

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

111

2023:PHHC:072402-DB

CWP-1378-2022

Date of Decision: 18.05.2023

Bhaiye Di Hatti

.....Petitioner(s)

Versus

Edelweiss Asset Reconstruction Co. Ltd.

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Ms. Shivya Sehgal, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the securitization proceedings including the demand notice dated 12.10.2021 (Annexure P-1) wherein by virtue of the notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act'), the respondent had claimed a sum of Rs.20,73,872.81/-, which was due as on 01.10.2021 being the assignee from HDB Financial Service Ltd. as per the assignment agreement dated 17.02.2021. Resultantly, possession notice was also issued on 19.01.2022 (Annexure P-4) wherein the mortgaged properties' possession was taken under Rule 8.1 of the Security Interest (Enforcement) Rules, 2002.

2. Counsel for the petitioner submits that the original loaner HDB Financial Service Ltd. had also instituted arbitration proceedings before Mr. Anis Ahmed, Advocate, the sole Arbitrator on 04.09.2017, which led to an award being passed on 17.12.2017 (Annexure P-5). It is submitted that the

said award is subject matter of the objections now filed under Section 34 of

the Arbitration and Conciliation Act, 1996 before the District Judge, Ludhiana and the execution is also pending before the same Court. It is, thus, the case of the petitioner that both the original loaner and the assignee cannot pursue the proceedings for the same loan account.

3. Though arguable issues are being raised but we are of the considered opinion that it is not a fit case to exercise our extra ordinary writ jurisdiction since possession notice has already been issued and there is a remedy available to the petitioner under Section 17 before the Tribunal in view of the law laid down by the Apex Court in *M/s. South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another, 2023 (2) RCR (Civil) 771* and since no proceedings as such have been initiated under Section 14 and, therefore, dispossession at this point of time is not apprehended.

4. Resultantly, we relegate the petitioner to the remedy before the Tribunal. In case the Securitization application is filed within a period of 3 weeks from today, the Tribunal shall proceed to hear the case on merits since against the possession notice dated 19.01.2022, the writ petition had been filed on 21.01.2022, which was very much within limitation and, therefore, the provisions of Section 14 of the Limitation Act, 1963 would come into play.

5. Disposed of with the aforesaid liberty.

(G.S. SANDHAWALIA)
JUDGE

18.05.2023
shivani

(GURBIR SINGH)
JUDGE