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

CWP No. 24848 of 2018
Decided on : 27.09.2018

M/s Golden Agro Foods and another ...... Petitioners

Versus

Central Bank of India and another ...... Respondents

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

Present : Mr. G.S.Gargah, Advocate
for the petitioners.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notices dated 10.09.2018 and 27.08.2018 (Annexure P-3) issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for brevity, 'the Act') and notice dated 21.03.2018 (Annexure P-4) issued under Section 13(2) of the Act.

2. Petitioner No.1, a partnership firm and is the borrower of the loan. Petitioner No.2 is the guarantor of the loan. Central Bank of India, Panchkula and Authorised Officer of Central Bank of India, Panchkula, have been arrayed as respondents No.1 and 2 respectively in the present writ petition.

3. Petitioner No.1 availed a cash credit facility in June 2014 to the tune of ₹ 228.50 lakhs. In order to secure the loan, petitioner No.2 stood as guarantor and house bearing No.443, Sector-9, Urban Estate, Huda, Ambala City was mortgaged with the bank. Petitioner No.1 failed to maintain financial discipline of the credit facility availed. The account was

classified as non performing asset (NPA) on 30.12.2016.

4. The petitioner approached the respondent-bank for One Time Settlement (OTS). The proposal was accepted vide letter dated 22.09.2017. The account was to be settled on payment of ₹197 lakhs. The petitioner was to make a payment of ₹ 126 lakhs on conveying of the sanction against the release of primary security and balance ₹ 71 lakhs was to be paid in installments but not later than 15.03.2018. It was clarified that in case of default in payment, the sanction will automatically be treated as cancelled.

5. The terms and conditions of the OTS was not complied with by the petitioners. The respondent-bank issued notice under Section 13(2) of the Act on 21.03.2018. The petitioner never cared to file any objections to the said notice. Thereafter, the respondent-bank issued notices dated 27.08.2018 and 10.09.2018 under Section 13(4) of the Act. Aggrieved of the recovery proceedings, the present petition has been filed.

6. From perusal of paper-book, it is evident that the terms and conditions of the OTS were not adhered to by petitioner No.1. It was only thereafter that the bank initiated the recovery proceedings under the Act. It is pertinent to note that the petitioner neither complied with OTS nor raised any grievance. The petitioners never even approached the bank.

7. Moreover, the petitioners have alternative remedies available under the Act.

8. The Supreme Court in the 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:-

XX XX XX

"21. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: ***Sadhana Lodh v. National Insurance Co. Ltd. & Anr., 2003(1) R.C.R.(Civil) 772 :(2003) 3 SCC 524****,* ***Surya Dev Rai v. Ram Chander Rai & Ors., 2004(1) R.C.R. (Civil) 147 : (2003) 6 SCC 675****,* ***State Bank of India v. Allied Chemical Laboratories & Anr., (2006) 9 SCC 252****. In* ***City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala & Ors., (2009) 1 SCC 168*** *this Court had observed that :*

"The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

22. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal under

Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution."

XX XX XX

9. The Supreme Court in the case of ***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."

10. In view that statutory remedies are available to the petitioners and having due regard to the decisions of the Supreme Court, the writ petition is dismissed with liberty to the petitioners to avail alternative remedies in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 27, 2018
anju

Whether speaking/reasoned: Yes

Whether reportable : Yes