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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22730 of 2018
Decided on 13.09.2018

M/s Chunnu Fashions, Gurugram

Petitioner

Versus

The District Magistrate, Gurugram and others

Respondents

* * *

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

Present : Mr. Anshuj Dhingra, Advocate,
Mr. Sanjay Vij, Advocate and
Mr. Kartik Sethi, Advocate
for the petitioner.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 14.03.2017 (Annexure P-1) passed by the District Magistrate, Gurugram 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 proprietorship concern of a Hindu Undivided Family (HUF) and petition has been filed through its *Karta.* Respondents No.1 and 2 in the writ petition are the District Magistrate, Gurugram and Edelweiss Asset Reconstruction Company Limited, Mumbai. The co-parceners of the HUF have been arrayed as respondents No.3 to 7.

3. The petitioner in the year 2005, availed various credit

facilities of Cash Credit Limits, Medium Term Loan etc., to the tune of Rs. 5 crores. The said facilities were altered/restructured from time to time till 2010. In order to secure the credit facilities availed, property located at Plot No. 23, Sector-4, Manesar, District Gurugram was mortgaged. There was default in repayment of the credit facilities. The accounts were classified as Non-Performing Assets (NPAs). The bank issued notice under Section 13(2) of the Act on 19.04.2011. Thereafter, a notice under Section 13(4) of the Act was issued.

4. Aggrieved of the proceedings initiated under the Act, the petitioner filed Securitization Application (SA) bearing No. 65 of 2011 before the Debts Recovery Tribunal, Delhi (DRT). During the pendency of the SA, the Indian Bank assigned the debts of the petitioner to respondent No.2 vide an agreement dated 15.07.2014. As a result, the mortgaged property was also assigned in favour of respondent No.2. Respondent No.2 moved an application for substitution in place of Indian Bank before the DRT and the same was allowed. The SA filed by the petitioner was dismissed on 20.08.2015. Appeal was filed before the Debts Recovery Appellate Tribunal. The same was dismissed on 27.11.2015 for want of compliance of pre-deposit conditions by the petitioner.

5. Aggrieved of the dismissal of the appeal, petitioner filed writ petition bearing CWP No. 10589 of 2016 before Delhi High Court and the same was also dismissed on 16.01.2017. Review Petition filed in the said writ petition is pending.

6. After the dismissal of the writ petition, respondent No.2 moved an application under Section 14 of the Act before respondent

No.1. The order dated 14.03.2017 was passed on the application directing the concerned *Tehsildar* to take over the possession of the mortgaged property.

7. Aggrieved of the passing of the order under Section 14 of the Act, the present writ petition has been filed.

8. Learned counsel for the petitioner contended that the order passed by respondent No.1 under Section 14 of the Act is illegal. The assignment agreement between Indian Bank and respondent No.2 was entered at Mumbai, therefore, the physical possession of the mortgaged property situated at Gurugram cannot be taken over.

9. The petitioner has an efficacious remedy under Section 17 of the Act against the order passed under Section 14 of the Act.

10. Section 17(1) of the Act is reproduced below :-

"17. Application against measures to recover secured debts—

(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.

11. 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.

12. 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 ?*
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> *On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court, held as under :*
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>> *"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.

13. In the present writ petition, the disputed question of fact has been raised regarding the place of execution of assignment agreement. Moreover, an efficacious remedy under Section 17 of the Act is available to the petitioner.

14. 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 13, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No