

**112+279 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP-10738-2022 (O&M)  
Date of Decision: May 04, 2023**

**M/S HARINDER FABRICS**

**....Petitioner(s)**

**VERSUS**

**SHRIRAM CITY UNION FINANCE LTD.**

**....Respondent(s)**

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

Present: Mr. Simranpreet Singh, Advocate for  
Mr. Ferry Sofat, Advocate  
for the petitioner.

Mr. Harsh Chopra, Advocate  
for the respondent.

\*\*\*\*

**HARPREET KAUR JEEWAN, J.**

1. The present writ petition has been filed challenging the possession notice dated 24.06.2021 (Annexure P-3) issued under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act') and for consideration of representations dated 30.03.2021, 28.09.2021 and 21.04.2022 (Annexures P-2 to P-5) for One Time Settlement submitted by the petitioner.

2. As per the version of the petitioner, he had availed business loan from the respondent vide Customer IDH0270141, Agreement No. CDLD3TF1904030001 dated 23.03.2019 and took loan of Rs.68,00,000/-, and mortgaged its property as a collateral security. The petitioner could not pay regular installments due to Covid 19 as such the account of the

petitioner–firm was declared NPA on 03.02.2020. The respondent issued Demand Notice dated 11.08.2020 (Annexure P-1) under Section 13(2) of the Act and raised a demand of Rs.75,02,583/- as on 10.08.2020. The petitioner submitted a representation dated 30.03.2021 (Annexure P-2) and requested for One Time Settlement at Rs.35 lakhs. However, the respondent-financial institution issued a possession notice under Section 13(4) of the Act (Annexure P-3). The petitioner-firm again submitted a request letter dated 28.09.2021 (Annexure P-4) and again offered for One Time Settlement. The said proposal was neither accepted nor rejected. The petitioner-firm again submitted third representation dated 21.04.2022 (Annexure P-5) with the same proposal.

3. Learned counsel for the petitioner submitted that the declaration of the loan account as NPA was against Master Circular Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated 02.07.2013.

4. However the Learned counsel for the respondent submitted that the present petition is liable to be dismissed as petitioner has not submitted the alleged representation Annexures P-2, P-3 and P-5. He has filed CM-10503-CWP of 2022 and placed on record Annexure P-6 which is the alleged representation dated 21.04.2022 but it was never submitted before the respondent-financial institution.

5. Learned counsel for the respondent further submitted that the said representation has been rejected by a detailed and speaking order dated 19.07.2022 (Annexure R-1) as the petitioner has offered a meagre amount of Rs.35 lacs against the huge outstanding of Rs.75,02,583/-. It is further submitted that the petitioner has equal and efficacious remedy to approach

the DRT under Section 17 of the Act. As such the writ petition is liable to be dismissed.

6. We have considered the aforesaid submissions. The petitioner was granted an opportunity to file an application challenging the rejection of the OTS by the respondent-financial institution on 19.07.2022 as per the interim order dated 20.07.2022 passed by the of the Co-ordinate Bench.

The said order is as under:

**“CM-10502-CWP-2022**

*This application is filed for advancement of the date of hearing of the Writ Petition from 28.09.2022 to an early date.*

*Having regard to the reasons assigned in the application, Writ Petition is preponed to today and the same is taken on board.*

**CM-10503-CWP-2022**

*Application is allowed as prayed for.*

**CM-10504-CWP-2022**

*Notice in the application.*

*Mr. Harsh Chopra, Advocate, accepts notice on behalf of the non-applicant-respondent.*

*Since the rejection of the OTS submitted by the applicant-petitioner by the respondent is on 19.07.2022 i.e. yesterday, and since the petitioner intends to challenge the same, till 29.07.2022, petitioner shall not be dispossessed from the secured asset. Petitioner shall file an appropriate application challenging the rejection of the OTS by the said date.*

**CWP-10738-2022**

*List on 29.07.2022.”*

7. The petitioner has not challenged the said order/rejection dated 19.07.2022. As per the facts of the case, the petitioner was issued notice under Section 13(2) of the Act raising a demand to pay the outstanding amount of Rs.75,02,583/- due as on 10.08.2020. Thereafter, the petitioner has not paid any amount to the respondent-financial institution. Possession notice under Section 13(4) of the Act was issued by the respondent-financial institution on 24.06.2021 whereby the symbolic possession of the immovable property has been taken by the said institution.

