IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(107+266) **Neutral Citation No.2023:PHHC:057426 -DB**

CWP-6351-2022 (O&M)

Asha Rani and others

....Petitioner(s)

Versus

Punjab National Bank and another

.... Respondent(s)

(2)

CWP-17601-2022 (O&M)

Asha Rani and others

....Petitioner(s)

Versus

Punjab National Bank and another

.... Respondent(s)

Decided on: 24.04.2023

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

Present: Mr. Lupil Gupta, Advocate for the petitioner(s).

Mr. Neeraj Sheoran, Advocate for the respondents.

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G.S. Sandhawalia, J.(Oral)

CM-20674-CWP-2022 in CWP-6351-2022
CM-20753-CWP-2022 in CWP-17601-2022

Applications to place on record sale notice dated 03.12.2022 as Annexure P-10 and P-12 in CWP Nos.6351 and 17601 of 2022, is allowed, subject to just exceptions. Same are taken on record. Office to append the same at the appropriate place.

CMs stand disposed of.

Main cases

Challenge in the present two writ petitions i.e. CWP Nos.6351 & 17601 of 2022 is regarding the consideration on the application dated 28.01.2022 (Annexure P-8) for One Time Settlement in view of OTS Scheme (Annexure P-9) as the petitioner is ready to pay 25%

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of the outstanding amount, as the father of petitioner No.1 and petitioner No.2 is only having 25% share in the property, whereas the other partners are having 75% share.

2. Neither other partner has been made respondent in the present petitions. Notice of motion was issued on 27.04.2022. On the asking of the Court counsel for the petitioners is not in a position to deposit 20% of the outstanding, which as per sale notice dated 26.07.2022 is Rs.48,80,831.68 as on 19.01.2022. Perusal of the said notice would also go on to show that notice under Section 13 (4) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '2002 Act') was issued on 19.01.2022.

3. 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 to. The Apex Court in **Sardar Associates and others Vs. Punjab & Sind Bank and others, (2009) 8 SCC 257** has held 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

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> 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."

4. Keeping in view the above, we are of the considered opinion that since possession notice has already been issued, the remedy lies before the Tribunal. It is open to the petitioner to file application under Section 14 of the Limitation Act, 1963, since they were pursuing remedy before this Court, for the issue of limitation which may arise at the time of filing the securitization application before the Tribunal.

5. Resultantly, the present writ petitions are disposed of with the aforesaid liberty.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

24.04.2023
Naveen

Whether speaking/reasoned :	✓Yes	No
Whether Reportable :	Yes	✓No

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