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

120+255 ***2023:PHHC:054198-DB***

CWP-24558-2021 (O & M)
Date of Decision: 18.04.2023

Star Guest House .....Petitioner(s)

Versus

State of Haryana and others ....Respondent(s)

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

Present: Mr. V.K. Sachdeva, Advocate,
for the petitioner.

Mr. Arun Beniwal, DAG, Haryana.

Mr. Amit Jhanji, Sr. Advocate,
with Mr. Nitin Jain, Advocate,
Mr. Jativ Bansal, Advocate,
Mr. Aditya Prasad, Advocate,
Mr. Sriram Kamal, Advocate,
for respondent No.4.

G.S.SANDHAWALIA, J.

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is primarily to the order dated 28.11.2019 (Annexure P-1) passed by respondent No.2-District Magistrate, Panchkula whereby, the application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the 2002 Act') filed by the predecessor of respondent No.4 namely M/s. Religare Finvest Ltd. was allowed.

2. The ancillary prayers which are made are for restructuring of the loan accounts on the ground that the RBI Guidelines dated 17.03.2016 (Annexure P-20) provide a framework and the matter has to be referred to the designated committee. The consideration of the representation dated

25.09.2021 (Annexure P-15) is also sought.

3. The case has a checkered history and shows how the provisions of the 2002 Act which are meant to realize the amounts of the financial institutions can be stretched agonisingly for years by the litigant who firstly takes resort to the civil suit and thereafter jumps on the bandwagon of Article 226 of the Constitution of India and eventually now has to be relegated to the Tribunal, which was the initial remedy which should have been preferred at the first instance. For noticing the manner in which the proceedings have been extended and to dismiss the writ petition, necessarily the narration of the requisite facts duly summarized will have to be resorted to.

4. Notice under Section 13(2) of the 2002 Act was issued to the petitioners on 19.08.2016 (Annexure P-3) by M/s. Religare Finvest Ltd., the loanee as such wherein they were put to notice that Rs.4,22,05,804.91/- was payable on 12.08.2016. The said notice was followed up by statutory notice dated 22.12.2016 under Section 13(4) read with Rule 9 of the 2002 Act (Annexure R-4/1) wherein, the petitioners were put to notice that the mortgaged property which was H.No.37-P, Sector 4, Mansa Devi Complex, Panchkula, Haryana which is being run as a guest house for which the mortgage had been created. Possession was being taken over symbolically and there was a charge on the mortgaged property which was duly described.

5. It is not disputed that vide assignment deed dated 05.11.2019, the said loan as such was assigned in the favour of respondent No.4 namely India Resurgence ARC Pvt. Ltd. The District Magistrate, Panchkula, however, allowed the application on 28.11.2019 in favour of the original financial institution M/s. Religare Finvest Ltd. (Annexure P-1). The petitioner, on 11.03.2021, got registered himself under the Micro, Small and

Medium Enterprises Development Act, 2006 (Annexure P-1/A) and on the very next day on 12.03.1921, filed a civil suit wherein, injunction was sought which is stated to be based on incorrect and wrong legal advise as per the pleadings in the writ petition. On 19.03.2021 (Annexure P-8), the Civil Court denied the injunction since application under Order 7 Rule 11 CPC had been filed and came to the conclusion that the statement had been recorded of Rajinder Singh that he would deposit an amount of Rs.90,00,000/- in the loan account on 21.07.2017 before the District Magistrate. The appeal was dismissed on 05.05.2021 (Annexure P-9) by the Appellate Court. It is pertinent to mention that the suit was filed against the assigned company-respondent No.4 namely India Resurgence ARC Pvt. Ltd. also. The civil revision came to be filed i.e. C.R. No. 1227 of 2021, which came up before one of us while sitting in Single Bench, G.S. Sandhawalia, J. and keeping in view the fact that Covid-19 pandemic had been raging and there was an order by the Division Bench in the public interest litigation, counsel for the petitioners was asked as to how they would propose to liquidate the outstanding amounts vide order dated 01.07.2021 (Annexure P-10). Thereafter, the matter was taken up on 15.07.2021 (Annexure P-11) as counsel had been changed and it was made clear that there was no interim order passed and on 30.07.2021, it was noticed that the outstanding amount, as per the affidavit of the petitioners, was Rs.2,43,17,867/- but they were willing to deposit only Rs.20,00,000/- and also to pay Rs.50,00,000/- by way of monthly installments in the next 6 months. The fact that the earlier settlement had been arrived at Rs.3,58,00,000/- as OTS but no earnest money was received was also noticed. The order dated 30.07.2021 reads thus:-

"CM-6348-CII-2021

Application is allowed, as prayed for. Affidavit of the petitioners proposing to liquidate the outstanding amount in compliance of the order dated 01.07.2021 is taken on record. Office to append the same at the relevant place.

CM stands disposed of.

Main case

In the said affidavit it has been mentioned that a tentative amount of Rs.2,43,17,867/-, which is also disputed, is stated to be the dues payable. It has also been mentioned that in December, 2019 the outstanding was stated to be Rs.2,08,00,000/- and admittedly nothing has been paid thereafter. It has further been mentioned that the petitioners are willing to deposit a sum of Rs.20,00,000/- with the respondent No.1 and also to pay Rs.50,00,000/- by way of monthly installments during the period of six months, till the whole amount is calculated in accordance with law.

