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

(1)

**CWP No. 3683 of 2018
Decided on 04.09.2018**

Gaini Sardara Singh Gill Foundation, Moga

Petitioner

Versus

M/s Hero FinCorp Limited (HFCL), New Delhi and others

Respondents

(2)

CWP No. 5907 of 2018

Gaini Sardara Singh Gill Foundation, Moga

Petitioner

Versus

Aditya Birla Finance Limited, Chandigarh and others

Respondents

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

Present : Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Mahir Sood, Advocate and
Mr. G.S. Ghuman, Advocate
for the petitioner.

Mr. Sanjeev Singh, Advocate
for respondent No.1.
(in CWP No.3683 and No. 5907 of 2018)

Mr. Harsimran Singh Sethi, Addl. A.G. Punjab,
Dr. Malvika Singh, Asstt. AG, Punjab and
Ms. Ishneet Kaur, Asstt. AG Punjab
for respondent No.2- State of Punjab.

Mr. Satya Pal Jain, Addl. Solicitor General of India
for respondent No.3-Union of India.

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AVNEESH JHINGAN, J.

This order shall dispose of CWP No. 3683 and 5907 of 2018.

Both petitions have been filed by same petitioner, the facts and
grievance raised in both writs are similar. However, the facts are being

extracted from CWP No.3683 of 2018. Petition has been filed seeking quashing of the possession notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act').

2. The petitioner is a registered educational Society. The petition has been filed through its Chairman. M/s Hero FinCorp Limited (HFCL), New Delhi; State of Punjab and Union of India have been arrayed as respondents No.1 to 3 respectively in the writ petition.

3. The petitioner-Society started three educational institutions in the State of Punjab. The colleges for engineering courses are presently affiliated with Maharaja Ranjit Singh Punjab Technical University, Bathinda and recognized by AICTE and the institute for polytechnic courses are affiliated to and recognized by Punjab State Board of Technical Education & Industrial Training, Chandigarh.

4. On 29.06.2015, the petitioner availed two loan facilities, firstly in the form of LAP for construction/extension in building and equipment upto the limit of Rs.3,34,62,358/- and another LAP-Balance Transfer upto the limit of Rs.14,28,56,896/-, both totaling to Rs. 17,63,19,254/-.

5. The petitioner defaulted in repayment and both the accounts were declared as Non-Performing Assets (NPAs) on 07.07.2017. The respondent No.2 issued notice dated 21.07.2017 under Section 13(2) of the Act. As per notice, an amount of Rs. 17,39,94,979/- alongwith future interest was due as on 14.07.2017. Thereafter, notice dated 21.12.2017 under Section 13(4) of the Act was issued. Being aggrieved of notice under Section 13(4) of the Act, the present writ petition has been filed.

6. Learned counsel for the petitioner contended that the petitioner was entitled to receive certain amount from State of Punjab for the scholarships given to students belonging to Scheduled Castes/Other Backward Classes (for brevity 'SC/OBC') categories. The State Government has not paid the said amount and hence, the petitioner defaulted in repayment. It was further submitted that a Civil Writ Petition bearing CWP No. 2378 of 2018 was filed for direction to the State of Punjab to release the pending claims to the petitioner as per terms of the 'Post Matric Scholarship Scheme' (for brevity 'the Scheme').

7. The grievance raised by learned counsel for the petitioner regarding non release of pending claims of the petitioner under the Scheme was subject matter of CWP No. 2378 of 2018. The same has been disposed of vide order dated 23.08.2018.

8. The prayer in the present writ petition is for quashing of notice issued under Section 13(4) of the Act. Against the said notice, the petitioner has alternative statutory remedies available to it under Section 17 of the Act.

9. The Supreme Court in case of **Kaniyalal Lalchand Sachdev & others Vs. State of Maharashtra 2011(2) SCC 782** relying upon its earlier decision held :-

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“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 Bhiwandiwalla & 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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10. The petitioner has an efficacious alternative remedy against the impugned notice, we do not find any ground to interfere in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, the writ petition is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 04, 2018

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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No