2023:PHHC:041564-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-4908-CWP-2023 in/and
CWP-3077-2023 (O&M)
Date of Decision: 21.03.2023

Sukhwinder Singh and another

......Petitioners

Vs.

R.B.I and others

.........Respondents

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

Present: Mr. Harsh Chopra, Advocate,
for the applicants-petitioners.

Mr. Nitin Thatai, Advocate,
for respondents No. 2 and 3.

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G.S.SANDHAWALIA, J. (ORAL)

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

2. The challenge in the present writ petition is to the proceedings initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as the Act of 2002), whereby a notice under Section 13 (2) was issued on 10.02.2022 (Annexure P-8), wherein on account of ₹22,00,000/- which was due, the party was put to notice.

3. Apparently, thereafter the notice dated 11.05.2022, under Section 13 (4) of the Act of 2002 was also served which has not been placed on record. However, a copy thereof has been supplied in Court today by learned counsel for respondents No. 2 and 3.

4. A perusal of the same would go on to show that ₹24,51,777/- was outstanding. Apparently, on account of that fact the possession had been taken and notice under Section 13 (4) of the Act of 2002 was issued and an order has been passed by the Additional District Magistrate on 17.01.2023 (Annexure P-9) under Section 14 of the Act of 2002.

5. Resultantly, the petitioner approached this Court and the co-ordinate Bench passed the following order on 17.02.2023:-

> *We have heard counsel for the petitioners as also for the caveator/creditor. During the course of hearing today, counsel for the caveator is not in a position to put forth any rebuttal on the following three aspects:-*
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> *(i) The loan advanced was an MSME loan;*
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> *(ii) Prior to declaring the loan as an NPA, the matter had not been placed before the duly designated committee as envisaged under the RBI circular dated 17.03.2016 (Annexure P-13);*
>
> *(iii) The nature of the mortgaged property is essentially agriculture in nature and as such will be covered by the bar mandated under Section 31 (i) of the SARFAESI Act 2002.*
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> *In view of the above, we issue notice of motion returnable for 18.04.2023.*
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> *In the meanwhile execution/implementation of the order dated 17.01.2023 (Annexure P-9) passed by the Additional District Magistrate, Rupnagar/respondent No.4, shall be held in abeyance.*

Undertaking of the counsel for the petitioners is recorded to the effect that a sum of Rs.10,00,000/- would be deposited with the respondent/creditor-AU Small Finance Bank within a period of four weeks from today. It is clarified that in case the petitioners default in making the deposit within the stipulated time frame, the2 interim protection shall stand automatically vacated."

6. Today, an application has been filed for modification of the order wherein it is submitted that only a demand draft of ₹4,00,000/- is available.

7. In such circumstances, we are of the considered opinion that the interim order was conditional order and would stand automatically vacated on account of non-deposit of the amount which the petitioners had undertaken.

8. There is an alternative remedy available under Section 17 of the Act of 2002 and therefore, all the arguments which were raised earlier before the learned co-ordinate Bench can also be raised before the Tribunal.

9. The issue of alternate remedy as provided under Section 17 of the Act of 2002 has been subject matter of debate time and again. Reliance can be placed upon the judgment passed in **G.M., Sri Siddeshwara Co-operative Bank Ltd. & another Vs. Sri Ikbal & others, 2013 (10) SCC 83.** In the said case, the mortgaged property had been auctioned and the sale certificate had been quashed by the learned Single Judge of the Karnataka High Court which was upheld by the Division Bench on the ground that the mandatory requirements of the rules were not followed.

Resultantly, it was held that though the said rule is mandatory but there was a remedy provided under Section 17 of the 2002 Act which had been brushed aside and once there was alternative and efficacious remedy available, the High Court was not justified to allow the same to be circumvented. Resultantly, the appeals were allowed and the orders were set aside.

10. Similarly, in **Authorized Officer, State Bank of Travancore & another Vs. Mathew K.C., 2018 AIR (SC) 676**, challenge before the Apex Court was to the interim order passed in a writ petition staying further proceedings under Section 13(4) of the 2002 Act on the deposit of Rs.3,50,000/- within 2 months. The appeal against the same had been dismissed by the Division Bench. Resultantly, the Apex Court set aside the said orders by the following observations:

> "17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.
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> 18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Another, 1997 (6) SCC 450, observing :-
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> "32. When a position, in law, is well settled as a result of judicial

> pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."
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> 19. The impugned orders are therefore contrary to the law laid down by this Court under Article 141 of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed."

11. A Three Judge Bench of the Apex Court in **Punjab National Bank & another Vs. Imperial Gift House & others, 2013 (14) SCC 622**, set aside the order whereby the writ petition had been entertained which was against the notice issued under Section 13(2) which had been rejected while passing an order under Section 13(3)(A) of the 2002 Act.

12 In **Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir & others, 2022 (5) SCC 345**, the notice under Section 13(2) of the 2002 Act had been issued and the credit facilities were assigned by the Bank in favour of the appellant. The restructuring had also been done but borrower failed to pay the outstanding due amount. The demand for the outstanding amount was treated as under Section 13(4) notice and an ex-parte interim order was passed regarding status quo to be maintained subject to the borrower paying Rs.1 crore. The application for vacation of the stay was not decided and the interim order was extended. Resultantly, the Apex Court, while discussing the law in issue, held as

under:

> "The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13.08.2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs.1 crore only (in all Rs.3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs.117 crores. The ad-interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI ACT. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of Court. It appears that the High Court has initially granted an ex-parte ad-interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

13. Thus, from the above discussion, it would be clear that that time and again the Apex Court has held that writ petitions are not to be entertained once possession has been taken under Section 13(4) of the Act and the remedy would thus lie under Section 17(2) of the Act before the

Tribunal. Needless to say that only in exceptional cases, the Writ Court would exercise its jurisdiction in the facts and circumstances of the present case do not make out any such exceptions which would entail the invoking of the extraordinary writ jurisdiction.

14. Resultantly, we do not find any ground as such and the petition is accordingly dismissed.

(G.S. SANDHAWALIA)
JUDGE

March 21, 2023 **(HARPREET KAUR JEEWAN)**
nitin **JUDGE**

Whether Speaking	Yes
Whether Reportable	No