

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-7451-CWP-2023 and
CM-7453-CWP-2023 IN/AND
CWP-25746-2022 (O&M)
DATE OF DECISION: 03.05.2023

AMIT NAGPAL

.....PETITIONER

VS.

AXIX BANK LTD. AND OTHERS

.....RESPONDENTS

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

Present: Mr. Ishnoor Singh, Advocate, for
Mr. Vikram Singh, Advocate,
for the applicant-respondent Nos. 4 to 6.
(in CMs-7451 and 7453-CWP of 2023)

Mr. Shivoy Dhir, Advocate,
for respondents No. 1 to 3.

Mr. Gandharv Malhotra, Advocate, for
Mr. Ashwani Talwar, Advocate,
for the non-applicant-petitioner.

HARPREET KAUR JEEWAN, J.

CM-7451-CWP-2023

By this application, the applicants-respondents No. 4 to 6
seeks preponment of the main case from 15.05.2023.

Keeping in view the averments made in the application, the
same is allowed and the date of hearing in the accompanying petition is
preponed from 15.05.2023 to today itself.

CM-7453-CWP-2023 IN/AND CWP-25746-2022

1. The present writ petition has been filed under Article 226 of

the Constitution of India assailing the notice dated 17.09.2022 (Annexure P-1) issued under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') read with the Security Interest (Enforcement) Rules, 2002.

1.1 The petitioner has also challenged the action of the Debts Recovery Tribunal-II, Chandigarh (for short 'the Tribunal') whereby SA No. 223 of 2022 was simply adjourned to 06.01.2023, vide order dated 29.10.2022 (Annexure P-2) on account of the orders dated 27.10.2022 passed by the co-ordinate Bench of this Court in CWP-24795-2022 (Annexure P-3).

1.2 Finding apprehension of the coercive actions at the hands of respondent No. 7-District Magistrate, Panipat, the present writ petition was filed whereby the outstanding dues are to the tune of ₹2,65,75,239.48/- as per the notice dated 17.09.2022 issued under Section 13 (4) of the Act (Annexure P-1).

2. Learned counsel for the petitioner has submitted that the petitioner is the owner in possession of the substantial portion of the mortgaged property, i.e. 2286 square yards out of 2611 square yards, situated at Purewal Colony, Panipat, which was allegedly mortgaged by respondents No. 4 to 6 with respondent No. 1-Bank. Respondents No. 4 to 6 failed to repay the loan amount obtained from the respondent-bank and the bank had initiated securitisation proceedings and notice dated 17.09.2022 (Annexure P-1) under Section 13 (4) of the Act was also issued.

3. It was further submitted that the petitioner was an alien to the transactions/agreement made between the respondent-bank and respondents No. 4 to 6, as such, the petitioner filed Securitisation Application No. 223 of 2022 titled **Amit Nagpal vs. Axis Bank and others**” under Section 17 (1) of the Act and the matter came up for hearing on 29.10.2022. No interim relief was granted in the said SA and the Presiding Officer finally simply adjourned the matter to 06.01.2023 on account of the order dated 27.10.2022 passed by the co-ordinate Bench in CWP-24795-2022 titled **Debts Recovery Tribunal Bar Association vs. Union of India and others** (Annexure P-3). Keeping in view the urgency and the sensitivity of the matter, the present writ petition was filed.

4. Learned counsel for the respondent-Bank further submitted that the Tribunal is now working and the petitioner can be relegated to the alternate remedy before the Tribunal which he has already availed.

5. As per the order dated 27.10.2022 passed in CWP-24795-2022, titled **Debts Recovery Tribunal Bar Association vs. Union of India and others**, (Anenxure P-3), the co-ordinate Bench observed that relationship with the Bar Association appears to be severally strained, and the Bar appears to have gone on strike from 26.10.2022, and counsels are not appearing before the 4th respondent (the DRT-II Chandigarh). Though Nodal Officers of Banks were appearing in cases before the 4th respondent (the DRT-II Chandigarh), the 4th respondent (the DRT-II Chandigarh) was restrained from passing any adverse orders in any of the cases (OAs or SAs) pending in which he is the Presiding Officer, till the next date of

hearing.

6. The aforesaid order of this Court was modified by the Hon'ble Apex Court, vide interim order dated 02.12.2022 passed in Special Leave Petition (C) No. 21138/2022 titled M.M Dhonchak vs. Debts Recovery Tribunal Bar Association and others, whereby the judicial member of the Tribunal (DRT-II, Chandigarh) was permitted to proceed with the hearing of the matters pending before him and to decide the same on merits. The said order dated 02.12.2022 reads as under:-

“By the impugned order, the High Court in exercise of powers under Article 227 of the Constitution of India and in a writ petition filed by the Debts Recovery Tribunal Bar Association, has restrained the Judicial Member of the Tribunal from passing any adverse orders in any of the cases (OAs or SAs) pending before him of which he is the Presiding Officer.

