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

(126) **CWP-3026-2023**
Decided on : 17.04.2023

M/s Nikon Sales

……Petitioner(s)

Versus

Bank of Baroda & others

……Respondent(s)

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

Present: Mr.D.S.Sidhu, Advocate, for
Mr.Vikas Bali, Advocate for the petitioner (s).

Mr.S.K.Dhir, Advocate, for the respondent-Bank.

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G.S. Sandhawalia, J. (Oral)

1. Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India is to the securitization proceedings including the reply to the notice dated 17.11.2022 (Annexure P-13) issued by the respondent-Bank under the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'Act').

2. A perusal of the paperbook would go on to show that possession notice dated 07.11.2022 (Annexure R-5) had also been issued under Section 13(4) of the Act wherein possession has been taken of the property on 07.11.2022 which is of residential premises.

On 27.03.2023, the following order was passed:

> "A perusal of the paperbook would go on to show that notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the

'Act') was issued on 30.08.2022 (Annexure P-12) on account of the outstandings of Rs.1,04,55,855.49 which was due on 25.08.2022.

Counsel for the respondent-Bank informs us that at this point of time, approximately Rs.1,50,00,000/- is due.

Apparently application under Section 14 of the Act was filed on 14.11.2022 (Annexure P-15) and it is pointed out that there is an order also dated 19.12.2022 (Annexure P-17). The property was also put to sale for 28.02.2023 vide notice dated 13.01.2023 (Annexure P-18).

Counsel for the petitioner submits that the petitioner shall settle the matter.

If that is so, let a demand draft of Rs.30,00,000/- in favour of the respondent-Bank be produced on the next date of hearing to show the bona fides of the petitioner.

List on 17.04.2023."

3. Today, the requisite bank draft of Rs.30 lakhs has not been produced. Section 17 of the Act provides a remedy to the person who is aggrieved under the measures taken under Section 13(4) of the 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.

4. 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 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."*

5. 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 is being taken under Section 14 while taking recourse to the provisions of the 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.

6. Resultantly, in view of the above discussion, the present writ petition is dismissed. However, liberty is granted to the petitioner to avail his remedy before the Tribunal under Section 17 of the Act.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

17.04.2023
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No