IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

120 ***2023:PHHC:051437-DB***

CWP No. 1183 of 2023

Date of Decision: 13.04.2023

Vijay Kumar Maini .....Petitioner(s)

Versus

Union Bank of India and others ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: None for the petitioner.

Mr. Gaurav Goel, Advocate, for the respondent-Bank.

G.S.SANDHAWALIA, J. (Oral)

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India challenging the securitization proceedings initiated including the possession notice issued on 13.09.2022 (Annexure P-1) which would go on to show that possession of the assets was taken under Section 13(4) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short '2002' Act). Thereafter, auction was also fixed for 20.10.2022.

2. Counsel for the bank submits that it has not fructified.

3. The terms and conditions of the same would go on to show that due amount was Rs.41,55,683.16/- as on 31.05.2021.

4. Keeping in view the above, we are of the considered opinion that since the bank is seeking to recover its dues in accordance with the procedure prescribed, it is always open to the petitioner to avail his alternative remedy before the Tribunal. Section 17 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short '2002' Act) provides a remedy to the person who is aggrieved under the measures taken under Section 13(4) of the 2002 Act which have been time and again settled by the Apex Court and the view taken in ***United Bank of***

India vs. Satyawati Tondon & others, (2010) 8 SCC 110 was followed. In ***Union Bank of India and another vs. Panchanan Subudhi, (2010) 15 SCC 552; Kaniyalal Lalchand Sachdev and others vs. State of Maharashtra and others, (2011) 2 SCC 782; G.M., Sri Siddeshwara Co-operative Bank Ltd. & another vs. Sri Ikbal & others, 2013 (10) SCC 83; M/s Hindon Forge Pvt. Ltd. and another vs. State of Uttar Pradesh through District Magistrate Ghaziabad and another, 2018 AIR SC 5383*** *and* ***Authorized Officer, State Bank of Travancore & another vs. Mathew K.C., 2018 AIR (SC) 676,*** the said view has been further reiterated.

5. Recently, the Apex Court, while dealing with notice of motion order passed by this Court whereby, the writ petition had been entertained against the securitization proceedings initiated and interim protection had been granted whereby loanees had been declared NPA contrary to the order dated 27.03.2023 passed by the Apex Court was a subject matter of consideration in ***SLP No. 17335 of 2022, Authorized Officer, Kotak Mahindra Bank vs. Anil Kumar Malhotra and another***. The Apex Court set aside the interim order and virtually directed that the petitioner to take recourse to alternative remedy by passing the following order:-

> *"1. Leave granted.*
>
> *2. Heard learned counsel for the parties.*
>
> *3. This appeal takes exception to the judgment and order dated 17.01.2022 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 873 of 2022.*
>
> *4. We are of the considered view that the High Court was not justified in passing the impugned judgment and order.*
>
> *5. The impugned judgment and order has the effect*

of scuttling the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. If the appellant was aggrieved by an order passed under Section 13(2) of the the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the appellant had an alternate remedy under the provisions of the said Act.

7. In that view of the matter, the impugned judgment and order passed by the High Court is quashed and set aside and the appeal is allowed.

8. Needless to state that the order passed herein would not affect the right of the appellant to take recourse to the alternate remedy.

9. Pending applications, if any, stand disposed of."

6. In such circumstances, keeping in view the settled principle of law, once securitization proceedings have been initiated after taking recourse to Section 13(4) and further possession has been taken while taking recourse to the provisions of the 2002 Act, we are of the considered opinion that firstly the remedy would lie with the Tribunal. Only in exceptional cases this Court would exercise its jurisdiction. Nothing has been shown to bring the case within the ambit of those exceptional circumstances.

7. Accordingly, the present writ petition is disposed of by relegating the petitioner to avail of his alternative remedy in accordance with law.

(G.S. SANDHAWALIA)
JUDGE

13.04.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No