IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.2818 of 2018.
Date of Decision: February 08, 2018

Rajesh Kumar and another ......Petitioners

versus

State Bank of India and others .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SHEKHER DHAWAN.

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Present: Mr.S.D.Bansal, Advocate, for the petitioners.

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Surya Kant, J. (Oral)

The petitioner-borrowers availed Cash Credit Limit facilities from the respondent-Bank but having failed to pay the due amount, their account was classified as NPA and notice dated 09.11.2016 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, was served asking them to clear the outstanding loan liability of Rs.45,46,588.00.

The respondent-bank thereafter served notice dated 05.07.2017 under Section 13(4) of the 2002 Act. As the petitioners failed to hand-over physical possession of the secured assets, the bank has now obtained an order dated 21.12.2017 from the District Magistrate, Hisar under Section 14 of the 2002 Act. The impugned action/order are under challenge in the instant writ petition. One of the plea taken is that action under the 2002 Act has been taken without classifying the loan account as NPA.

We do not find any merit in the contention, for notice under Section 13(2) of the 2002 Act expressly recites as follows:-

"....   You have also acknowledged subsistence of the

> liability in respect of the aforesaid credit facilities by executing confirmation of balances and revival letters and other documents from time to time. The operation and conduct of the above said financial assistance/credit facilities have become irregular and the debt has been classified as non-performing asset in accordance with the directives/guidelines relating to assets classifications issued by the Reserve Bank of India consequent to the default committed by you in repayment of principal debt and thereon......"

The petitioners' second plea that the above-stated notice has not been appropriately served on them, appears to be an afterthought as they themselves have been trying to get information sometimes under the RTI or otherwise from the bank authorities. Earlier, a Civil Suit was also got filed by the petitioners as an attempt to stall the proceedings under the 2002 Act. The petitioners have no intention to pay the defaulted loan amount and are totally reluctant to pay any substantial amount. Be that as it may, the factual issues sought to be raised in this writ petition can be effectively adjudicated by the alternative forum, namely, the Debts Recovery Tribunal to whom the petitioners may approach, if so advised. The plea that the Debts Recovery Tribunal does not entertain such like claims unless physical possession of secured assets is handed-over in terms of the decision dated 10.04.2017 of Delhi High Court in **Vikram Bakshi & Co. Pvt. Ltd. Versus Housing Development Finance Corporation Ltd. and others,** passed in WP(C) No.2966 of 2017, cannot be entertained, for firstly the petitioners have to approach the Debts Recovery Tribunal and in case they are aggrieved by an order passed by the Debts Recovery Tribunal, they shall be at liberty to approach the Appellate Tribunal under the Act.

Ordered accordingly.

[SURYA KANT]
JUDGE

February 08, 2018
mohinder

[SHEKHER DHAWAN]
JUDGE

Whether speaking/reasoned	**:**	**Yes/No**
Whether Reportable	**:**	**Yes/No**