IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8358-2023
DATE OF DECISION: 29.04.2023

M/S JMD INDUSTRIAL CORPORATION AND ANOTHER

......PETITIONERS

Vs.

CANARA BANK, HADIABAD BRANCH, PHAGWARA AND OTHERS

.........RESPONDENTS

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

Present: Mr. Praveen Kumar Bhatia, Advocate,
for the petitioners.

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G.S.SANDHAWALIA, J. (ORAL)

1. The present petition has been filed challenging the possession notice dated 16.02.2023 (Annexure P-2) under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') wherein symbolic possession of the property sought to be taken for the outstandings of ₹32,98,313.40/-. The same is in pursuance of the earlier notice dated 20.06.2022 (Annexure P-1) wherein ₹27,44,957.90/- was the outstanding amount as per Section 13 (2) notice of the Act.

2. Keeping in view the above, we are of the considered opinion that the petitioners have an alternate remedy available under Section 17 of the Act.

3. Section 17 of Act provides a remedy to the person who is aggrieved under the measures taken under Section 13(4) of the 2002 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 Ikbal & 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.

4. 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."

5. 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, the Apex Court noticed that the challenge was being raised to Section 13 proceedings while exercising jurisdiction under Article 226 of the Constitution of India. It was noticed that private individuals were involved over financial transactions, whose action would not come within the purview of Article 12 of the Constitution of India and in the presence of alternative remedy being available and 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 SCC Online SC 1522,** 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.
> 19. Reiterating the concern expressed, the present appeals are disposed of. The Registry is directed to mark a copy of this order to the High Court of Kerala and the High Court of Punjab & Haryana. No costs."

6. 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 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.

7. Keeping in view the above, we are of the considered opinion that since possession notice has already been issued, the remedy lies before the Tribunal. Counsel for the petitioners has not come-forth with any proposal to show his *bona fide* to submit 25% of the outstanding amount

also and therefore, we are not inclined to exercise extra-ordinary writ jurisdiction.

8. Resultantly, the present writ petition is disposed of with the aforesaid liberty.

(G.S. SANDHAWALIA)
JUDGE

April 29, 2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No