IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214 ***2023:PHHC:078430-DB***

CWP-10859-2022
Date of Decision: **26.05.2023**

ICICI Home Finance Co. Ltd. .....Petitioner(s)

Versus

District Magistrate, Bhiwani Haryana and others ....Respondent(s)

AND

CWP-28053-2022

Poonam Sharma .....Petitioner(s)

Versus

ICICI Home Finance Co. Ltd. and others ....Respondent(s)

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

Present: Mr. Rahul Garg, Advocate,
for Mr. D.K. Singal, Advocate,
for the petitioner (in CWP-10859-2022)
for respondent Nos.1 and 2 (in CWP-28053-2022).

None for the petitioner (in CWP-28053-2022).

Mr. Arun Beniwal, Sr. DAG, Haryana.

G.S.SANDHAWALIA, J.

1. The present order shall dispose of two civil writ petitions i.e. CWP Nos. 10859 and 28053 of 2022, since the loan account as such is common and proceedings thus arise out of the securitization proceedings launched by the bank. The financial institution has filed the first writ petition wherein it sought implementation of the order dated 28.02.2022 passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') (Annexure P-2)

passed by the District Magistrate, Bhiwani against G.R. Shiksha Samiti, Village and Post Office Gujrani, District Bhiwani. Vide interim order dated 07.09.2022, directions were issued to the officials of respondents to implement the said order of the District Magistrate within a period of 4 weeks and hand over physical possession.

2. Apparently, the second writ petition came to be filed challenging the order passed on 29.11.2022 (Annexure P-5), which was issued by the office of the Tehsildar for compliance of the said order. Prayer made in the second writ petition is that the petitioner was ready to settle the loan account and the defaulted EMIs at the earliest.

3. A perusal of the pleadings as such would go on to show that the loan of Rs.1,29,00,000/- had been taken against the property and there was a top up loan facility of Rs.86,00,000/- and on account of the financial discipline not being maintained, the loan account had been declared Non Performing Asset on 07.12.2020. Notices dated 27.07.2021 under Section 13(2) of the Act had accordingly been issued and thereafter under Section 13(4), the publication had been done on 25.10.2021 leading to the proceedings being initiated under Section 14 of the Act and resultantly, the order being passed.

4. Apparently, the loanee G.R. Shiksha Samiti filed a civil suit wherein an injunction was granted by the Civil Judge (Jr. Divn.), Bhiwani on 17.03.2022 (Annexure P-3) which had led to the non implementation of the order passed under Section 14 of the Act. The pleadings of the Financial Institution as such are that the jurisdiction of the Civil Court is barred under Section 34 of the Act and it was an *ex parte* injunction and there was no such service upon the financial institution that they had refused to receive the

summons and neither there is any branch in Bhiwani where the Naib Nazir had allegedly visited for service of summons. The second petition has been filed by one Poonam Sharma, who is stated to be the second wife of Hawa Singh, who was the actual owner in possession of the mortgaged property and he is stated to have leased it out to G.R. Shiksha Samiti where a school was running and students were studying and there was also a residential house. The claim as such in the writ petition was that EMIs were being paid regularly from 05.10.2019 till 14.10.2020 and due to Covid-19 pandemic, Hawa Singh had died on 22.05.2021 and, therefore, the school management could not pay the EMIs.

5. The reply of the official respondent Deputy Superintendent of Police, Bhiwani has been filed that police aid was provided and the physical possession of the mortgaged property was delivered to the financial institution and there is no further cause of action left. The entry in the General Diary Rapat No.21 dated 07.12.2022 was stated to have been done regarding this aspect.

6. Resultantly, keeping in view the above facts, we are of the considered opinion that the financial institution was resorting to its remedies in accordance with law and having succeeded by virtue of the interim order passed in CWP No. 10859 of 2022 filed by it, the same has been rendered infructuous and is disposed of as such.

7. Regarding CWP No. 28053 of 2022 wherein challenge is to the action of the financial institution to take possession which is as per the provisions of the Act, the petitioner's remedy is to approach the Tribunal to challenge the notices under Section 13(4) of the Act which have now been implemented by virtue of the order passed under Section 14 of the Act.

Resultantly, the petitioner is relegated to her remedy before the Tribunal in view of the law laid down in ***M/s. South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another, 2023 (2) RCR (Civil) 771.***

(G.S. SANDHAWALIA)
JUDGE

26.05.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No