

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

**CWP No. 18262 of 2016
Decided on : 21.11.2016**

Harbir Inder Singh

... Petitioner

Versus

State Bank of India and another

... Respondents

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

PRESENT: Mr. Rajat Gautam, Advocate
for the petitioner.

Mr. Pawan Kumar Bansal, Advocate
for the respondents.

AJAY KUMAR MITTAL, J. (Oral)

The challenge in this writ petition filed under Articles 226/227 of the Constitution of India, for quashing the orders dated 28.07.2016 and 29.07.2016 (appended as Annexures P-5 & P-6, respectively), passed by respondent No.2, whereby, OA No.748 of 2013, titled as “State Bank of India Vs. Harbir Inder Singh” was allowed with pre-determined mind.

2. Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 (for brevity 'the Act') provides for appeal to the Appellate Tribunal, whereby, any person aggrieved by the order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter. Section 20 of the Act reads thus:-

“20. Appeal to the Appellate Tribunal.—(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the

Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.”

3. Learned counsel for the respondents placed reliance upon the judgment of the Apex Court rendered in ***Punjab National Bank Vs. O.C. Krishnan and others, AIR 2001, SC 3208***. The relevant paras 5 and 6 of the aforesaid judgment are as under:-

“5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and

the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 this fast track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

4. In view of the above, it is not disputed that the impugned orders dated 28.07.2016 and 29.07.2016 (Annexures P-5 & P-6) are appealable under Section 20 of the Act, before the Debts Recovery (Appellate) Tribunal. Accordingly, the writ petition is disposed of by relegating the petitioner to take recourse to the remedies available to him before the appropriate Forum in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

November 21, 2016

J.Ram

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No