IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 11099 of 2016
Decided on : 21.10.2016

M/s Kashmir Apiaries Exports and others

. . . Petitioners

Versus

Kotak Mahindra Bank

. . . Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Ishaan Bhardwaj, Advocate
for the petitioners.

Mr. Nitin Ahluwalia, Advocate
for the respondent.

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AJAY KUMAR MITTAL, J. (Oral)

The petitioners have approached this Court under Articles 226/227 of the Constitution of India, seeking direction to the respondent to consider the case of the petitioner's unit for rehabilitation as per RBI guidelines before taking action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). A further prayer for quashing of notice dated 28.08.2015 (Annexure P-9), issued under Section 13(2) of the Act, letter dated 31.10.2015 (Annexure P-11), order dated 11.01.2016, possession notice dated 19.02.2016 (Annexure P-17) and 15.03.2016 (Annexure P-19), possession notice dated 27.03.2016 (Annexure P-21) and sale notice dated 27.04.2016 (Annexure P-22) has also been made.

2. On 28.09.2016, the following orders were passed:

"It is not disputed that the petitioners had availed a term loan from the respondent-Bank in the year 2011 and the said loan was for a period of five years.

> *Since the period of the said loan had expired in this year i.e. 2016, learned counsel for the petitioner is directed to produce the bank draft for a sum of ₹50 lac to show the bona fides of the petitioners regarding discharging of outstanding liability."*

3. The petitioners were required to produce a demand draft for a sum of ₹50 lacs in terms of the order dated 28.09.2016, to show the bona fides, as the term of repayment of loan had expired in the year 2011. However, the petitioners failed to produce the demand draft of ₹ 50 lacs in Court today. Moreover, the orders impugned herein are appealable under Section 17 of the Act.

4. Section 17 of the Act reads thus:-

> ***"17. Right to appeal***
>
> *(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:*
>
> *PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower.*
>
> *Explanation : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.*

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

PROVIDED that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in *writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).*

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder."

5. In such a situation, we refrain to entertain the petition and relegate the petitioner to avail the aforesaid alternative remedy, in accordance with law.

6. Dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

October 21, 2016
J.Ram

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