IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108+262 ***2023:PHHC:062546-DB***

CWP-26672-2021
Date of Decision: 02.05.2023

Kalpana Aggarwal and another .....Petitioner(s)

Versus

Bank of India ....Respondent(s)

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

Present: None for the petitioner.

Mr. Banni Thomas, 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 possession notice dated 28.06.2021 (Annexure P-6) issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act'). A perusal of the same would go on to show that the claim of the bank is for Rs.47,83,994.74/-, which was the amount claimed in the notice dated 15.04.2021 (Annexure P-5) issued under Section 13(2) of the Act. The account had been declared as NPA on 31.03.2021 and the dues as such thus became payable.

2. The stand of the respondents in their written statement was that the mortgaged property, which was a residential unit at the time of sanctioning of loan, was converted into six commercial shops and the loan amount of Rs.50,00,000/- was disbursed on 30.09.2015 which was to be repaid in 240 monthly installments of Rs. 48,086/- commencing from 30.10.2015. At one point of time, the loan account of the petitioners was

restructured on 30.10.2020 on account of the irregularity in the installments in June-July, 2019. Resultantly, the proceedings had been initiated as the account was not eligible to be restructured for the second time as it had been declared NPA on 31.03.2021. The above said possession notice dated 28.06.2021 (Annexure P-6) had been withdrawn as the petitioners had assured that they would repay the amount but no installment amount was deposited till 15.08.2021. Resultantly, the second possession notice dated 07.12.2021 (Annexure P-12) has apparently been issued.

3. In the replication dated 14.03.2021 filed, the only stand is that there were medical exigencies on behalf of the petitioners and now the petitioners are paying the installments in time and that the claim of Rs.51,27,207/- would be settled in a couple of months.

4. Now, CM-608-CWP-2023 has been filed further for placing on record application for one time settlement of the loan account and the reply of the bank dated 16.11.2022, which has rejected their claim.

5. Keeping in view the above, we are of the considered opinion that huge amounts are outstanding and the petitioners have an alternative and efficacious remedy as such to approach the Tribunal under Section 17 of the Act against the notice issued under Section 13(4) of the Act, which has been time and again laid down by the Apex Court and recently reiterated in ***SLP No. 22021-22022 of 2022, M/s. South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another*** decided on 17.04.2023 wherein, 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 petitioners have shown no inclination to furnish a bank draft of even 25% of the amount to show their *bonafides,* we are not inclined to exercise our

extra ordinary writ jurisdiction.

6. Accordingly, the petition stands dismissed on account of maintainability and we leave it open to the petitioners to avail their alternative remedy by approaching the Tribunal in accordance with law.

(G.S. SANDHAWALIA)
JUDGE

02.05.2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No