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

**CWP No.11630 of 2018
Decided on 27.09.2018**

Jaswant Kaur

Petitioner

Versus

The Jammu & Kashmir Bank Limited, Sector 54, Phase-II, Mohali
Branch and others

Respondents

* * *

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Prateek Gupta, Advocate
for the petitioner.

Mr. Sumit Batra, Advocate
for the respondent No.1.

Mr. P.S. Bajwa, Addl. A.G., Punjab.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking direction to the respondent not to initiate auction proceedings against the mortgaged property of the petitioner.

2. Petitioner is the guarantor of a loan. Jammu & Kashmir Bank Limited, Sector 54, Phase-II, Mohali; District Magistrate, Ludhiana, M/s S and D Febrics, Ludhiana; Manjit Singh, partner of M/s S and D Febrics, Ludhiana and B D Nets and Fabrics, Ludhiana have been arrayed as respondents No.1 to 5 respectively, in the writ petition.

3. The respondents No.3 and 4 availed certain credit

facilities from respondent No.1. The property owned by the petitioner i.e. House No.24, King Enclave, Ferozepur Road, Ludhiana was mortgaged. Respondent No.1 filed an original application (OA) for recovery of the outstanding dues before the Debts Recovery Tribunal-II, Chandigarh. It was alleged that the signatures of the petitioner were obtained on blank papers and fraud was played upon her, for which she has filed a criminal complaint. In the meantime, respondent No.1 filed an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') for taking over physical possession of the mortgaged property.

4. Aggrieved of the recovery proceedings and invoking of Section 14 of the Act, the present petition has been filed.

5. The present petition raises disputed question of facts which are required to be substantiated by leading evidence. Moreover, there are alternative remedies available to the petitioner under the Act.

6. The Supreme Court in the case of **Kaniyalal Lalchand Sachdev & others Vs. State of Maharashtra 2011(2) SCC 782**

relying upon its earlier decision held as under :-

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*“21. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: **Sadhana Lodh v. National Insurance Co. Ltd. & Anr., 2003(1) R.C.R.(Civil) 772 :***

(2003) 3 SCC 524, Surya Dev Rai v. Ram Chander Rai & Ors., 2004(1) R.C.R. (Civil) 147 : (2003) 6 SCC 675, State Bank of India v. Allied Chemical Laboratories & Anr., (2006) 9 SCC 252. In City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla & Ors., (2009) 1 SCC 168 this Court had observed that :

"The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*
- (b) the petition reveals all material facts;*
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;*
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;*
- (e) ex facie barred by any laws of limitation;*
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors."*

22. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution."

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7. The Supreme Court in **United Bank of India Vs.**

Satyawati Tondon and others (2010) 8 SCC 110, held as under:

“It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues.”

8. In the present writ petition, disputed question of facts has been raised regarding the status of the petitioner as a guarantor. Moreover, an efficacious remedy under Section 17 of the Act is available to the petitioner.

9. The writ petition is dismissed with liberty to the petitioner to avail alternative remedies available to it in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 27, 2018

pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No