Neutral Citation No.2023:PHHC: 040562-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(157) **CWP-5776-2023**
Decided on : 20.03.2023

Mukesh Kumar ……Petitioner(s)

Versus

Dena Bank (now Bank of Baroda)

……Respondent(s)

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

Present: Mr.Mukesh Verma, Advocate for the petitioner (s).

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G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India is to the action of the respondent for issuing notice dated 09.02.2023 (Annexure P-1) of taking physical possession whereby plot No.56-F, measuring 4835.50 sq.yards along with worker's housing plot No.132 which is in compliance of the order dated 10.01.2023 of the District Magistrate, Faridabad.

A perusal of the paperbook would go on to show that an application was also filed before the Debt Recovery Tribunal-2, Chandigarh challenging the proceedings initiated by the respondent-Bank.

Counsel for the petitioner has also placed on record order dated 18.03.2023 wherein the stay has been declined by the Presiding Officer, DRT-2, Chandigarh by noting that the amount due is Rs.2,59,87,453/-. Considering the fact that the Bank is only securing possession of the mortgaged property and the fact that the petitioner has already availed his alternative remedy and has further remedy of appeal against the said order which would lie before the Appellate Authority under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 which reads as under:-

> "**18. Appeal to Appellate Tribunal.—**
>
> **(**1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.
>
> Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:
>
> Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.
>
> (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

The Apex Court in **Varimadugu Obi Reddy Vs. B. Sreenivasulu and others, 2023 (1) RCR (Civil) 34** while discussing an similar issue held that the orders passed by the Debts Recovery Tribunal are appealable and it is not for the Writ Court to exercise its extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

Resultantly, we are of the considered opinion that the present writ petition is not maintainable under Articles 226/227 of the Constitution of India and the same is, accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

20.03.2023
sailesh

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