to take recourse to the mechanism provided under Section 14 of the Act. The third situation is where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act, wherein the Magistrate is to scrutinize the application as provided in Section 14 and then if satisfied, authorize a subordinate officer to take possession of the assets. The relevant extract from the judgment would read as under:-

“36. Thus, there will be three methods of the secured creditor to take possession of the secured assets:-

36.1 (i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorized officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realize the amounts that are claimed by the secured creditor.

36.2 (ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinize the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorize the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

36.3 (iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter, scrutinize the application as provided in Section 14, and then if satisfied, authorize a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under clause 36.2.(ii) above.

36.4 In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) Rules, 2002, shall apply.”

The paramount object of the Act is that the secured creditor should have possession of the secured assets to facilitate its sale to realize its dues. To achieve the said objective as held in Standard Chartered Bank's case (supra), there are three methods. In the present case, the Bank has initiated action under Section 13 of the Act which action is disputed by the surety by way of an application under Section 17 of the Act before the Tribunal. Independent of the said action, the Bank has a right to take recourse to Section 14 of the Act as held in Standard Chartered Bank's case (supra) (*see para 26*).

The proceedings before the Tribunal at the instance of the guarantor are pending, and that there is no interim order protecting the possession of the petitioner. Therefore, the Bank has a right to take possession without recourse to the Tribunal. If Bank has a right to take possession, without the intervention of the Tribunal, the mere fact, the Tribunal passed an order directing the Tehsildar to give effect to the order passed by District Magistrate is to support the statutory right vesting with the Bank. The action of the Bank and the order of the Tribunal sub-serve the public purpose to realize the public money. Therefore, the interpretation which advances the larger public interest has to be accepted. The Bank could take action against the borrower

and/or the guarantor under Section 14 of the Act even if the proceedings under Section 13(4) of the Act are pending at the instance of the guarantor before the Tribunal. The Tribunal under Section 17 of the Act exercises the jurisdiction in respect of the measures referred to in sub-section (4) of Section 13, resorted to by the secured creditor for enforcement of security. An order passed by the District Magistrate under Section 14 of the Act, can be challenged before the Tribunal in the light of the judgment of the Hon'ble Supreme Court in Kanaiyalal Lalchand Sachdev Vs. State of Maharashtra, (2011) 2 SCC 782, as interpreted by this Court in M/s Punjab Chemical Industries v. District Magistrate-cum-Deputy Commissioner, Ludhiana, CWP No. 15821 of 2014 decided on 12.8.2014. Therefore, the Tribunal will have the jurisdiction to pass orders directing the Tehsildar to give effect to the order passed by the District Magistrate as taking possession under Section 14 of the Act is one of the measures.

In respect of the argument that the Tribunal cannot entertain the plea in the hand of a Banker in the proceedings under Section 17 of the Act, we find that the judgments relied upon by learned Counsel for the petitioner such as Union of India v. Tarachand Gupta, AIR 1971 SC 1558; Maganlal Chagganlal v. Municipal Corporation of Greater Mumbai, AIR 1974 SC 2009; C.B. Gautam v. Union of India, AIR 1994 SC 771; Anthony v. K.C. Ittoop, AIR 2000 SC 3523; Abhay Kumar Pandey v. State of Bihar, AIR 1997 Patna 160; Krishna v. Kedarnath & Others, AIR 2006 Karnataka. 21; Mohanlal v. Dwarka Prasad, AIR 2007 Rajasthan 129; Sree Lakshmi Products v. State Bank of India, AIR 2007 Madras 148, Dena Bank v. Shri Shihor Nagarik Sahakari Bank Ltd., AIR 2008 Gujarat 110 and Hutchison Essar South Ltd., Bangalore v. Union Bank of India, AIR 2008 Karnataka 14, do not in any way advance the argument raised by the learned counsel for the petitioner. Rather, we find that the judgments

have been referred to without any application of mind as to how such judgments are relevant to any of the issues raised in the present petition.

