

111

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

**CWP No.21002 of 2018
Decided on : 21.08.2018**

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M/s Himalyan Agro Industries, Ambala

Petitioner

Versus

UCO Bank, Ogli (Kala-Amb), District Sirmour (HP) and another

Respondents

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

Present : Mr. Shakti Kaushik, Advocate
for the petitioner.

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AVNEESH JHINGAN, J.

This writ petition has been filed seeking quashing of notice dated 13.10.2017 (Annexure P-2) issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). Further prayer has been made for setting aside the order dated 11.07.2018 (Annexure P-6) issued by District Magistrate, Ambala deputing Naib Tehsildar, Mullana for taking over physical possession of the mortgaged property.

2. UCO Bank, Ogli, Kala-Amb, District Sirmour (HP) and Deputy Commissioner (exercising the powers of District Magistrate), Ambala have been arrayed as respondents No.1 and 2 respectively, in the writ petition.

3. In the year 2013, the petitioner availed a cash credit limit

of ₹15,00,000/- and got sanctioned ₹9,00,000/- as term loan from respondent No.1. Property bearing KK No. 6Min/6 khasra No. 427/203/128 was mortgaged with respondent No.1 to secure the loans.

4. The cash credit limit was increased to ₹32,00,000/- in the year 2015 and for the additional limit, a residential house situated in khewat No. 115, khatauni No. 153, khasra no. 129 1-7 of 215/823 share i.e. 00-07 KM mutation No. 563 at village Gaganheri was offered as security to respondent No.1.

5. The business of the petitioner was closed in the year 2017 and he defaulted in repayment of the cash credit availed. The account was declared as Non-Performing Asset (NPA) on 31.05.2017. A notice dated 17.06.2017 was issued under Section 13(2) of the Act. Thereafter, notice under Section 13(4) of the Act was issued on 13.10.2017. As per notice, an amount of ₹30,51,750/- was due. The petitioner approached the bank for one time settlement. The bank approved the compromise proposal subject to payment of ₹32,50,000/- on or before 31.03.2018. The petitioner though paid ₹7,50,000/- but failed to comply with the terms of compromise. The bank moved an application under Section 14 of the Act. Respondent No.2 vide order dated 11.07.2018 deputed Naib Tehsildar, Mullana as Duty Magistrate for taking over the physical possession of the secured property.

6. The petitioner filed CWP no. 19811 of 2018 with a prayer for setting aside the notice dated 13.10.2017 issued under Section 13(4) of the Act and made further prayer for setting aside the order dated 11.07.2018 issued by District Magistrate. On 09.08.2018,

after arguing the case for some time, learned counsel for the petitioner prayed that he may be permitted to withdraw the writ petition with liberty to take recourse to the remedies as may be available to it in accordance with law. The writ petition was dismissed as withdrawn with liberty as prayed for.

7. Though the order of this court has not been annexed with the present writ petition, however, the same is quoted below:-

“This writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the impugned notice dated 13.10.2017 (Annexure P-2) and A further prayer has been made in the present petition for setting aside the order dated 11.07.2018 (Annexure P-6).

2. After arguing for sometime, learned counsel for the petitioner states that he may be allowed to withdraw the present writ petition with liberty to the petitioner to take recourse to the remedies as available to it, in accordance with law.

3. Dismissed as withdrawn. It shall, however, be open to the petitioner to take recourse to the remedies, as may be available to it, in accordance with law.”

8. Now, on the same cause of action, this writ petition has been filed with identical prayer. The only additional issue raised by the petitioner is that after withdrawing the writ petition, another amount of ₹6,50,000/- has been deposited by the petitioner. On the same cause of action, the earlier writ petition with identical prayer was withdrawn with liberty to take recourse to the remedies available to the petitioner. The second writ petition on the same cause of action cannot be entertained.

9. The Full Bench of this Court in the case reported as “**Teja Singh Versus The Union Territory of Chandigarh and others**” 1982

PLR (84) P&H 160 held as under:-

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“(1) That in the matters which have not been specifically dealt with by the Writ Rules, the provisions of the Civil P. C., so far as they can be made applicable, would apply to the proceedings under [Article 226](#) of the Constitution.

(2) That the explanation added to Section 141 of the Civil P. C., by the [Amendment Act](#), does not in any way nullify the effect of Rule 32 of the Writ Rules.

(3) That when a writ petition is dismissed after contest by passing a speaking order, then such decision would operate as *res judicata* in any other proceeding such as suit, a petition under [Article 32](#) etc.

(4) That if a petition is dismissed only on the ground of laches or the availability of an alternate remedy or on a ground analogous thereto, then any other remedy by way of suit or any other proceeding will not be barred on principle of *res judicata*.

(5) That even in cases where a petition is dismissed on the ground of laches or on the ground of alternate remedy or on a ground analogous thereto, a second petition on the same cause of action under [Article 226](#) would be barred.

(6) That there is an exception to proposition (5) that where the first petition is dismissed on the ground that alternate remedy under the Act has not been availed of, then after availing of the statutory remedy under the Act, a second petition may be maintainable on the principle that the same has been filed on a cause of action which has arisen after the decision of the appropriate authority under the Act.

(7) That a second petition on similar facts and in respect of the same cause of action by the same party

would not be maintainable even if his earlier petition has been disposed of by one word 'Dismissed'.

(8) That the provisions of Order 22 Civil P. C. would apply to the proceedings under [Article 226](#) of the Constitution.

(9) That provisions of Order 23, Rule 1 of the Civil P. C. would apply to the writ proceedings and that a petition which has simply been got dismissed as withdrawn would be a bar to the filing of a second petition on the same facts and in respect of the same cause of action.”

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10. The earlier writ petition was withdrawn with liberty to take recourse to the remedies as may be available, in accordance with law. Second writ petition has been filed without availing the alternative remedies. Considering the law laid down by Full Bench of this Court and the fact that second writ petition is not maintainable, the instant writ petition is dismissed accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

21.08.2018
pankaj baweja

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