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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.1973 of 2021

Date of decision: 29.01.2021

Vishaldeep and another

..... Petitioner (s)

V/s.

District Magistrate, Pathankot, and others

..... Respondent (s)

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Rohit Suri, Advocate, for the petitioners.

Sanjay Kumar, J. (Oral)

The petitioners assail the initiation of proceedings against them by the Hindu Co-operative Bank Limited, Pathankot, the third respondent, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002'), and more particularly, the order dated 14.12.2020 passed by the District Magistrate, Pathankot, in exercise of power under Section 14 of the Act of 2002 for taking over physical possession of their mortgaged property.

Be it noted that the petitioners approached this Court earlier, by way of CWP No.22167 of 2020, in relation to this very cause of action and the said writ petition was dismissed by order dated 21.12.2020, relegating them to the statutory remedy available under the Act of 2002. Pursuant thereto, the petitioners approached the Debts Recovery Tribunal-III,

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Chandigarh, by way of an application filed under Section 17 of the Act of 2002, which was numbered as SA/1/2021.

However, by the impugned order dated 04.01.2021, the Tribunal dismissed the said application on the ground that it was premature. Perusal of the order reflects that the Tribunal was of the opinion that until and unless the petitioners actually lost their possession over the mortgaged property, they would not be entitled to invoke Section 17 of the Act of 2002. This understanding of the Tribunal ostensibly stemmed from an observation made by the Supreme Court in '*Standard Chartered Bank V/s. V. Noble Kumar and others*' [(2013) 9 SCC 620].

As this Court does not propose to go into the merits of the matter and as the Tribunal non-suited the petitioners at the very threshold, no cause is made out to put the respondents on notice or afford them an opportunity of hearing at this stage.

Pertinent to note, Section 17 (1) of the Act of 2002 makes it clear that any person, including a borrower, who is aggrieved by any of the measures referred to in Section 13(4) of the Act of 2002, taken by the secured creditor, may make an application thereunder before the jurisdictional Debts Recovery Tribunal within a time frame. Section 13(4)(a) of the Act of 2002 entitles a secured creditor to take possession of the secured asset of the borrower and such right includes the right to transfer, by way of lease, assignment or sale, the said secured asset.

It is well settled that taking over of possession under Section 13(4)(a) of the Act of 2002 may be either by way of symbolic delivery of possession or by actual physical delivery thereof. Section 14 of the Act of

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2002 comes into play in the event a secured creditor seeks to take physical delivery of possession by due process if the borrower fails to deliver peaceful physical possession of the secured asset. This aspect of the matter was dealt with by the Hon'ble Supreme Court in '**Standard Chartered Bank V/s. V. Noble Kumar and others**', referred to *supra*.

Though the Tribunal chose to pay attention to one sentence in the said judgment, by drawing it out of context, it lost sight of para 37 thereof, wherein the Supreme Court observed, on the strength of the three-Judge Bench judgment in '**Mardia Chemicals Limited V/s. Union of India [(2004) 4 SCC 311]**', that it would be open to the borrower to file an appeal under Section 17 at any time after measures are taken under Section 13 (4) and before the date of sale/auction. The Supreme Court further observed that the same would apply if the secured creditor resorts to Section 14 and takes possession of the property with the help of the officer appointed by the Magistrate. Therefore, it is not necessary that the borrower should remain inactive till he actually loses physical possession before invoking the statutory remedy. That is not the import of the judgment.

Reference may also be made to the earlier judgment of the Supreme Court in '**Kanaiyalal Lalchand Sachdev and others V/s. State of Maharashtra and others**' [(2011) 2 SCC 782], wherein the Supreme Court observed that an action under Section 14 of the Act of 2002 would constitute an action taken after the stage of Section 13(4) thereof and that it would fall within the ambit of Section 17(1) of the Act of 2002. The Supreme Court further observed that the Act itself contemplates an efficacious remedy for the borrower affected by an action under Section

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13(4) of the Act of 2002 by providing for an application before the Debts Recovery Tribunal. Similar was the edict laid down by the Supreme Court in '*Authorised Officer, Indian Overseas Bank V/s. Ashok Saw Mill*' (2009) 8 SCC 366/.

In the light of the aforesaid legal position and the clear mandate of Section 17(1) of the Act of 2002, the Tribunal erred in coming to the conclusion that the petitioners' application under Section 17 of the Act of 2002 was premature and in dismissing it on that ground.

The order dated 04.01.2021 passed by the Tribunal is accordingly set aside. In consequence, SA/1/2021 filed by the petitioners before the Tribunal shall stand restored. The Tribunal shall deal with the said application and any stay application filed therein on merits expeditiously, keeping in mind the apprehension of the petitioners that the order passed under Section 14 of the Act of 2002, that is sought to be challenged, may be acted upon in the near future.

The writ petition is allowed to the extent indicated above.

No order as to costs.

(SANJAY KUMAR)
JUDGE

(ARCHANA PURI)
JUDGE

29.01.2021
rakesh

whether speaking
whether reportable

: Yes/no
: Yes/no