IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(119) **Neutral Citation No.2023:PHHC:066687 -DB**

CWP-8100-2023
Decided on: 09.05.2023

Smt. Kanta Gupta & others

....Petitioner(s)

Versus

Bank of India & 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.

Mr. Devender Rattan, Advocate for respondent No.1.

Mr. Deepak Jain, Advocate and
Mr. Akshay Jain, Advocate for respondent No.2.

Mr. Gaurav Goel, Advocate for respondent No.2 and 3.

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G.S. Sandhawalia, J.

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order passed by the Debts Recovery Tribunal-II, Chandigarh (for short 'the Tribunal') dated 18.03.2023 (Annexure P-29) whereby SA No.59 of 2021 was dismissed.

2. The contention of the counsel for the petitioners is that it is in violation of the order dated 28.10.2022 (Annexure P-20) passed by this Court in a earlier round of litigation i.e. in CWP No.24791 of 2022. Mr. Jagga has tried to convince us to interfere in the merits of the case on the ground that the order passed by the Tribunal did not address the issue regarding the factum that whether free-hold rights were being put to auction by the Bank or it was the lease-hold rights, which were subject matter of consideration. Resultantly, it was argued that on 16.03.2021 (Annexure P-11) the Tribunal had passed an interim order that there were two auction notices dated 15.02.2021 one by the Bank and another by the Official Liquidator dated 16.02.2021 regarding the building, plant and

machinery and the auction of the land was by two different entities which were situated on the same piece of land and, therefore the stay had been granted at that point of time. Resultantly, it was argued that the Tribunal was not justified in dismissing the securitization application by holding that conduct of the applicant was malafide.

3. A perusal of the paper-book would go on to show that notice under Section 13 (2) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '2002 Act') was issued on 10.09.2019 (Annexure P-2), wherein it was noticed that the outstanding against respondent No.4, who is now stated to be in liquidation were to the tune of ₹167,93,83,755.64 against the credit facilities which had been advanced of ₹136,02,00,000/-. The account had been declared as 'Non-Performing Asset' w.e.f. 31.12.2015 and the following assets and securities had been charged to the Bank:-

> "(a) 1st pari passu charge on hypothecation of stocks and book debts of the company.
>
> (b) 1st pari passu charge on block assets of the company.
>
> (c) 1st pari passu charge by way of Equitable Mortgage of lease hold rights (99 years in favour of company) of factory land and building situated at 80th Mile Stone, G.T. Road, Jhattipur, Panipat (lease deed no. 1987 dt. 15.10.2010 for property/land measuring 114K 05M and 1814 dt. 09.08.2011 for property/land measuring 0K 08M)."

4. Eventually possession notice dated 25.11.2019 (Annexure P-2/A) was issued by the Bank of India, which showed that apart from the Bank of India claim, there were also dues of the other Banks amounting to ₹22,40,72,511.88 regarding State Bank of India, ₹13,70,03,045.36 regarding State Bank of Bikaner and Jaipur,

₹22,18,36,529.10 of State Bank of Patiala and ₹13,94,69,821.63 of Oriental Bank of Commerce. Resultantly, the total outstanding was ₹240,17,65,663.61. The description of the immovable property continued to be same which was 114 kanals 13 marlas.

5. Apparently on 31.01.2018 (Annexure P-3) the National Company Law Tribunal, Chandigarh Bench, Chandigarh (NCLT) admitted the petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'Code') and declared a moratorium whereby there was prohibition regarding the acts to be done under sub-Section (1) of Section 14 of the Code. Vide subsequent order dated 17.10.2019 (Annexure P-4) respondent No.4-Company was directed to be liquidated under Section 33 sub-Clause (1) of the Code. The specific prayer was made that the land and building owned by Shri Krishan Kumar Gupta, who was the promoter of the company of whom the petitioners are the legal heirs, which has been mortgaged with the Corporate Debtor be liquidated and was dealt with by coming to the conclusion that these matters did not have any direct connection with the main prayer in the application and was not being examined. The liquidator was given liberty to file appropriate application, if so advised regarding the said prayer. The said promoter of the company also got a notice of termination of lease dated 27.11.2020 (Annexure P-5) served upon the company and the liquidator who had been appointed by the NCLT, vide order dated 17.10.2019 (Annexure P-4).

6. The respondent-Bank issued notice for e-auction of the immovable property on 12.02.2021 (Annexure P-9) showing the property as a free-hold in the name of Shri Krishan Kumar and sought to auction the same, which was challenged by filing SA No.59 of 2021 (Annexure P-

10) without challenging the initial proceedings under Section 13 (4) of the 2002 Act, and interim order was passed on 16.03.2021 (Annexure P-11). Vide notice dated 12.08.2022 (Annexure P-18) the Bank had withdrawn the sale notice while specifying that action under Section 13 (2) and 13 (4) would continue to remain in force. Resultantly, vide order dated 28.09.2022 (Annexure P-19) the Tribunal came to the conclusion that the securitization application had been rendered infructuous and disposed of, whereas it allowed the IA of the Bank for vacation of the stay order dated 16.03.2021 (Annexure P-11) on the ground that the auction slated was no longer taking place.

7. Thereafter, the petitioner had approached this Court by filing CWP No.24791 of 2022 on the ground that the securitization application should have been decided on merits. After hearing both the sides, status-quo had been directed to be maintained, vide order dated 28.10.2022 (Annexure P-20). In the interim period Krishan Kumar Gupta expired on 25.12.2022 and his legal heirs have been brought on record, who are the writ petitioners in the present petition. The legal heirs also served a notice dated 21.01.2023 (Annexure P-22) that they had withdrawn notice sent on 27.11.2020 for termination of lease and claimed payment of ₹1 lakh as monthly rent. Eventually, impugned order came to be passed, after interim orders had been passed by the Presiding Officer that what was the stand of the applicant before the NCLT regarding the property being free hold or otherwise which should come on record by way of affidavit, which had led to the dismissal of the securitization application. It was noticed that IA No.14 of 2021 was also withdrawn before the NCLT where stance taken

was that the property was free-hold, whereas before the Tribunal the stance taken was the property was lease-hold.

8. Counsel for the respondent-Bank has opposed the writ petition on the ground of maintainability by submitting that the order is appealable before the Debts Recovery Appellate Tribunal.

9. We are in agreement with the counsel for the respondent-Bank that the remedy of appeal is provided under Section 18 of the Act. Keeping in view the above, we are of the considered opinion that remedy of appeal is provided against the order of the Debts Recovery Tribunal under Section 18 of the 2002 Act, 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."

10. 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.

11. We also feel that it is not a fit case to exercise the extra-ordinary writ jurisdiction. The whole exercise of the promoter now represented by the legal representatives is to get an interim order against the Bank which is proceeding to recover its dues in accordance with law. Once the main SA has been dismissed, the stay order has to follow the main case as per settled principle of law. The auction having been cancelled the challenge to the same has been rendered infructuous, especially since the Section 13 (4) notices issued way back on 25.11.2019 (Annexure P-2/A) were not the subject matter of consideration.

12. Resultantly, the present writ petition is dismissed and it is open to the petitioners to avail their remedy before the Debts Recovery Appellate Tribunal under Section 18 of the 2002 Act.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
JUDGE

09.05.2023
Naveen

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