8. Section 17 of the Act provides a remedy to a person who is aggrieved against the measures taken under Section 13(4) of the 2002 Act, to approach the tribunal under section 17 of the act. The same has 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.

9. 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 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 of 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 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."*

10. 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.”

11. In such circumstances, keeping in view the settled principle of law, once securitization proceedings have been initiated after taking recourse to Section 13(4), 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, once on foreclosure of the account the outstanding now is Rs.1,05,22,171/-

12. In the present writ petition, apart from challenging the possession notice under Section 13(4) of the Act, the petitioner had also sought a relief for directing the respondent-financial institution to consider the representation for One Time Settlement. The request for One Time

Settlement offered by the petitioner has already been rejected on the ground that an offer qua payment of a meager amount has been made against the huge outstanding amount of Rs.75,02,583/-. In the judgment passed in **Bijnor Urban Cooperative Bank Ltd., Bijnor & others Vs. Meenal Agarwal & others, 2022 (2) PLR 408**, the Apex Court has held as under:

“7. In the present case, a conscious decision was taken by the Bank as well as the Settlement Advisory Committee which is reflected from the Board’s Resolution dated 28.12.2020 and the decision dated 08.01.2021. Even personal hearing was afforded to the original writ petitioner by the Settlement Advisory Committee. The High Court in the impugned judgment and order has observed that no opportunity was given to the original writ petitioner, which is factually incorrect. Therefore, the decision cannot be said to be in violation of the principle of natural justice.

8. While passing the impugned judgment and order, the High Court, in response to the submissions on behalf of the Bank that, there are all possibilities of recovery of the loan amount and the efforts are being made to recover the amount by initiating proceedings under the SARFAESI Act and that the properties mortgaged can be auctioned, has observed that the proceedings under the SARFAESI Act have remained pending for seven years and the Bank has been unable to recover its dues and therefore the hope of recovery is illusory. This conclusion is not supported by any material on record. Merely because the proceedings under the SARFAESI Act have remained pending for seven years, the Bank cannot be held responsible for the same. No fault of the bank can be found. What is required to be considered is a conscious decision by the Bank that the Bank will be able to recover the entire loan amount by auctioning the mortgaged property and a due application of mind by the Bank that there are all possibilities to recover the entire loan

amount, instead of granting the benefit under the OTS Scheme and to recover a lesser amount. It is ultimately for the Bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept a lesser amount under the OTS Scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom.

9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

10. If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.

11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having

regard to the public interest involved and having regard to the factors which are narrated hereinabove.”

13. Similarly another aspect would have to be considered that the respondent-financial institution is a private institution and, therefore, the observations of the Apex Court in **Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir & others, 2022 (5) SCC 345** would also come into play, apart from the observations made in **M/s South Indian Bank Ltd. & others (supra)** that where the financial transactions are subject matter of consideration, the Writ Court would not exercise its jurisdiction. It is also to be noticed that the outstandings against the petitioner have now increased to Rs.1,05,22,171/-, as per the foreclosure made on 22.07.2022.

14. In view of the facts and circumstances of the present case and the ratio of the aforesaid decisions, the petitioner is not entitled to invoke the writ jurisdiction for seeking a relief of issuance of the direction to the respondent for One Time Settlement especially when alternate and efficacious remedy is available to the petitioner to challenge the proceedings under Section 13(4) of the Act.

15. As such, the present petition is devoid of any merits and is accordingly dismissed.

16. Pending miscellaneous applications, if any, also stand disposed of.

**(G.S. SANDHAWALIA)**  
**JUDGE**

**(HARPREET KAUR JEEWAN)**  
**JUDGE**

**May04, 2023**  
sangeeta