IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 7569 of 2016
Decided on : 01.10.2018

Basakha Singh Rathore ...... 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.Deepak Sharma, Advocate
for the petitioner.

Mr.I.P.S. Doabia, Advocate
for respondent No.1.

Mr. Shailender Kashyap, Advocate
for respondent No.2.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notice dated 16.03.2016 (Annexure P-11) issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act').

2. State Bank of India, Main Branch Ambala City, Union Bank of India, Ambala City and Anish Kumar son of Om Parkash, have been arrayed as respondents No.1 to 3 respectively in the present writ petition.

3. The petitioner is the purchaser of property originally owned by Sh. Om Parkash son of Norata Ram. Om Parkash had purchased 16 marlas land from Gurdev Singh son of Ishwar Singh vide registered sale deed No.4618/1 dated 01.03.1999. Mutation of said 16 marlas land was sanctioned in his favour. Out of 16 marlas land purchased by Om Parkash

half of the property was gifted to his son Anish Kumar-respondent No.3 vide registered gift deed No.11210/1 dated 23.03.2005. As a result of the gift, the mutation of 8 marlas land was sanctioned in favour of respondent No.3. He took a loan of ₹ 7 lakhs from respondent No.2. In order to secure the loan, he mortgaged the land received in gift by him.

4. There was a default in repayment of loan. Respondent No.2 initiated recovery proceedings under the Act and ultimately, the property was put to auction. The mortgaged property was purchased by the petitioner in an open auction. Respondent No.2 issued sale certificate and executed registered sale deed in favour of the petitioner.

5. Respondent No.3 had also availed another loan from respondent No.1 in the year 2005. The same 8 marlas of property received in gift by respondent No.3 was mortgaged in order to secure the loan taken from respondent No.1. Respondent No.1 initiated recovery proceedings for the outstanding dues. Notices under Sections 13(2) and 13(4) of the Act were issued. The said notices were affixed on the wall of the mortgaged property. In pursuance to the recovery proceedings, respondent No.1 took the possession of the mortgaged property. Aggrieved of the action of respondent No.1, the present petition has been filed.

6. Vide order dated 26.04.2016, notice of motion was issued and it was ordered that respondents shall not take any further action in respect of property in question without leave of the Court. During the hearing of the petition, both respondents No.1 and 2 produced the original title deeds of the property in question.

7. Learned counsel for the petitioner contended that the property was purchased in an open auction and the revenue records have been

forged, to show mortgage of said property in favour of respondent No.1.

8. Learned counsel appearing for respondents No.1 and 2 contended that both the banks have the original title deeds. It was argued that the challenge is to the notice issued under Section 13(4) of the Act, against which the petitioner has an alternative remedy.

9. The petition has been filed being aggrieved of taking over of the possession by respondent No.1 and challenging notice under Section 13(4) of the Act. Undisputedly, the petitioner has alternative remedy.

10. 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:-

> *"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.

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.*

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."*
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11. Further, 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. In the present writ petition, the disputed questions of fact are involved. There is a serious issue regarding loan by respondent No.1. Moreover, both the banks are having the original title deeds of the mortgaged property. There is an allegation of forging of revenue records. In view of the disputed questions of facts and availability of remedy under Section 17 of the Act, the writ petition is disposed of with liberty to the petitioner to avail alternative remedies in accordance with law.

13. Keeping in view the fact that the writ petition was pending in this Court since 2016, in case the petitioner files an application under Section 17 of the Act within one month from today, the Debt Recovery

Tribunal (for brevity, 'the Tribunal') shall decide the same on merits without raising the issue of limitation. Further, keeping in view the nature of dispute, it would be desirable that DRT must decide the application expeditiously. During the pendency of the petition, there was interim protection in favour of the petitioner. It is further ordered that the property in dispute shall not be put to auction for a period of three months from today. It is, however, clarified that extending of interim protection for three months by this Court shall not be construed as an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 01, 2018
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Whether speaking/reasoned: Yes

Whether reportable : Yes