The single Bench judgment of Gujarat High Court in Dena Bank's case, deals with the right of the tenant of a secured asset. It was held that the action of the secured creditor cannot be decided by the Tribunal under Section 17 of the Act. However, in view of the judgment of this Court in M/s Punjab Chemical Industries' case (supra), the rights of the tenant of a secured asset are also required to be examined by the Tribunal under Section 17 of the Act.

The judgment of the Rajasthan High Court in Mohanlal's case (supra) deals with the rights of the coparceners after the partition of the property and therefore, the issue involved in the said case is different. Even the judgment in Sree Lakshmi Products' case (supra) is in line with the judgment of this Court in M/s Punjab Chemical Industries' case (supra).

A Division Bench judgment of Bombay High Court reported as Jai Bharat Synthetic Ltd. v. SBI, 2010(3) Maharashtra Law Journal 827, held that the provision under Section 14 of the Act, does not involve any adjudicatory process and therefore, the principles of natural justice are not attracted. The order passed by the District Magistrate is to provide assistance sought by the secured creditors in accordance with law to enforce the security interest. It is a help provided by the lawful authorities by non-adjudicatory process. The Court observed as under:-

“.....The said provision is intended to ensure that the proceedings initiated under Section 13(2) of the Act are carried to its logical outcome. The provision do not contemplate judicial process or work as it does not involve any adjudicatory process and as such, therefore, the principles of natural justice are not attracted. In view of the observations by the Supreme Court (in para 56) of its decision in M/s. Transcore v. Union of

India (supra), if a borrower is dispossessed unlawfully or not in accordance with the provisions of the Act, then the Debts Recovery Tribunal is entitled to put the clock back by restoring the status quo ante. Therefore, it cannot be said that if possession is taken before the confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is authorised officer taking possession. In view defeated by the of the non-adjudicatory process under Section 14, it would be erroneous to say that the rights of the borrower would stand defeated without adjudication.”

We agree with the aforesaid view of the Bombay High Court. We also find that in fact, the Appellate Tribunal issued the directions to the Bank to initiate action in the event the petitioner fails to pay the due amount. It is thereafter, the District Magistrate passed the impugned order. The petitioner was not taken by a surprise when such order was passed. The District Magistrate is not bound to issue notice before initiating the proceedings under Section 14 of the Act, but may choose to issue a notice as he deems fit. But failure to issue notice will not vitiate the proceedings as held by the Bombay High Court as the District Magistrate is not exercising adjudicatory process. Therefore, the proceedings under Section 14 of the Act, could not be challenged for the reason that a show cause notice was not served so as to comply with the principles of natural justice.

We also find that even if there is any ambiguity over the jurisdiction of the Tribunal to issue directions to the District Magistrate or Tehsildar; this Court, in exercise of its jurisdiction under Article 226 read with Article 227 of the Constitution, can issue directions to the District Magistrate to give effect to the statutory provisions at the instance of the Bank. Hence, the technical plea raised by the petitioner cannot be a ground to delay the recovery of the public money.

Learned counsel for the petitioner has referred to 12 judgments in support of the plea that the order passed by the Tribunal is a nullity. We find that benefit of none of the judgments can be extended to the facts of the present case, wherein the Tribunal has passed an order under Section 17 of the Act to give effect to an order passed by the District Magistrate under Section 14 of the Act.

Learned counsel for the petitioner has referred to another 12 judgments in support of the argument that the petitioner has a right to invoke the jurisdiction of this Court rather than avail the remedy against the order passed by the Tribunal. Such judgments are not relevant for the reason that we have heard the arguments raised on merits rather than to relegate the petitioner to an alternative remedy.

In view of the above, we do not find any merit in the present petition. Hence, the same is dismissed.

[HEMANT GUPTA]
JUDGE

[LISA GILL]
JUDGE

April 20, 2015
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