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

115+282 ***2023:PHHC:070546-DB***

**CM-8567-CWP-2023 in/and
CWP-17720-2022 (O & M)
Date of Decision: 16.05.2023**

Prachi Enterprises and others .....Petitioner(s)

Versus

IDFC First Bank Ltd. and others ....Respondent(s)

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

Present: Ms. Jasleen Kaur Chandhok, Advocate,
for the petitioners.

Mr. Aditya Grover, Advocate,
for the respondent-Bank.

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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 notice dated 11.07.2022 (Annexure P-2) issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') wherein, a sum of Rs.3,03,68,409.98/- alongwith interest was due. Challenge was primarily on the ground that it being a residential house property should not be sold and rescheduling and regularizing the home loan facility should be done.

2. An interim order was passed in favour of the petitioners on 19.12.2022 which has continued till now. Apparently, the Section 14 application was filed before the District Magistrate and an order was passed on 09.12.2022 in favour of the bank. It is not disputed between the counsels

that the application was filed by the bank for withdrawal of the said order with liberty to file afresh. In such circumstances apparently, the bank will not be in a position to press for possession on the basis of the said order.

3. In the reply filed by the bank, it has been mentioned that the loan account of the petitioners was rendered as Non Performing Asset and resultantly, notice was issued under Section 13(2) of the Act and there is an alternative and efficacious remedy available to the petitioner under Section 17 of the Act before the Tribunal since a notice under Section 13(4) was issued on 11.07.2022. It has also been mentioned that there are two loans and as per the latest calculation, the amount payable was Rs.3,20,98,816/- in both the loan accounts. It has further been averred that in case the petitioners are willing to pay the same, the respondent-bank does not have any objection.

4. Keeping in view the huge outstanding and on account of the inability of the petitioners to have furnished any demand draft of substantial amount against the outstandings, we do not find that it is a fit case to further continue the proceedings 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.***

5. Resultantly, the petitioners are relegated to their remedy before the Tribunal. However, since the petitioners have approached this Court and got an interim order dated 19.12.2022, we are of the considered opinion that the interim order would continue for a period of 2 weeks provided the petitioners file the securitization application within the said period. The Tribunal would, thus, consider the issue whether the interim relief is to be continued by putting the petitioners to appropriate terms it deems fit.

Needless to say since the matter was filed here and has remained pending for a considerable time, if the securitization application is filed within the above said period, we expect that the Tribunal will decide the issue on merits keeping in view the provisions of Section 14 of the Limitation Act, 1963.

6. Writ petition stands disposed of in the above said terms.

(G.S. SANDHAWALIA)
JUDGE

16.05.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No