IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-6720-CWP-2023 IN/AND
CWP-1499-2023 (O&M)
DATE OF DECISION: 25.04.2023

M/S GOMCY KNITWEARS AND OTHERS

......PETITIONERS

VS.

IDFC FIRST BANK LTD. AND ANOTHER

.........RESPONDENTS

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

Present: Mr.Sholab Arora, Advocate,
for the petitioners.

Ms. Diksha Kakkar, Advocate, for
Mr. Aditya Grover, Advocate,
for the respondent-Bank.

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G.S.SANDHAWALIA, J. (ORAL)

CM-6720-CWP-2023

This application has been filed under Order VI Rule 7 read with Section 151 CPC for amendment of the writ petition.

Notice in the application.

Ms. Diksha Kakkar, Advocate, for Mr. Aditya Grover, Advocate, appears and accepts notice on behalf of the respondent-Bank.

Keeping in view the averments made in the application which is duly supported by an affidavit of petitioner No. 2, the application is allowed and the amended writ petition is taken on record.

With the consent of counsel for the parties, main case is taken on Board today itself for hearing.

CWP-1499-2023 (O&M)

1. The challenge has been made primarily to the securitisation proceedings whereby symbolic possession notice dated 15.03.2023 (Annexure P-17) has been issued. A perusal of the said annexure would go on show that symbolic possession was taken under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') read with Rule 9 of the Security Interest (Enforcement) Rules, on 14.03.2023 of the mortgaged property.

2. The notice dated 14.12.2022 issued under Section 13 (2) of the Act (Annexure P-2) would go on to show that there are huge outstanding to the tune of ₹1,07,52,328.07/- against two loan accounts which were declared NPA on 31.10.2022.

3. Learned counsel for the petitioners has vehemently argued that the benefit of the Reserve Bank of India's circular dated 17.03.2016 (Annexure P-3) is sought to be imposed.

4. Keeping in view the above, we are of the considered opinion that there is an alternate remedy available under Section 17 of the Act. It is settled principle that once there is an alternate and efficacious remedy available, the Writ Court will not exercise its jurisdiction. Reliance can be placed upon the judgment of the Apex Court passed in **SLP No. 22021-22022 of 2022, M/s. South India Bank Ltd. and others vs. Naveen**

Mathew Philip and another decided on 17.04.2023, wherein all the earlier precedents have been referred.

5. Regarding the issue of the circular, the Apex Court in **Sardar Associates and others Vs. Punjab & Sind Bank and others, (2009) 8 SCC 257** has held that the Tribunal is duly empowered to enforce the statutory regulations. It has further been observed by the Apex Court in that case that the guidelines issued by the Reserve Bank of India are binding and the OTS factor can also be agitated before the Tribunal. Relevant part of the said judgment reads as under:-

> *"29. It may be that no specific prayer was made but the same, in our opinion, keeping in view the provisions of the 2002 Act, did not preclude the Appellate Tribunal to consider the offer of the appellants. The Appellate Tribunal in terms of the provisions of the Act like the original Tribunal is interested only in recovery of the amount. While doing so, it, in our considered opinion, has the requisite jurisdiction to consider the prayer made by a debtor for one time settlement particularly in view of the fact that the same is within the purview of One Time Settlement Scheme of the Reserve Bank of India. If a public sector bank is otherwise bound by any guidelines issued by the Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act by the Tribunal and consequently by the Appellate Tribunal. It is not a case where the appellants had prayed for quashing of a policy decision taken by the respondent- Bank. The question which arose for consideration before the Appellate Tribunal as also*

> *before the High Court was as to whether offer having been made by the bank to the appellants herein, it could have turned around and contend that only because the appellants had furnished security to the extent of Rs.11 crores, the same by itself would entitle it to take recourse to a discriminatory treatment. The answer to the said question must be rendered in the negative."*

6. In such circumstances, we are of the considered opinion that there is no offer as such to pay even 25% of the outstanding of the mortgaged money to show the *bona fide* of the petitioners and as such there are no valid circumstances to invoke the extra-ordinary writ jurisdiction of this Court.

7. Accordingly, the present petition is disposed of with liberty to the petitioners to avail their alternate remedy as provided under the statute.

8. Since the petitioners had approached the Court on 31.01.2023 and the matter was pending, in case the application under Section 17 of the Act is filed within a period of four weeks from today, the Tribunal shall hear the securitisation proceedings on merits.

9. Pending miscellaneous application (s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

April 25, 2023 **(HARPREET KAUR JEEWAN)**
nitin **JUDGE**

Whether Speaking Yes
Whether Reportable No