111 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 25965 of 2018
DECIDED ON: OCTOBER 10, 2018

SUBASH KUMAR GABA & ANOTHER

.....PETITIONERS

VERSUS

THE EXECUTIVE MAGISTRATE, DISTRICT LUDHIANA, PUNJAB AND OTHERS

.....RESPONDENTS

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

Present : Mr. Vishal Handa, Advocate
for the petitioners.

Mr. V.K. Sachdeva, Advocate for
Mr. Rohit Sapra, Advocate
for the Caveator-respondent-M/s Indiabulls Housing Finance Ltd.

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AVNEESH JHINGAN, J

The present writ petition has been filed seeking quashing of order dated 26.09.2018 (Annexure P-6) passed by respondent No.1-Executive Magistrate, Ludhiana under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act').

2. Petitioners No.1 and 2 are husband and wife and also borrowers of loan. The Executive Magistrate, Ludhaina; Authorised Officer/Branch Managar, India Bulls Housing Finance Ltd, New Delhi; India Bulls House, Corporate Office 448-451, Phase-V, Gurugram through Authorised Officer and India Bulls Housing Finance Ltd, Feroze Gandhi Market, Ludhiana through Authorised Officer have been arrayed as respondents No.1 to 4 respectively, in the writ petition.

3. Petitioners availed two term loans of ₹44,75,000/- and ₹22,13,906/- from Indiabulls Housing Finance Ltd. (hereinafter referred to as 'finance company'). The loans were sanctioned on 31.10.2014 and were to be re-paid in 180 equal monthly installments. In order to secure the credit facility availed, property bearing Plot No. 28 (Min), Khasra No. 726/28, Khata No. 1150/1505, HB No. 157, Village Barawal, Raman Enclave, Tehsil & District Ludhiana, Punjab was mortgaged.

4. Petitioners defaulted in repayment of loans. The accounts were classified as Non Performing Asset (NPA) on 13.10.2017. The Finance Company issued two separate notices dated 13.10.2017 under Section 13(2) of the Act. As per the notices, amounts of ₹21,28,691/- and ₹45,17,543/- were due against the petitioners. Thereafter, the finance company further issued notices under Section 13(4) of the Act. The finance company filed an application under Section 14 of the Act. Notice dated 26.09.2018 was issued to the petitioners by respondent No.1. Aggrieved of recovery proceedings, present petition has been filed.

5. Learned counsel for the petitioners argued that petitioners are ready to settle their loan accounts by selling the mortgaged property.

6. On pointed query during hearing of petition learned counsel submitted that as on date there is no proposed buyer, but as soon as there would be a buyer, the property would be sold.

7. The grievance of the petitioners is against the steps taken under Section 13(4) and the proceedings initiated under Section 14 of the Act. Petitioners have an alternative remedy under Section 17 of the Act.

8. 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."

9. 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.

10. 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 :*
>
> > *"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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> *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.

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 Vs. National Insurance Co. Ltd. & Anr. (2003) 3 SCC 524; Surya Dev Rai Vs. Ram Chander Rai & Ors. (2003) 6 SCC 675; State Bank of India Vs. Allied Chemical Laboratories & Anr. (2006) 9 SCC 252)****. In* ***City and Industrial Development Corporation Vs. 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; Supreme Court Judgement*
>
> *(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.

11. The Supreme 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."*

12. Keeping in view the availability of alternative remedy against the impugned order and the law laid down by the Supreme Court on the issue, the writ petition is disposed of with liberty to the petitioners to avail alternative remedy in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

OCTOBER 10, 2018
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Whether speaking/reasoned: ***Yes / No***
Whether reportable : ***Yes / No***