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

**CWP No. 25344 of 2017
Decided on : 08.08.2018**

M/s Vishkarma Industries, Bhiwani

Petitioner

Versus

State Bank of India and others

Respondents

* * *

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

Present : Mr. Dharinder Sharma, Advocate
for the petitioner.

Mr. I.P.S. Doabia, Advocate
for respondents No.1 and 2.

Mr. Vinod Gupta, Advocate
for respondent No.3

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notice dated 17.02.2017, Annexure P-8 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') and possession notices dated 21.04.2017, 31.08.2017 and 24.10.2017 Annexure P-9, P-10 & P-11 respectively.

2. The State Bank of India, Zonal Office, Chandigarh and Main Branch, Clock Tower, Bhiwani are respondents No.1 & 2 in the writ petition and New India Assurance Company Limited, Ghanta Ghar Branch, Bhiwani

has been arrayed as respondent No.3.

3. The petitioner is a proprietorship concern and was engaged in manufacturing of plastic goods. In July 2008, petitioner availed the cash credit limit of ₹20 lakhs from respondent No.2. In order to secure the loan, immovable properties were mortgaged. The cash credit limit was enhanced to ₹50 lakhs in October 2015.

4. There was a fire incident in the factory premises on 21.12.2016. Thereafter, the petitioner defaulted in repayment of cash credit limit availed.

5. As no payment was being made by the petitioner towards repayment of cash credit facility availed, respondent No.2 issued a notice on 17.02.2017 under Section 13(2) of the SARFAESI Act. As per notice, there was an outstanding liability of ₹55,36,607/- as on 02.02.2017. Since the petitioner neither repaid the amount nor filed any reply, possession notices dated 21.04.2017 and 31.08.2017 were served on the petitioner. The respondent-bank gave another possession notice on 24.10.2017 giving further opportunity to the petitioner to pay the entire outstanding amount alongwith interest and expenses till 08.11.2017, otherwise, the possession of the secured assets would be taken.

6. No payment was made by the petitioner. The bank approached under Section 14 of the SARFAESI Act for police help to take possession of the secured assets. At this juncture, the writ petition was filed.

7. It is argued that the building structure, plant, machinery and accessories, stock and stock in progress were insured with respondent No.3. The occurrence of fire incident was informed to respondent No.2 as well as respondent No.3. Various representations were made by the petitioner to respondent No.3 with regard to the insurance claim and in the meantime, the

bank initiated recovery proceedings.

8. Notice of motion was issued vide order dated 07.11.2017 and *status quo* was ordered to be maintained.

9. The order is quoted below:-

> *"Learned counsel for the petitioner submitted that petitioner had cash credit limit of ₹ 50 lacs with the State Bank of India. The account was regular till such time, fire took place in the factory of the petitioner on 21.12.2016. The factory premises was got insured by the bank for a total sum of ₹ 88 lacs. The incident of fire was reported by the petitioner to the bank as well as the insurance company. The insurance company appointed an investigator, who found that the fire had taken place in the insured premises and there was no breach of warranty. Despite this fact, the insurance company has not settled the claim. As the business of the petitioner was closed, the bank has initiated action under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.*
>
> *Notice of motion for 15.11.2017.*
>
> *Process dasti only.*
>
> *In the meantime, status quo regarding possession of the property in dispute shall be maintained."*

10. On 04.04.2018, the counsel for respondent No.3 stated that insurance claim has been rejected holding it to be a false claim. The counsel for the petitioner sought time to seek instructions to challenge the decision of the Insurance Company before the appropriate Forum as such an issue cannot be adjudicated into in the writ proceedings.

11. Today, during the course of hearing, learned counsel for the petitioner admitted the fact that the insurance claim has been rejected by respondent No.3. His contention is that the said decision would be challenged

before the appropriate Forum and till claim of insurance is paid to the petitioner, there is no concrete proposal to repay the outstanding amount of the bank.

12. In such circumstances, no interference is called for in exercise of writ jurisdiction under Article 226 of the Constitution of India. The petitioner has alternative remedies available against the rejection of the insurance claim and against the proceedings of the Bank under Section 13 of the SARFAESI Act.

13. The writ petition is dismissed with liberty to the petitioner to avail the remedies available to him, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

08.08.2018
pankaj baweja

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