

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

116

2023:PHHC:050846-DB

CWP No. 3926 of 2023
Date of Decision: 11.04.2023

M/s. Morinda Rice and General Mills

.....Petitioner(s)

Versus

DRT-II, Sector 17, Chandigarh and another

....Respondent(s)

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

Present: Mr. V.K. Sachdeva, Advocate,
for the petitioner.

Mr. Rakesh Gupta, Advocate,
for respondent No.2-bank.

G.S.SANDHAWALIA, J.

1. The petitioner, in the present petition filed under Articles 226 and 227 of the Constitution of India challenges the order dated 17.02.2023 (Annexure P-3) passed by Debt Recovery Tribunal-II, Chandigarh wherein MA/33/2023 dated 14.02.2023 (Annexure P-2) was dismissed. The relief claimed in the said application was for restoring the physical possession of the secured asset of the applicant in view of the earlier order passed in its favour by the Tribunal on 23.01.2023 (Annexure P-1). The Tribunal, in a very cursory manner, dismissed the application by holding it to be misconceived and not maintainable and held that it had become *functus officio* after passing of the earlier order.

2. In our considered opinion, the above said order suffers from a

patent lack of exercise of jurisdiction which was vested with the Tribunal which should have been exercised at the first instance itself and having failed to do so, the Tribunal had an opportunity to rectify the error but in a summary manner has dismissed the application which, in our considered opinion, has resulted in denying the fruits of the litigation to a successful litigant. It is in such circumstances, we are constrained to exercise our extra ordinary jurisdiction. The reliance by the counsel for the respondent-Bank upon ***Varimadugu Obi Reddy vs. B. Sreenivasulu and others, 2023 (1) RCR (Civil) 34*** would, in our considered opinion, not stand in the way to grant the relief.

3. It is to be noticed that initially the petitioner had filed a securitization application i.e. S.A. No.10 of 2023 under Section 17 of the Act, in which it challenged the proceedings including the physical possession which had been obtained through the District Magistrate. The Tribunal came to the conclusion that service upon the applicant had not been effected and accordingly the personal notice had not been served upon Gursewak Singh, the proprietor of the petitioner-Mill. The relevant port of the order reads thus:-

“8. From the documents on file and arguments advanced before this Tribunal, this Tribunal is satisfied that there is non-compliance of Rule 3 of the one Rules of 2022 in respect of affixation on the property in question. Even, if the publication in the two newspapers is deemed to be legal, this flaw remains incurable and thus, all cannot be said to be well wit the securitisation proceedings initiated by the respondent bank. The argument advanced by Sh. Rohit Sapra, Advocate that even the publication in the newspapers was not made at

the latest address of the applicant at village Rauni-Khurd, cannot be brushed aside. In these circumstances, the securitisation proceedings have failed to take off in accordance with law which warrants allowing of the present application. Consequently, the SA is allowed with costs. Needless to say that the respondent bank is at liberty to issue fresh notice under Section 13(2) of the Act. It hardly needs to be stated here that the notice under Section 13(2) of the Act not being served legally, all subsequent proceedings shall not hold good.

4. The relief which was claimed in the said S.A. No.10 of 2023 reads as under:-

- i) that the entire action under Section 13 of the Act culminating into issuance of 15 days sale notice 06.01.2023 be declared as illegal, null and void ab-initio.*
- ii) that respondent Bank be directed to pay a sum of Rs. 50 lacs to the applicant towards compensation and cost for its wrongful act.*
- iii) that the applicant be awarded the entire cost of the SA and that of the proceedings.*
- iv) Any other relief to which the applicant may be found entitled to in law or equity may also be granted.”*

5. The petitioner thereafter filed the miscellaneous application that he had approached the bank to restore the physical possession alongwith the demand draft of Rs.96,255/-, which was the application fee/cost incurred in filing the securitization application (Annexure P-2), which met the fate of the sudden dismissal, as reproduced above. A perusal of representation dated 29.01.2023 (Annexure P-5) would go on to show that the same relief had been asked for that under Section 13(2) of the 2002 Act, all subsequent

proceedings would not hold good and, therefore, physical possession should be delivered. The provisions of Section 17(3) provide for the remedies to any person aggrieved by the measures referred under Section 13(4) of the 2002 Act which are taken by the secured creditor. Section 17(3) of the 2002 Act reads thus:-

17. [Application against measures to recover secured debts].

