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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7650 of 2017 (O&M)
Decided on 01.10.2018

Rattan Mould Industries, Fatehgarh Sahib and another

Petitioners

Versus

State of Punjab and others

Respondents

* * *

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

Present : Mr. Gitish Bhardwaj, Advocate
for the petitioners.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notice dated 26.07.2016 (Annexure P-1) issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') and notice dated 31.03.2016 (Annexure P-2) issued under Section 13(2) of the Act. Further prayer for quashing of order dated 25.01.2017 (Annexure P-3) passed under Section 14 of the Act and order dated 21.03.2017 (Annexure P-4) passed by the District Magistrate, Fatehgarh Sahib.

2. Petitioner No.1 is a partnership firm. Petitioner No.2 is partner of petitioner No.1-firm. State of Punjab; ICICI Bank Ld., Rohini, New Delhi; ICICI Bank Ltd., Jhandewalan Ext., New Delhi; Authorised Officer, ICICI Home Finance Ltd., Chandigarh and ICICI

Home Finance Ltd., G.T. Road, Bathinda have been arrayed as respondents No.1 to 5, respectively, in this writ petition.

3. The petitioners availed a loan of ₹46 lakhs from respondent No.3 on 09.04.2006. In order to secure the loan, property bearing Khatoni No.345-483, Khasra No.42//11/3 (4-5), 18/2, (3-3) 19, (9-11), 20/1(5-8) 22/1 (6-4) 22/2/2 (1-1) 23/1(6-0) Plot No. 302, Sector 3C, GT Road, Main Bazar, Mandi Gobindgarh, Fatehgarh Sahib, was mortgaged. The said loan was assigned to respondent No.5 on 17.03.2014. There was a default in repayment of the monthly installments. The account was classified as Non-Performing Asset (NPA). Respondent No.5-bank issued notices under Section 13(2) and Section 13(4) of the Act. As per notice issued under Section 13(2) of the Act, there was an outstanding amount of ₹45,36,069/-, as on 31.03.2016. Respondent No.5 moved an application under Section 14 of the Act. Summons were issued by the District Magistrate to the petitioners. The Advocate for the petitioners appeared on one date and thereafter, he never appeared for 10 dates. An *ex-parte* order dated 25.01.2017 was passed for providing police help for taking over physical possession of the mortgaged property. The petitioner filed review application before the District Magistrate. The same was dismissed vide order dated 21.03.2017.

4. Aggrieved of the recovery proceedings, the present writ petition has been filed.

5. On 13.04.2017, the petitioners furnished demand drafts totalling to ₹10 lakhs and undertook that an additional amount of ₹10 lakhs will be paid within a period of four weeks. Notice of motion

was issued. Dispossession of the petitioners from the mortgaged property was ordered to be stayed. The demand drafts were allowed to be encashed by the respondent No.5 without prejudice to its rights in the pending petition. During the pendency of the writ petition, a sum of ₹10 lakhs was kept with the Registrar (Judicial) of this Court in the shape of a Fixed Deposit.

6. Learned counsel for the petitioners contended that there was no service of notices issued under Section 13(2) and Section 13 (4) of the Act. It was argued that the detail of mortgaged property had been wrongly mentioned in the notices. It was, further, submitted that the District Magistrate erred in passing an *ex-parte* order under Section 14 of the Act.

7. The challenge in the present writ petition is to notice issued under Section 13(4) of the Act and to order passed under Section 14 of the Act. The petitioners have statutory alternative remedies available 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 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 :*
>
> > *"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."*

11. In the present writ petition, the disputed question of facts have been raised regarding service of the notice and detail of property mortgaged. Moreover, an efficacious remedy under Section 17 of the Act is available to the petitioner.

12. The writ petition is dismissed with liberty to the petitioner to avail alternative remedies available to it in accordance with law.

13. The Fixed Deposit of ₹10 lakhs lying with the Registrar (Judicial) be released to respondent No.5, to be appropriated against outstanding amount of the petitioners.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 01, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No