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

106 ***2023:PHHC:062381-DB***

CWP-15691-2022
Date of Decision: 02.05.2023

M/s. KW Enterprises and another .....Petitioner(s)

Versus

Punjab National Bank ....Respondent(s)

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

Present: None for the petitioners.

Mr. Gaurav Goel, Advocate,
for Mr. Pancham Sharma, Advocate,
for the respondent-Bank.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the securitization proceedings including the notice dated 06.07.2022 (Annexure P-1) issued by the Tehsildar-cum-Executive Magistrate, Ludhiana, who is seeking to implement the order dated 13.04.2022 of the District Magistrate, Ludhiana.

2. Counsel for the bank submits that physical possession of the mortgaged property has already been taken.

3. A perusal of the paper book would go on to show that notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') was issued on 31.05.2021 (Annexure P-4) claiming a sum of Rs.3,56,52,347.68/- due as on 01.04.2021 in as many as six accounts. Separate notice of even date has also been annexed which was pertaining to petitioner No.2, in which Rs.2,84,20,453.36/- was being claimed.

4. Keeping in view the fact that the matter has been pending herein since July, 2022 and counsel has been taking repeated adjournments and not arguing the matter, we are of the considered opinion that the matter is not maintainable since petitioners' remedy lay before the Tribunal in view of Section 17 of the Act to point out any lacuna in the proceedings initiated by the bank.

5. The issue of alternate remedy as provided under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been subject matter of debate time and again. Reliance can be placed upon the judgment passed in ***G.M., Sri Siddeshwara Co-operative Bank Ltd. & another vs. Sri Ikbal & others, 2013 (10) SCC 83.*** In the said case, the mortgaged property had been auctioned and the sale certificate had been quashed by the learned Single Judge of the Karnataka High Court which was upheld by the Division Bench on the ground that the mandatory requirements of the rules were not followed. Resultantly, it was held that though the said rule is mandatory but there was a remedy provided under Section 17 of the 2002 Act which had been brushed aside and once there was alternative and efficacious remedy available, the High Court was not justified to allow the same to be circumvented. Resultantly, the appeals were allowed and the orders were set aside.

6. Similarly, in ***Authorized Officer, State Bank of Travancore & another vs. Mathew K.C., 2018 AIR (SC) 676,*** challenge before the Apex Court was to the interim order passed in a writ petition staying further proceedings under Section 13(4) of the 2002 Act on the deposit of Rs.3,50,000/- within 2 months. The appeal against the same had been dismissed by the Division Bench. Resultantly, the Apex Court set aside the

said orders by the following observations:

> *"17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.*
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> *18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Another, 1997 (6) SCC 450, observing :-*
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> *"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."*
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> *19. The impugned orders are therefore contrary to the law laid down by this Court under Article 141 of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed."*

7. A three-Judge Bench of the Apex Court in ***Punjab National***

Bank & another vs. Imperial Gift House & others, 2013 (14) SCC 622, set aside the order whereby the writ petition had been entertained which was against the notice issued under Section 13(2) which had been rejected while passing an order under Section 13(3)(A) of the 2002 Act.

8. In ***Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir & others, 2022 (5) SCC 345***, the notice under Section 13(2) of the 2002 Act had been issued and the credit facilities were assigned by the Bank in favour of the appellant. The restructuring had also been done but borrower failed to pay the outstanding due amount. The demand for the outstanding amount was treated as under Section 13(4) notice and an ex-parte interim order was passed regarding status quo to be maintained subject to the borrower paying Rs.1 crore. The application for vacation of the stay was not decided and the interim order was extended. Resultantly, the Apex Court, while discussing the law in issue, held as under:

> *"The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13.08.2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs.1 crore only (in all Rs.3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs.117 crores. The ad-interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI ACT. Filing of the writ petition by the borrowers before the High Court is nothing but an*

abuse of process of Court. It appears that the High Court has initially granted an ex-parte ad-interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

9. Thus, from the above discussion, it would be clear that that time and again the Apex Court has held that writ petitions are not to be entertained once possession has been taken under Section 13(4) of the Act and the remedy would thus lie under Section 17 of the Act before the Tribunal. Needless to say that only in exceptional cases, the Writ Court would exercise its jurisdiction in the facts and circumstances of the present case do not make out any such exceptions which would entail the invoking of the extraordinary writ jurisdiction.

10. Accordingly, the petition stands dismissed with the liberty to the petitioners to approach the Tribunal in accordance with law.

(G.S. SANDHAWALIA)
JUDGE

02.05.2023 (HARPREET KAUR JEEWAN)
shivani JUDGE

Whether reasoned/speaking Yes
Whether reportable No