(1) and (2) xxx xxx xxx

(3) *If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,--*

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]”

6. A perusal of the above provisions would go on to show that there can be no quarrel with the proposition that the Tribunal was under a legal

duty having declared the measures under 13(4) of the 2002 Act to be invalid. It was, thus, duty bound to restore the possession of the secured asset to the aggrieved person. The word '*and*' has been mentioned and, thus, it is the only remedy as such provided to the extent that even Section 34 of the 2002 Act provides that there is a bar in respect of entertaining any proceedings in respect of a matter which the Tribunal is empowered to determine under the Act. Sections 34 and 35 of the Act read thus:-

34. Civil court not to have jurisdiction.--No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

35. The provisions of this Act to override other laws.--The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

7. Thus, the Tribunal was under a bounden duty to grant the relief under clause (iv) which was prayed for in the original securitization application once it had held that the proceedings under Section 13 of the 2002 Act were bad. Rather, it is to be noticed that even the prayer was made for paying compensation of Rs.50,00,000/- for the wrongful acts of the bank.

8. The Apex Court in *Authorised Officer, Indian Overseas Bank*

financial institutions have been granted the stringent powers for recovery of the dues, the Tribunals had been given the power to set aside the transactions and to restore possession in appropriate cases. Rather, it has been held that even *status quo ante* can be restored by the DRT. The relevant portion of the judgment reads thus:-

“22. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the Banks or Financial Institutions, certain checks and balances have been introduced in [Section 17](#) which allow any person, including the borrower, aggrieved by any of the measures referred to in Sub-Section (4) of [Section 13](#) taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in Sub-Section (3) thereof.

23. The intention of the legislature is, therefore, clear that while the Banks and Financial Institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee. The consequences of the authority vested in DRT under Sub-Section (3) of [Section 17](#) necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of [Section 13\(4\)](#) of the Act. The Legislature by including Sub-Section (3) in [Section 17](#) has gone to the extent of vesting the DRT with authority to even set

aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr. Gopalan and Mr. Altaf Ahmed that the DRT has no jurisdiction to deal with a post 13(4) situation, cannot be accepted. The dichotomy in the views expressed by the Bombay High Court and the Madras high Court has, in fact, been resolved to some extent in the Mardia Chemicals Ltd.'s case (supra) itself and also by virtue of the amendments effected to [Sections 13](#) and [17](#) of the principal Act. The liberty given by the learned Single Judge to the appellants to resist S.A.No.104 of 2007 preferred by the respondents before the DRT on all aspects was duly upheld by the Division Bench of the High Court and there is no reason for this Court to interfere with the same.

24. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under [Section 13\(4\)](#) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of [Section 13\(4\)](#) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT.”

9. The reliance by the respondent-Bank upon *Obi Reddy (supra)* is not acceptable as it was a case where the borrowers were frustrating the auction sale and on account of not getting relief from the DRT, instead of filing a statutory remedy of appeal under Section 18 of the 2002 Act, a writ petition under Article 226 of the Constitution of India was filed. On account

the Apex Court that there was a remedy provided which was not exhausted and apparently to avoid the condition of pre-deposit contemplated under the second provisio of Section 18 of the 2002 Act. In such circumstances, the writ petition was allowed and, therefore, the said judgment would be of no assistance.

10. It is settled principle that the writ court would reach out and grant a *mandamus* since there was a duty enshrined under the 2002 Act itself, which the Tribunal has failed to exercise. Rather, we are surprised to see the manner in which the application has been dismissed in a cursory manner, which has rather shaken the faith in the litigant who, though successful, has not been able to get the fruits of the litigation. The observations of how the Tribunal has come to the conclusion that the application was misconceived or that it has become *functus officio* which is a term which is associated with a matter where a reference is made and after the decision of the reference, the Court may be termed as *functus officio* and, therefore, the order cannot be sustained or can be said to be reasoned in any manner.

11. Resultantly, we quash the order dated 17.02.2023 (Annexure P-3) passed by Debt Recovery Tribunal-II, Chandigarh and direct the respondent-Bank to restore the possession within a period of one week from today.

(G.S. SANDHAWALIA)
JUDGE

11.04.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No