On the other hand Counsel for the respondent No.1, on instructions from Mr. Shakti Srivastava, Chief Manager, has submitted that on an earlier occasion in January, 2021 also a settlement was arrived at to pay Rs.3,58,00,000/- as OTS, but as no earnest money had been received from the petitioners, it did not fructify and a sum of Rs.4,41,00,000/- is now outstanding as on 31.07.2021.

Let, a copy of the accounts be placed on record, so that the petitioners be also in a better position to propose as to how they would liquidate the amount which is outstanding.

Accordingly, proceedings are deferred for 19.08.2021. It is, however, made clear that no interim order has been passed in the present revision petition."

6. On 19.08.2021 (Annexure 12A), as per the statement of accounts

produced by respondent No.4, the amount due was Rs.4,47,54,118/- and counsel for the petitioners had sought time to seek fresh instructions as to how they were willing to liquidate the outstanding amounts. The matter was eventually adjourned *sine die* on 01.12.2021 (Annexure R-4/3) since respondent No.4 had filed CWP No. 24322 of 2021 seeking enforcement of the order under Section 14 of the 2002 Act. An interim order dated 01.12.2021 had been passed at the first instance against the petitioner/loanee, which reads thus:-

> *"Notice of motion to respondents No.1 to 3 only.*
>
> *Mr. Sharan Sethi, Additional Advocate General, Haryana accepts notice on behalf of respondents No.1 to 3.*
>
> *Pending further orders, respondent No.3 is directed to implement the orders dt. 28.11.2019 (Annexure P-3) passed by respondent No.2 within a period of two weeks from today and deliver possession of the secured asset to the petitioner. Serious view will be taken if the order is not implemented within the time frame fixed.*
>
> *List on 20.12.2021."*

7. Apparently, it was brought to the notice of the co-ordinate Bench that since the matter had been assigned and the order under Section 14 of the 2002 Act could not be enforced by the respondent No.4. The writ petition was accordingly dismissed as withdrawn on 07.12.2021 and the order dated 01.12.2021 stood vacated. In the meantime on 03.12.2021, the writ petition had been filed and the same co-ordinate Bench directed the State not to take possession of the subject property in spite of the earlier order passed on 01.12.2021. The said order dated 03.12.2021 reads thus:-

> *"Notice of motion.*

> *Mr. SS Pannu, DAG Haryana takes notice for respondents No.1 to 3.*
>
> *The Deputy Advocate General, Haryana shall instruct the third respondent not to take possession of the subject property till 08.12.2021, notwithstanding the order dt. 01.12.2021 passed by us in CWP-24322-2021.*
>
> *List on 07.12.2021."*

8. The said order was further confirmed on 07.12.2021 by noting that respondent No.4 did not get itself substituted in the proceedings before the District Magistrate as required under Section 5(5) of the 2002 Act. It is, thus, apparent that the writ petition was withdrawn by respondent No.4, as noticed above.

9. Now, in such circumstances, we are of the considered view that apparently even on an earlier occasion, there were outstandings of Rs.2.50 crores as per the admission made by counsel for the petitioner at that point of time in order dated 30.07.2021 in the civil revision which the petitioner is not willing to take out from his pocket even today to show his *bona fides.* A perusal of the order dated 30.07.2021 would also go on to show that efforts were made as such even by respondent No.4 to settle the matter by way of an OTS which was also not accepted and the outstandings were stated to be Rs.4.47 crores at that point of time.

10. In such circumstances, we are of the considered opinion that respondent No.4 is free to approach the District Magistrate for enforcement of the notice under Section 13(4) of the 2002 Act since, admittedly, the loan has been assigned to it as even pleaded by counsel for the petitioner and he has the right to take possession in accordance with law. The petitioner, on the other hand, is free to file appropriate proceedings under Section 17 of the 2002 Act, which it should have resorted to at the first instance rather than

filing the civil suit and the effort as such to get itself registered on 11.03.2021 as Micro, Small and Medium Enterprise and then filing a civil suit on 12.03.2021 goes on to show its conduct. Section 17 of 2002 provides a remedy to the person who is aggrieved under the measures that have been taken under Section 13(4) of the 2002 Act which have been time and again been 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 Ikbal & 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. In ***SLP No. 22021-22022 of 2022, M/s. South India Bank Ltd. and others vs. Naveen Mathew Philip and another*** decided on 17.04.2023, it has been held that only in exceptional cases, the resort as such is to be taken to Articles 226 and 227 of the Constitution of India in financial matters. Since the counsel has shown no inclination to furnish a bank draft of even 25% of the amount to show his *bona fides,* we are not inclined to exercise our extra ordinary writ jurisdiction.

11. Accordingly, keeping in view that an alternative remedy is available under Section 17 of the 2002 Act to the petitioner as per settled principles of law, we are of the considered opinion that the petitioner can be relegated to his remedy to challenge the securitization proceedings in

accordance with law.

12. Resultantly, the writ petition stands dismissed. Office shall take steps to list CR-1227-2021 which has become infructuous as the suit has admittedly been withdrawn.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

18.04.2023
shivani

Whether reasoned/speaking Yes
Whether reportable Yes