IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18968-2020 (O&M)

Gagandeep Singh and others

....Petitioner(s)

Versus

Authorized Officer/Chief Manager, Punjab & Sind Bank, Kotkapura,

District Faridkot and another

.... Respondent(s)

(2) **CWP-11293-2022 (O&M)**

Gagandeep Singh and others

....Petitioner(s)

Versus

Authorized Officer/Chief Manager, Punjab & Sind Bank, Kotkapura, District Faridkot and others

.... Respondent(s)

Decided on: 27.03.2023

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH

Present: Mr. JPS Sidhu, Advocate for the petitioners.

Mr. ABS Sidhu, Advocate for the respondent-Bank.

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G.S. Sandhawalia, J.

The present shall dispose of two writ petitions i.e. CWP-18968-2020 and CWP-11293-2022, as the same have been filed by the same petitioners who are the loanees and challenging the action of the respondent-Bank under the Securitization and Re-construction of Financial

Assets and Enforcement of Security Interest Act, 2002 (for short '2002 Act').

2. The challenge in the first writ petition bearing CWP-18968-2020 is to the possession notice dated 08.10.2020 (Annexure P-1) issued under Section 13 (4) of the 2002 Act, whereby on account of loan amount of ₹66,80,925.18 which was due on 30.09.2019, the property had been taken over. The same was in pursuance of the notice dated 06.12.2019 (Annexure P-2), wherein the petitioners were put to notice under Section 13 (2) of the 2002 Act regarding the term loan which they have taken of ₹47.50 lakhs and Cash Credit Hypothecation limit of ₹50 lakhs, which had been modified thereafter and CC Limit was enhanced from ₹50 lakhs to ₹1 crore. On account of financial indiscipline the cash credit facility had been declared as 'Non-Performing Asset' (NPA) on 31.03.2014. Thereafter, certain amounts had been paid, but it was noticed that there was a debit balance of ₹66,80,925.19 on 30.09.2019.

3. Initially on 10.11.2020 while issuing notice of motion statement was made that since petitioner No.1 was in jail in connection with a case under Section 302 IPC but his family were willing to settle the dispute as quickly as possible. It was also undertaken that the petitioner would arrange a sum of ₹40 lakhs, which were to be paid to the bank on or before 18.12.2020. Prior to that they had to pay ₹20 lakhs on or before 27.11.2020. Resultantly, their possession had been protected by an order of status-quo. It was thereafter noticed on 01.12.2020 the amounts had not been remitted as undertaken on the earlier date and status-quo order was, accordingly, vacated.

4. The reply was thereafter filed by the respondent-Bank taking the plea of alternative remedies and also pointing out that no objection had been raised with regard to wrong declaration of the account as NPA after issuance of notice under Section 13 (2) of the 2002 Act.

5. On 28.01.2021 another opportunity was given that the necessary amount in pursuance of the order dated 10.11.2020 be deposited in the meantime. CM-1975-CWP-2022 was filed on 04.03.2020 for restraining the respondents from selling secured assets of petitioners as per notice dated 21.01.2020 (Annexure A-1) and that two months was needed to settle the account. The said application was dismissed as withdrawn on 04.03.2022. Similarly, CM-4182-CWP-2022 was filed that the physical possession of rice mill and plant had already been taken which had market value more than of ₹8 crores and respondents are trying to take possession of the house of the petitioners. The said application was also dismissed by noting the conduct of the writ petitioners.

6. Thereafter, second writ petition bearing CWP-11293-2022 came to be filed, wherein challenge has been raised to the e-auction and sale conducted by the respondent-Bank and the sale certificate and public notice dated 21.03.2022 (Annexure P-24), whereby the mortgaged property was put to auction. The said case ordered to be heard with the first case i.e. CWP-18968-2020. CM-8761-CWP-2022 was also filed for restraining the respondent-Bank from getting sale deed executed in favour of respondent No.3 who was the auction purchaser. Challenge has also been made to the sale certificate dated 27.04.2022 (Annexure P-28), which has been issued in favour of respondent No.3–Mr. Yash Garg who had deposited ₹2,26,40,000/- for the two lots of properties sold which

consisted of plant and machinery (in Lot No.1) and land measuring 32 kanals comprising Murabba No.736 (in Lot No.2). No restraint order was passed in the said application. Reference was also made in the said application regarding pendency of two Civil Suits filed by one Manish Mittal and Jaidev Parshad for recovery of ₹36,89,090/- and ₹20,05,990/-.

7. A perusal of the interim order dated 07.04.2022 (Annexure P-36) passed in the Civil Suit filed by M/s Hazari Lal against Kissan Rice Mill would go on to show that initially the Bank was directed to hold the remaining auction amount after adjusting the outstanding loan amount and not to disburse the same to anyone without prior permission of the Court till further orders. Thereafter, on 23.05.2022 (Annexure P-35) it was noticed that on account of the auction conducted and the sale certificate being issued on 27.04.2022, a sum of ₹1,21,85,113.36 was lying with the Bank, which was surplus. It was also noticed that there was an attachment made by the Sales Tax Department by Rapat No.40 dated 26.09.2019 and, accordingly, the Bank was directed to hold the remaining amount after payment of encumbrances of the Sales Tax Department as standing on the property in question and not to disburse the remaining amount to anyone without prior permission of the Court. Resultantly, the case was adjourned.

8. The written statement filed by the respondent-Bank in the second case would go on to show that the possession was also delivered to the auction purchaser.

9. Keeping in view the above cumulative facts, it would be apparent that there are outstandings against the petitioners from various debtors including the respondent-Bank and there are also private

individuals who had filed civil suits and also the Sales Tax Department is a claimant as noticed above. In such circumstances, disputed question would arise as to how the amount has to be eventually adjusted and the prior rights of the claimants against the property which was duly mortgaged and attachment order and the action initiated by the Sales Tax Department.

10. Resultantly, we are of the considered opinion that since there is an alternative remedy available and initially the writ petition had earlier been entertained on the assurance that to show his bonafides certain amounts would be paid within the prescribed period, but the said order was never complied with. The present writ petitions are, thus, not liable to be entertained further, keeping in view the law laid down by the Apex Court regarding the availability of the alternative remedy.

11. The issue of alternate remedy as provided under Section 17 2002 Act 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.

12. 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 Acton 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."

13. 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.

14. 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."

15. 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. 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.

16. Resultantly, the present writ petitions are dismissed. However, if the petitioners so wish they can approach the Tribunal within four weeks from the receipt of the certified copy of this order and on doing so, the Tribunal would decide the case on merits, since the matter was pending herein for all these years.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
JUDGE

27.03.2023
Naveen

Whether speaking/reasoned :	✓Yes	No
Whether Reportable :	Yes	✓No