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

**CWP No.15806 of 2018 (O&M)**
**Decided on 19.09.2018**

M/s Pahul Steel Shuttring through its partners

Petitioner

Versus

The Debt Recovery Tribunal-III, Chandigarh and others

Respondents

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

Present : Mr. Parveen Chauhan, Advocate
for the petitioner.

Mr. Sumit Batra, Advocate
for the respondents.

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**<u>AVNEESH JHINGAN, J.</u>**

The present writ petition has been filed seeking quashing of order dated 15.03.2018 (Annexure P-3) passed by the District Magistrate/Deputy Commissioner-cum-Collector, Kapurthala under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act').

2. The petitioner is a partnership firm. The Debts Recovery Tribunal-III, Chandigarh (for brevity 'the DRT'); United Bank of India, Sector 17, Chandigarh and District Magistrate/Deputy Commissioner-cum-Collector, Kapurthala have been arrayed as respondents No.1 to 3 respectively, in the writ petition.

3. The petitioner availed facilities of cash credit and mortgage loan to the tune of ₹25 lakhs in the year 2013 from respondent No.2. In order to secure the loan, house measuring 7.5 marlas being 15/700 share as comprised in khasra no. 1256(6-1), 1257(3-2), 6818/4090 (7-7), 1259/1(0-13), 1212/1(0-7), Khata No. 312/455 situated at Phagwara Garbi, Tehsil Phagwara, District Kapurthala was mortgaged.

4. The petitioner defaulted in repayment. Respondent No.2 issued notice under Section 13(2) of the Act on 07.07.2015. As per the notice, there was outstanding amounts of ₹18,74,679/- in the overdraft account and ₹6,35,249/- in the mortgage loan, as on 30.06.2015. The respondent-bank moved an application under Section 14 of the Act on 09.02.2018. Respondent No.3 vide order dated 05.03.2018 allowed the application and provided police help for taking over possession of the mortgaged property. In the meantime, the petitioner filed Securitisation Application (SA) before the respondent No.1. The same was numbered as SA No. 63 of 2018. SA was withdrawn by the petitioner on 05.05.2018 by stating that SA would be filed again when the bank will take over the physical possession of the mortgaged property. Relevant portion of the order is reproduced as under:-

> *"The counsel for the applicant stated that he has filed the above mentioned SA, however, he do not want to press it at this stage as the physical possession of the secured asset has not been taken by the bank and sought permission to withdraw the above mentioned SA at this stage and stated that in case the bank took the physical possession of the property, then he will again file SA, for which he has liberty. Therefore, the SA is allowed to withdraw at this stage and above SA is dismissed as*

*withdrawn. File be consigned to the record."*

5. On 13.04.2018, respondent No.3 directed the Tehsildar, Phagwara to take possession of the mortgaged property. The bank, on 01.06.2018, affixed the notice for possession of the mortgaged property. The possession of the mortgage property was taken on 01.08.2018. Being aggrieved of the recovery proceedings, the present writ petition has been filed.

6. Notice of motion was issued on 30.08.2018. Petitioner produced 2 demand drafts totaling ₹2.5 lakhs to show its *bona fides.* The same was ordered to be deposited with the respondent-bank and the bank was ordered to accept the same without prejudice to its rights in the writ petition. *Status quo* was ordered to be maintained regarding possession of the property.

7. Heard learned counsel for the parties.

8. Learned counsel for the petitioner argued that the petitioner has suffered irreparable loss as the possession has been taken over. He contended that the impugned order (Annexure P-3) has been wrongly passed by respondent No.3 as the bank had not complied with mandatory provisions of Section 13 of the Act.

9. Learned counsel for respondent No.2 submitted that the bank had filed Original Application (OA) for recovery of the outstanding amount and the same has been decreed on 14.09.2018. He argued that the petitioner had already filed SA before the DRT and the same was withdrawn that it would be filed again when the bank would takeover the possession. The bank has already taken over the possession, hence, the writ petition is not maintainable.

10. Petitioner has efficacious alternative remedies available to it to challenge the proceedings under Sections 13(4) and 14 of the Act. There are statutory remedies against the decree dated 14.09.2018 passed in OA.

11. The Supreme Court in case of ***Kaniyalal Lalchand Sachdev & others Vs. State of Maharashtra 2011(2) SCC 782*** relied upon its earlier decision in Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill, (2009) 8 SCC 366 and observed as under:-

> *"19. In **Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill, (2009) 8SCC 366** the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated under Section 13(4) of the Act ?*
>
> *On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court, held as under :*
>
>> *"35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.*
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>> *36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.*
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>> *XX XX XX*
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>> *39. We are unable to agree with or accept the*

> *submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."*

> *20. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT."*

12. 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."*

13. In view of the statutory remedies available with the petitioner and having due regard to the decisions of Supreme Court, the writ petition is disposed of with liberty to the petitioner to avail alternative remedies in accordance with law.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**(AVNEESH JHINGAN)**
**JUDGE**

**September 19, 2018**
*pankaj baweja*

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