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CM-6328-CWP-2023 IN/AND  
CWP-7726-2022 (O&M)

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2023:PHHC:075790-08

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CM-6328-CWP-2023 IN/AND  
CWP-7726-2022 (O&M)  
DATE OF DECISION: 22.05.2023

PARDEEP SHARMA

.....PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

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

Present: Mr. Akhilesh Vyas, Advocate,  
for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

Mr. Abhay Karan Khanna, Advocate,  
for respondents No. 2 and 3.

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**HARPREET KAUR JEEWAN, J.**

1. The challenge in the present petition is to the notice dated 24.05.2021 (Annexure P-5) issued under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), the notice dated 16.03.2022 (Annexure P-7), issued under Section 13 (4) of the Act and the possession notice dated 29.03.2022 (Annexure P-8).

2. Learned counsel for the petitioner submits that the petitioner availed Cash Credit and Term Loan facility from respondent No. 2-Bank and mortgaged his residential house, situated in Amritsar. The account of the petitioner was wrongly declared NPA on 31.03.2021. The petitioner

had suffered huge losses, and the respondent-Bank issued a notice dated 24.05.2021 (Annexure P-5) under Section 13 (2) of the Act in violation of the notification dated 05.05.2021 (Annexure P-6) having resolution framework 2.0. The classification of the account of the petitioner as NPA was against the Master Circular-Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to advances dated 02.07.2023. Hence, the petitioner sought quashing of the demand notice 24.05.2021 (Annexure P-5) issued under Section 13 (2) of the Act, the notice dated 16.03.2022 (Annexure P-7), issued under Section 13 (4) of the Act and the possession notice dated 29.03.2022 (Annexure P-8).

3. Learned counsel for the respondents-Bank referring to the reply filed on behalf of respondents No. 2 and 3 and submitted that the petitioner has availed loan in four accounts and presently two accounts are running which have been declared NPA. The petitioner had withdrawn money from the accounts which are presently working and deposited the same with the other two accounts for closing the same. The outstanding of ₹83,96,678.28/- is due against the petitioner which he has failed to pay. Hence, the petition is liable to be dismissed.

. We have heard the above submissions.

5. Out of the huge outstanding of ₹83,96,678.28/-, the petitioner is not willing to deposit any reasonable amount against the said outstanding to get the matter resolved. After issuance of the demand notice dated 24.05.2021 (Annexure P-5) under Section 13 (2) of the Act, the petitioner has failed to show that he had paid a reasonable amount to the Bank or had given any assurance to the Bank to clear his outstanding. He has not filed

any objection to the Bank challenging the said notice. The Bank had issued a notice dated 16.03.2022 (Annexure P-7) under Section 13 (4) of the Act and the petitioner has an alternate and efficacious remedy to challenge the said notice by way of filing a petition under Section 17 of the Act before the Tribunal.

6. In view of the above, we are of the considered opinion that an alternate remedy is available to the petitioner under Section 17 of the Act and as per the provisions, of sub Section (2) and (3) of Section 17 of the Act. The Debt Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties has ample power to set aside any measures referred to in Section 13(4) of the Act, if the Tribunal comes to the conclusion that the secured creditors have not acted in accordance with the provisions of the Act and the Rules made thereunder. The Tribunal has wide powers to pass such orders as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditors under sub Section (4) of Section 13 of the Act. Section 17 of the Act reads as under:-

**“Application against measures to recover secured debts:**

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 1[may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts it is hereby declared that

the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-----

- (a) the cause of action, wholly or in part, arises;
- (b) where the secured asset is located; or
- (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(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 of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, 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 restore the possession of the secured assets to the borrower and
- (b) restore the management of the secured assets to the borrower, as the case may be, and
- (c) pass such order 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.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

1 [(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

7. In SLP (Civil) Nos.22021-2202 of 2022 titled *M/s South Indian Bank Ltd. & others Vs. Naveen Mathew Philip & another*, decided

on 17.04.2023, the Hon'ble Apex Court held that the Tribunal is expected to go into the issues of fact and law including those of statutory violation and it has a wide range of powers to set aside all illegal orders and grant consequential reliefs, including re-possession and payment of compensation and costs. The relevant portion holding that jurisdiction under Article 226 of the Constitution of India is to be held in extraordinary circumstances reads as under:-

“18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

8. Keeping in view the settled principle of law, once securitization proceedings have been initiated after taking recourse to Section 13(4) 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.

9. In such circumstances and keeping in view the facts of the present case, we are of the considered opinion that it is not for the writ court to exercise its extraordinary writ jurisdiction under Article 226 and 227 of the Constitution of India where an equal and efficacious remedy is available with the petitioner. As such the present petition is disposed of with liberty to approach the Tribunal within a period of two weeks, from the receipt of the certified copy of this order.

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10. Pending miscellaneous application (s), if any, also stand  
disposed of.

(G.S. SANDHAWALIA)  
JUDGE

(HARPREET KAUR JEEWAN)  
JUDGE

May 22, 2023

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| Whether Speaking   | Yes |
| Whether Reportable | No  |