IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(112+282) **Neutral Citation No.2023:PHHC:057364-DB**
CM-1218-CWP-2023 in/and
CWP-29629-2022
Decided on :24.04.2023

M/s Alaska Mart

……Petitioner(s)

Versus

State Bank of India and another

……Respondent(s)

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

Present: Mr. Chander Shekhar, Advocate and
Mr. Manmohan Saroop, Advocate for the petitioner (s).

Mr. Chandeep Singh, Advocate for the respondent-Bank.

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G.S. Sandhawalia, J. (Oral)

CM-1218-CWP-2023

Application to place on record written statement alongwith Annexures, filed on behalf of the respondents, is allowed, subject to just exceptions. Same are taken on record. Office to append the same at the appropriate place.

CM stands disposed of.

CWP-29629-2022

The present writ petition has been filed under Article 226 of the Constitution of India for setting aside the sale notice dated 16.11.2022 (Annexure P-6), whereby the property was put to auction.

2. A perusal of said notice would go on to show that a sum of Rs.56,94,707/- was due as on 04.03.2022. Written statement filed by the Bank would also go on to show that symbolic possession was taken on 04.06.2022 under Section 13 (4) of the Securitization and Re-construction

of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ‘2002 Act’) (Annexure R-5). Perusal of the paper-book further goes on to show that the respondent-Bank has also filed OA No.1010 of 2022 before the Debts Recovery Tribunal, Chandigarh, which summons have been appended as Annexure P-5. The respondent-Bank in its reply has also confirmed that the auction has failed, which was fixed for 23.12.2022.

3. Keeping in view the settled principles of law that once there is an alternate and efficacious remedy available, the petitioner can be relegated to the Tribunal as such, wherein already the proceedings are pending in the form of OA, in which the respondent-Bank is seeking directions for recovery of its due. Apart from that the petitioner is also free to file securitization application, if he so desires. Section 17 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short '2002' Act) provides a remedy to the person who is aggrieved under the measures taken under Section 13 (4) of the 2002 Act which have been time and again 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.

4. Recently, the Apex Court, while dealing with notice of motion order passed by this Court whereby, the writ petition had been entertained against the securitization proceedings initiated and interim protection had been granted whereby loanees had been declared NPA contrary to the order dated 27.03.2023 passed by the Apex Court was a subject matter of consideration in **SLP No. 17335 of 2022, Authorized Officer, Kotak Mahindra Bank vs. Anil Kumar Malhotra and another**. The Apex Court set aside the interim order and virtually directed that the petitioner to take recourse to alternative remedy by passing the following order:-

> "1. Leave granted.
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> 2. Heard learned counsel for the parties.
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> 3. This appeal takes exception to the judgment and order dated 17.01.2022 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 873 of 2022.
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> 4. We are of the considered view that the High Court was not justified in passing the impugned judgment and order.
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> 5. The impugned judgment and order has the effect of scuttling the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
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> 6. If the appellant was aggrieved by an order passed under Section 13(2) of the the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the appellant had an alternate remedy under the provisions of the said Act.
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> 7. In that view of the matter, the impugned judgment and order passed by the High Court is quashed and set aside and the appeal is allowed.

> 8. Needless to state that the order passed herein would not affect the right of the appellant to take recourse to the alternate remedy.
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> 9. Pending applications, if any, stand disposed of."

5. In **SLP (Civil) Nos.22021-22022 of 2022 titled M/s South Indian Bank Ltd. & others Vs. Naveen Mathew Philip & another**, decided on 17.04.2023, the Apex Court noticed that the challenge was being raised to Section 13 proceedings while exercising jurisdiction under Article 226 of the Constitution of India. It was noticed that private individuals were involved over financial transactions, whose action would not come within the purview of Article 12 of the Constitution of India and in the presence of alternative remedy being available and the settled proposition of law while taking into consideration the judgments passed in **Federal Bank Ltd. Vs. Sagar Thomas, (2003) 10 SCC 733** and **State Bank of India Vs. Arvindra Electronics (P) Ltd., 2022 SCC Online SC 1522** and it was held that the Tribunal is expected to go into the issues of fact and law including those of statutory violation and it had a wide range of powers to set aside all illegal orders and grant consequential reliefs, including re-possession and payment of compensation and costs. Resultantly, the question of law was again reiterated by holding as under:

> "18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.
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> 19. Reiterating the concern expressed, the present appeals are disposed of. The Registry is directed to mark a copy of this order to the High Court of Kerala and the High Court of Punjab & Haryana. No costs."

6. In such circumstances, keeping in view the settled principle of law, once securitization proceedings have been initiated after taking recourse to Section 13 (4) and further possession is being taken while taking recourse to the provisions of the 2002 Act, we are of the considered opinion that firstly the remedy would lie with the Tribunal. Only in exceptional cases this Court would exercise its jurisdiction. Nothing has been shown to bring the case within the ambit of those exceptional circumstances.

7. Claim as such for regularization of the loan account as per Clause 4.2.5 of the Master Circular/Guidelines dated 02.07.2012 issued by the Reserve Bank of India (Annexure P-7) can be raised before the Tribunal under the 2002 Act, in view of the law laid down by the Apex Court in **Sardar Associates and others Vs. Punjab & Sind Bank and others, (2009) 8 SCC 257.** Relevant part of the said judgment reads as under:-

> "29. It may be that no specific prayer was made but the same, in our opinion, keeping in view the provisions of the 2002 Act, did not preclude the Appellate Tribunal to consider the offer of the appellants. The Appellate Tribunal in terms of the provisions of the Act like the original Tribunal is interested only in recovery of the amount. While doing so, it, in our considered opinion, has the requisite jurisdiction to consider the prayer made by a debtor for one time settlement particularly in view of the fact that the same is within the purview of One Time Settlement Scheme of the Reserve Bank of India. If a public sector bank is otherwise bound by any guidelines issued by the Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act by the Tribunal and consequently by the Appellate Tribunal. It is not a case where the

appellants had prayed for quashing of a policy decision taken by the respondent- Bank. The question which arose for consideration before the Appellate Tribunal as also before the High Court was as to whether offer having been made by the bank to the appellants herein, it could have turned around and contend that only because the appellants had furnished security to the extent of Rs.11 crores, the same by itself would entitle it to take recourse to a discriminatory treatment. The answer to the said question must be rendered in the negative."

8. Resultantly, the present writ petition is disposed of and the petitioner is relegated to avail of his alternate remedy before the Tribunal.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

24.04.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No