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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17721 of 2018
Decided on 18.09.2018

Bhai Kanhaiya Sewa Society (Regd.) and another

Petitioners

Versus

The District Magistrate, Fazilka and others

Respondents

* * *

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

Present : Mr. Gaurav Chopra, Advocate
for the petitioners.

Ms. Ishneet Kaur, AAG Punjab.

Mr. I.P. Singh, Advocate
for the respondent-bank.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of proceedings initiated under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') whereby the respondents No.2 and 3 (hereinafter referred to as 'the bank') have taken physical possession of equitably mortgaged immovable property. Further, prayer has been made for quashing of order dated 26.04.2018 (Annexure P/6) passed by Additional District Magistrate, Fazilka on the application filed under Section 14 of the Act.

2. The petitioner No.1 is a registered charitable Society and

is also running a Homeopathic Medical College at Abohar. The petitioner No.2 is Homeopathic Medical College. The District Magistrate, Fazilka, Punjab and Sind Bank, Rajendra Palace Branch, New Delhi and Punjab and Sind Bank, Abohar have been arrayed as respondents No.1 to 3 respectively in this writ petition.

3. Petitioner No.1 had been running a Homeopathic Medical College since 1975. The said college is affiliated with Guru Ravi Dass Ayurved University, Hoshiarpur. Petitioner No.1 approached the bank for availing credit facilities. The same were sanctioned on 25.05.2009. The limit of the term loans etc., were amended from time to time and vide order dated 27.03.2015, the limits of term loans were reconstructed. Repayment schedule was also amended.

4. Respondent No.2 sanctioned two term loans of Rs. 5 crores on 19.06.2009 and of Rs. 2.30 crores on 14.12.2012. Apart from creating Over Draft Privilege (ODP) limit of Rs. 1.50 crores on 04.12.2012 and a Funded Interest Term Loan (FTIL) of Rs. 55,09,000/- on 30.03.2015 was also provided. In order to secure the credit facilities, equitable mortgage was made of the lands as detailed below:

a) Land measuring 30 kanals comprised in Rect. No. 79 Killa No.8(8-00) 9(8-00) 10/2(6-00) 11(8-00) Khewat No. 1969 min Khatoni No. 2814.

b) Land measuring 23 kanals 0 marlas comprised in Rect. No. 89 killa No.4/2(7-00) 6(8-00) 7(8-00) Khewat No.1969 min Khatoni No.2813.

c) Land measuring 77 kanals 07 marlas comprised in Rect. No.79 Killa No.12(8-00) 13/1(5-07) 19(8-00) 20 (8-00) 21(8-00) 22(8-00) Rect. No. 88 Killa No. 1(8-

00) 2(8-00) 9(8-00) 10(8-00) Khewat No. 1969 min Khatoni No. 2815.

d) Land measuring 03 kanals 07 marlas being 5/12 share of total land measuring 08 kanals comprised in Rect. No. 89 Killa No. 5(8-00) Khewat No.2239 Khatoni No.3154.

e) Land measuring 04 kanals 16 marlas being ½ share of total land measuring 09 kanals 12 marlas comprised in Rect. No.78 Killa No. 24/2(1-12) 25(8-00) Khewat No. 2334 Khatoni No. 3339.

f) Land measuring 04 kanals 16 marlas comprised in Rect. No.78 Killa No. 16/1(4-16) Khewat No. 2322 Khatoni No. 3315 as per jamabandi for the year 2006-07 situated within the revenue estate of village Azimgarh Tehsil Abohar, vide gift deed wasika No. 4742 dated 15.10.2008 registered in the office of sub-registrar, Abohar.

5. There was a default in repayment and the loan accounts were classified as Non-Performing Assets (NPAs) on 30.06.2017. Respondent No.3 issued notice dated 03.07.2017 under Section 13(2) of the Act. As per notice, there was outstanding amount of Rs. 6,73,30,098/- upto 30.06.2017.

6. The petitioners filed their objections under Section 13(3A) of the Act. The objections were decided by the bank on 12.09.2017. Thereafter, a notice dated 27.09.2017 was issued under Section 13(4) of the Act. The bank filed an application under Section 14 of the Act. Respondent No.1 allowed the application vide order dated 26.04.2018, The physical possession of the mortgaged property was taken over on 06.07.2018.

7. Aggrieved of the taking over of the physical possession of

the mortgaged property, the present writ petition has been filed.

8. The contention raised in the writ petition was that the petitioners have to receive certain amount of scholarships under the 'Post Matric Scholarship Scheme' and due to non-receipt of the said amounts, the aforesaid default has occurred.

9. During the pendency of the writ petition, the schedule of the examination was produced. A request was made that the dates of the examinations have been notified but the bank has already taken over the physical possession of the Homeopathic Medical College, and therefore, the bank be directed to open the part of the College so that examinations can be conducted.

10. Vide order dated 23.08.2018, the bank was directed to make available space to the petitioners for holding the examinations as per the schedule given.

11. Learned counsel for the petitioners submitted that the bank had made available the part of the premises of Homeopathic Medical College and the examinations have been conducted upto 14.09.2018. He undertook that the possession of the College would be handed over back to the bank within three days from today. He made a further request that practical exams are still to be conducted and directions be issued to the bank to make available the space of the Homeopathic Medical College for holding the practical examination.

12. Keeping in view the welfare of the students, the petitioners are directed to approach the bank well in advance with the schedule of practical exams. The bank, on receipt of the schedule, shall make available portion of the Institute for conducting the said exams. The

possession shall be handed over to the petitioner No.1 two days in advance from the beginning of the practical exams. The petitioner No.1 would ensure that portion of Institute opened by the bank shall not be utilised for any other purpose. The possession shall be delivered back to the bank within two days from the conclusion of the practical exams.

13. The issue raised by the petitioners regarding non-release of scholarships under the Scheme is not the subject matter of the present writ petition. For the said relief, the petitioners have already filed a writ petition.

14. The grievances raised in the writ petition is against measures taken under Section 13(4) of the Act and against the order passed under Section 14 of the Act. The petitioners have efficacious alternative remedies available to them under Section 17 of the Act.

15. For ready reference, Section 17 of the Act is reproduced below:-

> ***"17. Application against measures to recover secured debts—***
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> *(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 measures 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."

16. Section 17 provides for filing of an application by any person aggrieved of any of the measures taken under Section 13(4) of the Act. Section 17 provides remedy even for an action taken after the stages contemplated under Section 13(4) of the Act.

17. 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.

18. 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."*

19. Accordingly, the writ petition is disposed of with the liberty to the petitioners to avail alternative remedies in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 18, 2018
pankaj baweja

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