202

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8034 of 2018
Decided on 03.10.2018

C.S. Tong Rice Mills Tangra, Amritsar and others

Petitioners

Versus

State Bank of India, Branch at Baba Bakala and another

Respondents

* * *

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

Present : Mr. Varinder Kumar Sandhir, Advocate
for the petitioners.

Mr. Gaurav Goel, Advocate
for the respondents.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notice dated 12.03.2018 (Annexure P-5) 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. Petitioner No.1 is a partnership firm and petitioners No.2 to 6 are the partners of petitioner No.1. State Bank of India, Branch at Baba Bakala, Amritsar and Authorized Officer-cum-Chief Manager, State Bank of India, Amritsar have been arrayed as respondents No.1 and 2 respectively in the writ petition.

3. Petitioner No.1 availed a cash credit limit from the respondent No.2-bank in the year 1992. In order to secure the credit

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facility availed, equitable mortgage of factory and land measuring 240 marla bearing killa No.53/18/2/2, 53/19, Khata Khatoni No. 213/492 land situated at Village Tangra owned by respondents No.2 to 6 was created. Plant & Machinery and stocks of rice, paddy, rice bran, fuck etc lying at village Tangra were also hypothecated.

4. Petitioner No.1 failed to maintain the financial discipline and as a result the respondent-bank issued a notice dated 17.08.2017 under Section 13(2) of the Act. As per notice, there was an outstanding amount of ₹1,31,00,658/- as on 31.07.2017. Thereafter, notice under Section 13(4) dated 12.03.2018 was issued. Possession notice dated 18.03.2018 was published in the newspaper. Aggrieved of the notice issued under Section 13(4), the present writ petition has been filed.

5. The petitioners have an alternative remedy under Section 17 of the Act against the notice issued under Section 13(4) of the Act.

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

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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 &***

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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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7. 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*

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adverse impact on the right of banks and other financial institutions to recover their dues."

8. 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 the alternative remedy.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 03, 2018
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Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No

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