Such an interim order of not to pass any adverse orders in any of the cases by the Judicial Member of the Tribunal cannot be passed and is unsustainable.

At this stage, Shri Vikas Singh, learned Senior Advocate, appearing on behalf of the original writ petitioner-Bar Association has fairly conceded that, let the concerned Judicial Member of the Tribunal proceed further with the hearing of the cases and decide the same on merits and the members of the Bar shall cooperate. However, he has requested that self-respect of the members of the Bar Association shall also be maintained. He has stated at the Bar that therefore, the Bar has no objection if the impugned order is modified to the extent allowing/permitting the Judicial Member of the Tribunal to proceed further with the hearing of the cases and to decide the same by him on merits.

In that view of the matter, we modify the impugned order passed by the High Court and permit the petitioner-herein, Judicial Member of the Tribunal to proceed further with the hearing of the matters before him and decide the same on merits.

It goes without saying that the Judicial Member as well as the Bar should always try to maintain cordial atmosphere/relationship as both are part of the justice delivery system and both are the two wheels of the chariot of justice. Therefore, it is expected that both the sides may respect each other.

We impress upon the petitioner also to see that there is no unnecessary confrontation and he may decide the cases in accordance with law on its own merits. That does not mean that we have commented upon the conduct on the part of the advocates and/or the petitioner-Judicial Member of the Tribunal.

It goes without saying that wherever the applications are dismissed for non-prosecution, it will be open for the concerned parties to move for restoration, which may be considered positively with a view to see that no injustice is caused to the litigant.

Put up on 12.12.2022.

Let a copy of the petition be served in the office of Shri Tushar Mehta, learned Solicitor General.”

7. Since the impugned order dated 29.10.2022 (Annexure P-2) was passed by the Presiding Officer during the period when the co-ordinate Bench of this Court had restrained him from passing any adverse orders in any cases pending before him, as such, it is in the interest of justice that the matter be heard and decided on merits by the Tribunal who has already been approached by the petitioner by way of availing his legal remedy

under Section 17 of the Act, whereby the securitisation proceedings initiated by way of notice issued under Section 13 (4) of the Act has been challenged.

8. As per the interim order dated 16.11.2022 passed by the co-ordinate Bench, the following order was passed granting the interim relief staying dispossession of the petitioner in pursuance to the possession notice dated 17.09.2022 (Annexure P-1) issued by respondents No. 1 to 3:-

“Mr.Vikram Singh & Mr.Ishnoor Singh, Advocates appearing for respondents No.4 to 6 have filed their Vakalatnama today in Court which is taken on record. Mr.Chirag Suri, Advocate, appearing for respondent No.8 has filed his Memorandum of Appearance today in Court which is taken on record. They seek time to file replies.

Heard counsel for the parties.

Counsel for the petitioner contends that petitioner has clear title to an extent of 850 sq. yards land as per sale deeds (P4 & P5) and is in possession of a further extent of 1436 sq. yards land out of the extent of 2611 sq. yards land, and has filed municipal tax receipts and rental deed showing the possession of respondent No.8 as a tenant of a portion of the land in their occupation. It is further stated that respondent No.5 had filed a Civil Suit bearing CIS No.952 of 2016 before the Civil Judge (Jr. Divn.) Panipat for an injunction in respect of the subject property and has withdrawn the same on 10.12.2018, and thereafter he has filed a civil suit for recovery of possession against the petitioner and others without impleading respondents No.1 to 3/Bank and these circumstances indicate that respondents No.4 to 6 do not have prima facie title to the subject land which is mentioned at Sr. No.2 in possession notice dt.17.09.2022 (P1) and they could not have mortgaged it to

respondents No.1 to 3/Bank.

*Counsel for respondents No.1 to 3 has
disputed the said contention and seeks time to file reply.*

*Prima facie, we find force in the said
contention of the counsel for the petitioner. Therefore, till
the next date of hearing, the petitioner shall not be
dispossessed from the subject property of 2286 sq. yards
situated at Purewal Colony, Panipat which is part of Item 2
property mentioned in the possession notice dt.17.09.2022
issued by respondents No.1 to 3.*

Adjourned to 01.03.2023.”

9. Keeping in view the facts that the order of the Tribunal dated 29.10.2022 (Annexure P-2) was based upon the stay granted by this Court which stands set aside by the Apex Court, the present writ petition is disposed of with directions to the Tribunal to proceed in accordance with law and take up the securitization application. It is open to the petitioner to file an appropriate application for interim protection.
10. The interim order passed herein on 16.11.2022, shall continue to be in force for a period of two weeks.
11. Pending miscellaneous application(s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

May 03, 2023
nitin

Whether Speaking	Yes
Whether Reportable	No