IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CWP-COM No.39 of 2017
Date of Decision:-16.03.2017

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NEC Packaging Limited

….. Petitioner

Vs.

Punjab National Bank and others

….. Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
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Present: - Mr.Anand Chhibbar, Sr. Advocate, with
Mr.Rajat Khanna, Advocate,
for the petitioner.

Mr.Gaurav Goel, Advocate,
for respondent No.1.

Mr.Kamal Satija, Advocate,
for respondent No.2.

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RAKESH KUMAR JAIN, J. (ORAL)

The respondent No.3 is a partnership firm. It owns premises measuring 9435 Sq. Yards bearing No.E-3, Focal Point, SAS Nagar, Mohali. The entire property has been mortgaged by respondent No.3 facilitating respondent No.4 to obtain loan from respondents No.1 & 2. Both respondents No.1 and 2 initiated proceedings under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the Act'] against respondent No.4. The objections filed under Section 13(3A) of the Act were dismissed and proceedings under Section 13(4) of the Act are initiated by respondents No.1 & 2 and further proceeding has been initiated under Section 14 of the Act by the District Magistrate.

The petitioner has approached this Court seeking quashing of the demand notice dated 13.07.2016 and possession notice dated 30.09.2016 issued by respondent No.1 in collaboration with respondent No.2, under Section 13(4) of the Act and also prayed that the petitioner may not be dispossessed from the land in question measuring 2614 Sq. Yards in pursuance of E-Auction Notice dated 3.2.2017, on the ground that the said land i.e. 2614 Sq. Yards is in possession of the petitioner as a lessee by virtue of a registered lease deed dated 1.10.2008 for a period of 20 years expiring on 30.09.2028.

The respondents have raised a preliminary objection about the maintainability of the petition filed under Article 226/227 of the Constitution of India on the ground that the petitioner has an alternate statutory remedy under Section 17(4) of the Act.

Learned counsel for the petitioner has, however, relied upon a decision of the Supreme Court rendered in the case of ***"Harshad Govardhan Sondagar*** *Vs.* ***International Assets Reconstruction Company Limited and others"*** *(2014) 6 Supreme Court Cases 1,* to contend that if the petitioner is found to be in possession as a lessee then the decision of the Chief Metropolitan Magistrate/District Magistrate may be challenged before the High Court under Article 226/227 of the Constitution of India.

I have heard both the learned counsel for the parties and after examining the record, am of the considered opinion that the question which is to be decided in this case is about the maintainability of the writ petition as to whether the writ petition having been filed under Article 226/227 of the Constitution of India is maintainable in view of the availability of a statutory remedy in terms of Section 17(4A) of the Act. In order to answer this question, it would be relevant to refer to Section 17(4A), 17(5), 17(6) and 17(7), of the Act, which read as under:-

> *"17(4A) Where*
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> *i) Any person, in application under Sub Section (1), claims any tenancy or leaseful rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy:-*
>
> *a) has expired or stood determined : or*
>
> *b) is contrary to section 65A of the transfer of property Act 1882 (4 of 1882); or*
>
> *c) is contrary to terms of mortgage or*
>
> *d) is created after the issuance of notice of default and demand by the Bank*

under sub-section (2) of Section 13 of the Act and

ii) the Debt Recovery Tribunal is satisfied that tenancy right or lease hold rights claimed in secured asset falls under the sub clause (a) or sub clause (b) or sub clause (c) or sub clause (d) of clause (i), then notwithstanding anything in the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provision of this Act."

"17(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 party 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 (51 of 1993) and the rules made thereunder."

Undisputedly, at the time when the judgment in the case of ***Harshad Govardhan Sondagar (Supra)*** was delivered by the Supreme Court on 3.04.2014, the aforesaid provision of Section 17(4A) of the Act was not in force because it was inserted by Act No.44 of 2016 w.e.f. 1.9.2016. Section 17(4A) of the Act prescribes a complete procedure in respect of a person who claims himself to be a tenant or lessee over the secured asset to establish the said fact before the DRT and also provides the other party, the issues on which the said right of the said tenant/lessee can be challenged. The legislature has also provided that the recovery tribunal shall decide such application expeditiously but preferably within a period of 60 days from the date of filing of the application and in case the tribunal is unable to decide the same within the prescribed period of 60 days it can extend the time upto 4 months but not beyond that. It further provides that in case the application is not decided by the tribunal one way or the other even within the prescribed time the aggrieved party can approach the appellate tribunal for seeking a direction to the tribunal for the purpose of expeditious disposal.

Thus, in view of the aforesaid provisions having been made by the legislature, the present petition filed, invoking the extraordinary jurisdiction of this Court, under Article 226/227 of the Constitution of India would not be maintainable because in that eventuality it would render the statutory provision of Section 17(4A) of the Act redundant.

Consequently, I am of the considered opinion that in case where the statutory remedy is available, the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India should not be invoked. Hence, the question posed in the earlier part of this order is answered in favour of respondents No.1 & 2 and against the petitioner, holding that the present petition is not maintainable in its present form having been filed under Article 226/227 of the

Constitution of India in view of the remedy available to the petitioner under Section 17(4A) of the Act.

The petitioner is relegated to its remedy of filing an appropriate application before the DRT, if so advised.

Disposed of.

(RAKESH KUMAR JAIN)
16.03.2017 **JUDGE**
Vivek

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*