

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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2023:PHHC:044139-DB

CWP No. 6292 of 2023
Date of Decision: 24.03.2023

Pardeep Kumar and others

.....Petitioner(s)

Versus

Magma Fincorp Ltd. and others

....Respondent(s)

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

Present: Mr. Saurav Kumar Manchanda, Advocate,
for the petitioners.

Mr. Vijiyesh Malhotra, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for quashing of the order dated 29.11.2022 (Annexure P-8) passed by the District Magistrate-cum-Deputy Commissioner, Yamuna Nagar.

2. It is not disputed that the possession has already been taken on 28.02.2023 in view of the fact that there were outstandings of Rs.38,37,792/- as on 13.07.2022 payable by the petitioners.

3. Keeping in view the above, we are of the considered opinion that it is not for the Writ Court to exercise its extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India, in view of the huge outstanding as the bank is only seeking to recover the same, especially keeping in view the law laid down in ***United Bank of India Vs. Satyawati***

Tondon & others, (2010) 8 SCC 110. The principles laid down in the said

case were also arising out of the proceedings of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short '2002' Act) and resultantly discussing the law in detail it was held that as under:-

“27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the [DRT Act](#) and [SARFAESI Act](#) and exercise jurisdiction under [Article 226](#) for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under [Section 13\(4\)](#) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy.”

4. In ***Union Bank of India and another Vs. Panchanan Subudhi, (2010) 15 SCC 552***, the High Court had disposed of the writ petition by directing the petitioners to pay a sum of Rs.10 lakhs in installments for liquidating the dues of the appellant-Bank and proceedings were pending before the Debts Recovery Tribunal. During the pendency of the proceedings before the Tribunal, the Bank had issued notices under Section 13 (2) and 13 (4) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 and even the recovery amount had been quantified by the Tribunal. Resultantly, the High Court had been

approached, which had directed that the amount be paid in installments. Thereafter, the appeal had been filed before the Apex Court, wherein it was held that there was no justification for the High Court to entertain the writ petition by ignoring the fact a statutory alternative remedy was available to the respondent under Section 17 of the SARFAESI Act. Section 17 reads as under:-

“17. 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 fortyfive days from the date on which such measure 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 this sub-section.]

(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 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.

(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.

(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 the 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.”

5. In ***Kaniyalal Lalchand Sachdev and others Vs. State of Maharashtra and others, (2011) 2 SCC 782***, the High Court had dismissed the proceedings under Section 14 of the SARFAESI Act on the ground that there was an alternative remedy was available. However, it had directed that an order of status-quo which was for a period of 10 weeks for enabling the respondents to approach the Debts Recovery Tribunal. The extension sought was rejected and resultantly the matter was taken to the Apex Court. The Apex Court has held that the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution of India and the appeal was dismissed with costs of `20,000/-.

6. In ***M/s Hindon Forge Pvt. Ltd. and another Vs. State of Uttar Pradesh through District Magistrate Ghaziabad and another, 2018 AIR SC 5383***, while overruling the judgment of the Full Bench of the Allahabad High Court, the Apex Court held that a borrower can approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act and possession notice had been referred to under Rule 8 (1) and 8 (2) of the Security Interest (Enforcement) Rules, 2002.

7. In such circumstances, since there is an efficacious and alternative remedy in place and challenge has been made to the auction notice in pursuance of the physical possession of the property, which had been taken over on 28.02.2023 in pursuance of order dated 29.11.2022 (Annexure P-8) by an authorized officer, we are of the considered opinion that the petitioner's

remedy lies before the Debts Recovery Tribunal.

8. Accordingly, the present writ petition is disposed of by relegating the petitioner to avail of his alternative remedy in accordance with law.

(G.S. SANDHAWALIA)
JUDGE

24.03.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No