

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

CWP No. 17801 of 2019

Date of Decision: 05.07.2019

KIRANJIT SINGH BAWA AND OTHERS

..... Petitioners

V/s.

DEBT RECOVERY TRIBUNAL-III, CHANDIGARH AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI.

Present: Mr. Rajiv Kataria, Advocate,
with Mr. Ashok Jindal and Mr. Aman Joon, Advocates
for the petitioners.

RAKESH KUMAR JAIN, J. (Oral)

The petitioners have challenged the notices under Section 13(2) and 13(4) issued on 27.11.2018 and 22.02.2019 respectively under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the Act”) as well as the order dated 04.05.2019 passed by the Debt Recovery Tribunal-III, Chandigarh (for short “the Tribunal”) by which the Securitization Application No. 34 filed by the petitioners has been dismissed. Besides this, petitioners have also prayed for issuance of a writ in the nature of mandamus for directing the respondent No. 3 to comply with the award/e-mail dated 16.05.2019 of respondent No. 2.

Respondent No. 3 has filed a caveat. At the outset, learned counsel for the caveator-respondent No. 3 has questioned the maintainability of this petition on the ground that against order of the Tribunal, appeal is available to the petitioners under Section 18 of the Act before the Debt Recovery Appellate Tribunal (DRAT) and it is submitted that the petitioners

may be relegated to avail the remedy of appeal available under the Act. In this regard, he has relied upon the decisions of the Hon'ble Supreme Court rendered in the case of Union Bank of India Vs. Satyawati Tandon and others; 2010 AIR (SC) 3413 and Authorized Officer, State Bank of Travancore and Another Vs. Matthew K.C.; 2018(2) RCR (Civil).

Insofar as the other prayer of the petitioners for the issuance of a writ in the nature of mandamus in concerned, learned counsel for the caveator-respondent No. 3 has referred to an e-mail dated 03.07.2019 sent by respondent No. 3 to respondent 2 as per which respondent No. 2 has referred the complaint of petitioner No. 1 to the Chief Vigilance Officer.

Learned counsel for the petitioners has submitted that since it is a case of fraud played upon the petitioners by the other partner, namely, S. Sukhwinder Singh S/o Karnail Singh who is at present absconding and also the employees of the Bank, therefore, this Court may exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to entertain the present petition. In support of his submissions, he has relied upon a decision of a single bench of this Court rendered in the case of Jagdish Chand Vs. State of Haryana; 1995 (2) SCT 54.

Learned counsel for the caveator-respondent No. 3 has submitted that the petitioners has earlier approached this Court by way of a Writ Petition bearing No. 15609 of 2018 when the notices under Section 13(2) and 13(4) of the Act were issued in the year 2014 but the said petition was withdrawn to file again on the same cause of action with better particulars.

However, learned counsel for the petitioners has submitted that since the cause of action has changed because fresh notices under Section

13(2) and 13(4) of the Act have been issued and the order has been passed on 04.05.2019, therefore, this petition is maintainable.

We have heard learned counsel for the parties and after perusal of the record, are of the considered opinion that order of the Tribunal by which Securitization Application filed by the petitioners has been dismissed is definitely amenable to appeal under Section 18 of the Act. In this regard, reference could be had to the observations made by the Hon'ble Supreme Court in the case of Union Bank of India (Supra), which reads thus:-

“17.....It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

“27 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. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

Thus, in view of the law laid down by the Hon’ble Supreme Court, we do not find any reason to entertain this writ petition in the presence of the remedy of appeal even though it is argued by learned counsel for the petitioners that the said remedy is onerous.

Therefore, in view of the observations made hereinabove, the present petition is not entertained being non-maintainable and the same is hereby dismissed. However, the petitioners, if so advised, may avail the remedy of appeal before the Debt Recovery Appellate Tribunal in accordance with law.

[RAKESH KUMAR JAIN]
JUDGE

July 5, 2019
Ess Kay

[ARUN KUMAR TYAGI]
JUDGE

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