

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(128)

CWP-7474-2023

Decided on : 08.05.2023

M/s Laxmi Pipes Ltd.

.....Petitioner(s)

Versus

District Magistrate & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH**

Present: Mr.Aalok Jagga, Advocate for the petitioner (s).
Mr.Anurag Jain, Advocate, for respondent No.3-Bank.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India has been made to the securitization proceedings including the possession notice dated 31.03.2023 (Annexure P-28) issued under Section 14 of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the 'Act').

2. The following order was passed on 17.04.2023:

“Challenge has primarily been raised to Section 13(4) notice issued under the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the ‘Act’) on the ground that the company has been subjected to the proceedings for initiation of Corporate Insolvency Resolution Process under the provisions of the Insolvency & Bankruptcy Code, 2016.

A perusal of the paperbook would go on to show that the outstandings are of Rs.48,13,37,399.91 as on 31.07.2022 (Annexure P-24). It is the own case of the petitioner that it is a going unit and it has also been pointed out that the grand total sale for the year 2023 is Rs.38,48,44,142/-. In our considered opinion, though the petitioner has an alternate remedy under Section 17 of the Act before the Tribunal, however, if the petitioner wishes to show its bona fides to settle the matter, it would be appropriate that a demand draft for a sum

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of Rs.10 crores in favour of the Registrar General of this Court be produced on the next date of hearing, since the proceedings under Section 14 of the Act has also been initiated and the Tehsildar is sitting at the door-steps.

To come up for necessary compliance on 26.04.2023.”

3. After arguing for some time, counsel for the petitioner does not press the present writ petition since apparently there is an alternative remedy available under Section 17 of the Act.

4. Section 17 of the Act provides a remedy to the person who is aggrieved under the measures taken under Section 13(4) of the Act which have been time and again settled by the Apex Court and the view taken in ***United Bank of India vs. Satyawati Tondon & others, (2010) 8 SCC 110*** was followed. In ***Union Bank of India and another vs. Panchanan Subudhi, (2010) 15 SCC 552; Kaniyalal Lalchand Sachdev and others vs. State of Maharashtra and others, (2011) 2 SCC 782; G.M., Sri Siddeshwara Co-operative Bank Ltd. & another vs. Sri Iqbal & others, 2013 (10) SCC 83; M/s Hindon Forge Pvt. Ltd. and another vs. State of Uttar Pradesh through District Magistrate Ghaziabad and another, 2018 AIR SC 5383 and Authorized Officer, State Bank of Travancore & another vs. Mathew K.C., 2018 AIR (SC) 676***, the said view has been further reiterated.

5. Recently, the Apex Court, while dealing with notice of motion order passed by this Court whereby, the writ petition had been entertained against the securitization proceedings initiated and interim protection had been granted whereby loanees had been declared NPA contrary to the order dated 27.03.2023 passed by the Apex Court was a subject matter of consideration in ***SLP No. 17335 of 2022, Authorized Officer, Kotak Mahindra Bank vs. Anil***

Kumar Malhotra and another. The Apex Court set aside the interim order and virtually directed that the petitioner to take recourse to alternative remedy by passing the following order:-

- “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 Securitization 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 Securitization 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.”*

6. In SLP (Civil) Nos.22021-22022 of 2022 titled *M/s South Indian Bank Ltd. & others Vs. Naveen Mathew Philip & another*, decided on 17.04.2023, while taking into consideration the jurisdiction exercised by the Kerala High Court regarding Section 13(4) challenge, it was noticed that

financial transactions were being entertained despite the settled proposition of law while taking into consideration the judgments passed in **Federal Bank Ltd. Vs. Sagar Thomas, (2003) 10 SCC 733** and **State Bank of India Vs. Arvindra Electronics (P) Ltd., 2022 SCCOnline SC 1522** and it was held that the Tribunal is expected to go into the issues of fact and law including those of statutory violation and it had a wide range of powers to set aside all illegal orders and grant consequential reliefs, including re-possession and payment of compensation and costs. Resultantly, the question of law was again reiterated by holding 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.”

7. In such circumstances, keeping in view the settled principle of law, once securitization proceedings have been initiated after taking recourse to Section 13(4) and further possession is being taken under Section 14 while taking recourse to the provisions of the 2002 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 as the petitioner is also unwilling to deposit any amount as suggested to him to show his bona fides.

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8. In view of the above discussion, the petitioner is relegated to his alternate remedy as available to him under Section 17 of the Act.

(G.S. SANDHAWALIA)
JUDGE

08.05.2023 (GURBIR SINGH)
sailesh JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No