IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

131 ***2023:PHHC:075448-DB***

CWP-7173-2023
Date of Decision: 24.05.2023

State Bank of India .....Petitioner(s)

Versus

State of Punjab and others ....Respondent(s)

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

Present: Mr. Rakshit Gupta, Advocate,
for the petitioner-Bank.

Mr. Navneet Singh, Sr. DAG, Punjab,
and Mr. Abhay Pal Singh Gill, DAG, Punjab.

Mr. Akhilesh Vyas, Advocate,
for respondent Nos. 5 and 7.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the order dated 05.12.2022 (Annexure P-22) passed by the District Magistrate, Ludhiana whereby, he has dismissed the application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') for taking over the secured property.

2. The reasoning given by the District Magistrate for declining the application under Section 14 was that there was a Moratorium dated 18.02.2022 in operation and which had been met by the bank by holding out that the Moratorium protection is applicable only against the corporate debtor and not on the personal guarantors. The other reasoning as such which

weighed with the District Magistrate was that CWP No. 873 of 2022 was pending before this Court in which an order of stay had been granted on 17.01.2022 and dispossession of the mortgaged property had been stayed. The District Magistrate, further to justify the reasoning given, went on to hold that the deed of personal guarantees had been produced before the NCLT and resultantly, directed the bank to seek clarification from the appropriate Forum.

3. Counsel for the State has tried to justify the said order on the ground that there was already a stay granted by this Court.

4. Counsel for the bank has pointed out that the interim order had been challenged by Kotak Mahindra Bank in SLP No. 17335 of 2012 and the order was set aside on 27.03.2023. Resultantly, this Court had dismissed the CWP No. 873 of 2022 on 11.04.2023 as consequential effect on account of order of the Apex Court. The order passed by this Court reads thus:-

> *"1. There is no dispute that the matter had been taken by respondent No. 2 to the Apex Court against the notice of motion order dated 17.01.2022, whereby interim protection had been granted by this Court while issuing notice of motion. The said order has been set aside on 27.03.2023 in SLP (C) 17335 of 2012, titled* ***Authorised Officer Kotak Mahindra Bank vs. Anil Kumar Malhotra and another.*** *The said order reads as under:-*
>
> *"1. Leave granted.*
>
> *2. Heard learned counsel for the parties.*
>
> *3. This appeal takes exception to the judgment and order dated 17.01.2022 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 873 of 2022.*
>
> *4. We are of the considered view that the High Court was not justified in passing the impugned judgment and*

order.

5. The impugned judgment and order has the effect of scuttling the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. If the appellant was aggrieved by an order passed under Section 13(2) of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the appellant had an alternate remedy under the provisions of the said Act.

7. In that view of the matter, the impugned judgment and order passed by the High Court is quashed and set aside and the appeal is allowed.

8. Needless to state that the order passed herein would not affect the right of the appellant to take recourse to the alternate remedy.

9. Pending applications, if any, stand disposed of."

2. Keeping in view the above, counsel for the petitioner has also not in a position to argue the case on merits.

3. Accordingly, the writ petition is disposed of relegating the petitioner to avail of his alternative remedy before the Tribunal in terms of the order of the Apex Court.

4. This Court had been approached with a categorical averment made in paragraph 25 of the petition that there was no Presiding Officer in the Debt Recovery Tribunal, Chandigarh.

5. In such circumstances, if an appropriate application under Section 17 of the Act is filed within a period of 02 weeks from today, the Tribunal shall hear the case on merits.

6. All pending miscellaneous applications *stand disposed of and interim order stands vacated.*

5. Keeping in view the above, we are of the considered opinion that the reasoning which had prevailed as such with the District Magistrate no longer exists and, therefore, we quash the said order 05.12.2022 (Annexure P-22) and direct the District Magistrate to decide the application afresh. While deciding the application under Section 14 of the Act, the District Magistrate would keep in mind that it is not exercising any adjudicatory function and he is not a quasi judical Forum in view of the law laid down by Division Bench of this Court in ***Asset Reconstruction Company India Ltd. vs. State of Haryana, 2018 (1) PLR 473.*** The Division Bench, while discussing the provisions of Section 14 of the 2002 Act and the powers exercised by the District Magistrate, came to the conclusion that the said power is not quasi judicial and does not involve any adjudicatory process. The Apex Court in ***Balkrishna Rama Tarle (D) through L.Rs. and another vs. Phoenix ARC Pvt. Ltd. and others, 2022 AIR (SC) 4756*** also, while placing reliance upon the judgment in ***M/s. R.D. Jain and Co. vs. Capital First Ltd., AIR 2022 (SC) 4820*** decided on 27.07.2022, held that there is no element of *quasi judicial* function or application of mind by the Magistrate who is just to adjudicate and decide the correctness of the information given in the application and nothing more. It resultantly upheld the order of the Division Bench wherein the claim for tenancy was being entertained by the District Magistrate and he had declined to assist the secured creditor and taking possession of the secured assets. The High Court had set aside the said order which was upheld by the Apex Court and the directions which have been issued to proceed further in the application under Section 14 of the Act. The relevant part reads as under:-

"8.1 However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment. As observed and held by this Court in the case of NKGSB Cooperative Bank Ltd. (supra), the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including

the advocate commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasijudicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets."

6. Accordingly, the writ petition is allowed. Fresh order under Section 14 be passed by the District Magistrate and be implemented within a period of 4 weeks from today, keeping in view the above observations.

(G.S. SANDHAWALIA)
JUDGE

24.05.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No