

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.8882 of 2015
Date of decision:7.5.2015

M/s Shivpam Agrofoods Private Limited Petitioner

VERSUS

Allahabad Bank and another Respondents

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

Present: Mr. Ved Parkash Sehtiya, Advocate for the petitioner.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the memo No.DM/MA/15/1365-67 dated 23/27.01.2015 issued by the District Magistrate directing the Tehsildar (Revenue), Union Territory, Chandigarh to take physical possession of House No.3166, Sector 23 D, Chandigarh.

The petitioner has availed financial assistance from the respondent-Bank in terms of the sanction letter dated 19.03.2010 issued. The petitioner has furnished primary and collateral securities. The primary security is plant and machinery of the firm M/s Shivpam Agrofoods Pvt. Ltd. whereas the house in question is a collateral security.

The respondent-Bank initiated proceedings under the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short 'the Act') when it served notice dated 03.10.2012 under Section 13(2) of the Act and notice dated 21.12.2012 under Section 13(4) of the Act. Admittedly, the petitioner has not availed the remedy contemplated under Section 17

of the Act before the Debts Recovery Tribunal against the action taken under Section 13(4) of the Act. The respondent-Bank also submitted an application under Section 14 of the Act along with an affidavit for police help to the District Magistrate. In the said application, the District Magistrate has passed the impugned order which is challenged in the present writ petition.

Learned counsel for the petitioner argued that initiation of proceedings under Section 14 of the Act suffers from the vice of violation of principle of natural justice as no notice was given to the petitioner. Still further, the Bank has proceeded against the collateral security without exhausting the remedies against the primary security. It is only after exhausting the remedy against the primary security; the Bank can proceed against the collateral security. It is also argued that since the Rice Sheller and the land on which such Rice Sheller is installed is located in Fatehgarh Sahib; therefore, the District Magistrate Chandigarh has no jurisdiction to initiate proceedings under Section 14 of the Act. Therefore, the action of the District Magistrate is not sustainable in law.

We have heard learned counsel for the petitioner and find no merit in the present writ petition. The argument that the principles of natural justice have not been complied with by the District Magistrate while directing police help is misconceived in the light of judgment of this court in CWP No.1210 of 2015 titled Mrs. Raman Khanghura v. The Board of Directors, Punjab and Sind Bank and others, decided on 20.04.2015. The Division Bench has considered the similar argument and repelled the argument relying upon an order of Division Bench judgment of Bombay High Court reported as 2010(3)

Maharashtra Law Journal 827 titled Jai Bharat Synthetic Ltd. v. SBI.

It has been held that the District Magistrate is not exercising adjudicatory process. It is an administrative order, therefore, District Magistrate is not bound to issue notice before initiating proceedings under Section 14 of the Act.

In respect of the argument that the Bank has to first exhaust its remedies against the primary security is again not tenable. The petitioner has equitably mortgaged two properties including House No.3166, Sector 23, Chandigarh which is apparent from the letter of sanction dated 19.03.2010 (Annexure P-1). The equitable mortgage of house is a secured asset as defined under Section 2(zc) of the Act. The Bank has right to proceed against the secured asset in accordance with the provisions of the Act which includes the proceedings under Section 13 of the Act as well as under Section 14 of the Act.

We do not find any merit in the argument that unless the sale of the primary security is affected, the collateral security cannot be possessed or put to sale. It is for the creditor to choose the security against which it proceeds to recover the dues. The right has been given to the secured creditor to choose against the principal borrower or against the guarantor. The property mortgaged is that of the guarantor Savinder Singh which is apparent from the sanction letter dated 19.03.2010 (Annexure P-1). In a recent judgment reported as Ram Kishun and others v. State of Uttar Pradesh and others, (2012) 11 SCC 511, this settled position in law has been reiterated when the Court held:

“10. There can be no dispute to the settled legal proposition of law that in view of the provisions of Section 128 of the

Contract Act, 1872 (hereinafter called “the Contract Act”), the liability of the guarantor/surety is coextensive with that of the debtor. Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as to how he should make the recovery and pursue his remedies against the principal debtor at his instance. (Vide *Bank of Bihar Ltd. v. Damodar Prasad AIR 1969 SC 297*, *Maharashtra SEB v. Official Liquidator AIR 1982 SC 1497*, *Union Bank of India v. Manku Narayana AIR 1987 SC 1078* and *SBI v. Indexport Registered AIR 1992 SC 1740*.)

11. In *SBI v. Saksaria Sugar Mills Ltd. (1986) 2 SCC 145* this Court while considering the provisions of Section 128 of the Contract Act held that liability of a surety is immediate and is not deferred until the creditor exhausts his remedies against the principal debtor. (See also *Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala (2009) 9 SCC 478* and *United Bank of India v. Satyawati Tondon AIR 2010 SC 3413*.)”

In view of the above, we do not find any merit in the said argument as well.

Thus the present writ petition is dismissed the same being without any merit and as another attempt to delay the recovery of public dues.

Dismissed.

(HEMANT GUPTA)
JUDGE

MAY 7, 2015
‘D. Gulati’

(LISA GILL)
JUDGE