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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25311 of 2018
Decided on 01.10.2018

Rasid

Petitioner

Versus

State of Punjab and others

Respondents

* * *

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

Present : Mr. Sandeep Singh Majithia, Advocate
for the petitioner.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 21.09.2018 (Annexure P-7) passed by the Additional District Magistrate, S.A.S. Nagar, Mohali under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act')

2. State of Punjab; Department of Revenue, Govt. of Punjab; Additional District Magistrate, SAS Nagar, Mohali; Arms, a Division of Arcil [Asset Reconstruction Company (India) Limited], Mumbai; Balwinder Singh s/o Bachan Singh r/o Village Dhanori, Tehsil Morinda, District Ropar and Surjit Kakkar w/o Late Manohar Lal Kakkar r/o Mohali have been arrayed as respondents No.1 to 6, respectively, in the writ petition.

3. The petitioner purchased a House bearing No.30, measuring 208 sq. yards i.e. 4 Biswa 03 Biswasi being 83/9480 share of land measuring 23 Bigha 14 Biswa comprising in Khata No. 290/429 Khasra No. 206(4-0), 207(4-0), 208(4-0), 209(4-0), 210(4-0), 211(3-14) situated in Village Baltana, District SAS Nagar, Mohali vide sale deed dated 19.02.2016 from respondent No.5. Respondent No.5 i.e. vendor of the petitioner had purchased house in question from respondent No.6 vide sale deed dated 20.03.2008. Respondent No.6 had purchased the said house from Sh. Chaman Lal Ahuja and for purchasing the property, she availed loan from GE Money to the tune of ₹15 lakhs. In order to secure the loan, the property in question was mortgaged.

4. There was default in repayment of loan by respondent No.6 and the matter was referred to the Arbitrator. An award was passed on 04.08.2009 for recovery of ₹16,60,582/- alongwith interest @ 18% and ₹15,000/- as costs. Respondent No.6 failed to pay the outstanding dues and respondent No.4 initiated recovery proceedings under the Act. An application under Section 14 was filed by respondent No.4. Notice was issued by the respondent No.3. Thereafter, order dated 21.09.2018 was passed for taking over physical possession of the mortgaged property and handing over the same to respondent No.4. Aggrieved of the order, the present writ petition has been filed.

5. Learned counsel for the petitioner contended that the loan was taken by respondent No.6 whereas the petitioner had purchased the house from respondent No.6, as such no recovery proceedings

can be proceeded against the said property. He argued that respondent No.3 erred in passing order under Section 14 of the Act in the facts and circumstances of the present case.

6. The grievance of the petitioner is against order passed under Section 14 of the Act. The petitioner has a statutory remedy available against the order passed under Section 14 of the Act. Moreover, there are disputed question of facts involved in the petition such as, the property in question having passed through the hands of various vendors, and, therefore, to decide the lis, evidence has to be adduced.

7. 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 held that remedy under section 17 of the Act is available to an aggrieved party even against action under section 14 of the Act. It was 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 :*
>
> > *"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.

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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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.

8. Further delving into the issue of alternative remedy, the Apex 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."

9. There being disputed question of facts involved in this petition and keeping in view the availability of alternative remedy to the petitioner, the writ petition is dismissed with liberty to the petitioner to avail alternative remedies in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 01, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No