IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12563 of 2015(O&M)

Date of decision:29.6.2015

Johnny Mathew ….Petitioner

VERSUS

M/s PNB Housing Finance Limited and others .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. A.K. Walia, Advocate for the petitioner.

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HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to an order passed by Debts Recovery Appellate Tribunal (for short 'Appellate Tribunal') on 21.01.2015 whereby an appeal filed by the petitioner against an order passed by the Debts Recovery Tribunal (for short 'Tribunal') on 08.11.2013 was dismissed.

The petitioner availed Housing Loan from respondent No.1 in the year 2001. The petitioner defaulted in making payment of installments. Therefore, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short 'the Act') was issued on 17.02.2004. A notice under Section 13(4) of the Act was issued on 17.10.2007 but the petitioner failed to settle the loan account. The property was put to sale and the sale certificate was issued after confirmation of sale on 08.07.2010. Thereafter, the sale deed was executed on 06.12.2010. The petitioner did not avail any remedy against issuance of notice under Section 13(4) of the Act or against the proceedings for confirmation of sale. It was on 14.12.2012, the petitioner filed an application under Section 17 of the Act for cancellation of sale deed dated 06.12.2010. Learned Tribunal dismissed the same holding that it is barred by limitation as the limitation is only of 45 days after notice under Section 13(4) of the Act was issued. It is the said order which has been affirmed by learned Appellate Tribunal on 21.01.2015.

Learned counsel for the petitioner vehemently argued that learned Tribunal has erred in law in holding that there was a delay of five years, in fact the delay can be said to be of two years from the date of execution of the sale deed, though an appeal was filed within 45 days of the knowledge of sale. It is also argued that the sale price is inadequate and the entire process of sale is vitiated.

We find that even delay of two years could not be ignored by learned Tribunal or by learned Appellate Tribunal. The petitioner was served with notice under Section 13(2) of the Act in the year 2004. The petitioner did not file any objections as contemplated under Section 13(3A) of the Act. Thereafter, notice under Section 13(4) of the Act was issued on 17.10.2007. The petitioner again did not take recourse to any of the legal remedies provided under the statute. The petitioner allowed the sale to be proceeded with. The sale proceedings were confirmed and the sale certificate was issued on 08.07.2010. The sale deed was issued thereafter on 06.12.2010.

The petitioner had a remedy to challenge the proceedings under Section 13(4) of the Act in the first instance in respect of which a notice was issued on 17.10.2007. The petitioner invoked the jurisdiction of the Tribunal on 14.12.2012 i.e. after five years. The sale deed by itself could not be challenged by the petitioner under Section 17(1) of the Act, which permits challenge only to any of the measures taken under Section 13(4) of the Act. Even if an action of the secured creditor of sale could be challenged under Section 17 of the Act, the same could be done within 45 days of confirmation of sale. The petitioner had not challenged such order within 45 days but challenged it after more than two years. The argument that the petitioner has availed the remedy within 45 days from the date of knowledge is not tenable. In the case of an appeal against the order passed, the date of knowledge is not relevant but the date of passing of the order. The petitioner has not availed the remedy of an appeal under Section 17(1) of the Act within the period of limitation. Such appeal has not been rightly entertained. We find that the petitioner was sleeping over his rights since the year 2007 and thus, the law cannot come to the rescue of a person who is not diligent.

Another argument raised by learned counsel for the petitioner is that the property was undervalued. He relies upon a judgment of this Court reported as 2008(4) RCR (Civil) 50 titled Bhupinder Singh v. The State Bank of Patiala, The Mall, Patiala and others.

We do not find that such an argument can be permitted to be raised by the petitioner in the writ petition. To raise such an argument, the petitioner has to be diligent and avail remedies contemplated by law. The petitioner slept over his rights for years together. Therefore, we cannot permit the petitioner to raise the said argument at this stage, when the rights of third party consequent to sale stands crystallized.

We do not find any merit in the present petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

JUNE 29, 2015 **(LISA GILL)**
'D. Gulati' **JUDGE**