Sr.No.102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.37486 of 2019(O&M)
Date of Decision:26.04.2023

Arthot Logistics Company …..Petitioner

versus

Zonal Office, Bank of Maharashtra, Chandigarh and others
……Respondents

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Sanjeev Singh-petitioner is present in person.

Harpreet Kaur Jeewan, J.

CM-4451-CWP-2023

1. Application has been filed for placing on record the authorization of Shri Sanjeev Singh to appear on behalf of the petitioner company. The application is supported with an affidavit filed by Shri Sanjeev Singh-petitioner as well copy of the resolution passed by the Board, authorizing the petitioner to represent the company in the Court matters (Annexure A-2). The application is allowed and the copy of the resolution of the Board Annexure A-2 is taken on record.

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2. Present writ petition under Article 226 of the Constitution of India has been filed assailing the notice of sale deed dated 18.11.2019(Annexure P-4) issued by the respondent-bank under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 (hereinafter referred as 'the Act').

3. A petitioner is appearing in person and he has been asked to avail the services of free legal aid but he has submitted that he would personally address arguments in this case.

4. Petitioner has submitted that the revenue record has been fabricated by making an entry of Rapat No.460 regarding Registered Mortgage dated 01.06.2017 and in pursuance to the said record the property of Shri Dalip Singh located at 21-A, Adhunik Vihar, Dalhousie Road, Pathankot has been put to sale as per the order dated 05.07.2018 passed by District Magistrate Pathankot, under Section 14 of the Act (Annexure P-1). In pursuance to the said order of District Magistrate, Pathankot, which is an ex-parte order, physical possession of the said property has been taken with the undue favor of Tehsildar Pathankot and Police Official of Mamoon Police Station. The Bank has filed an OA 552 of 2019 wherein no documents regarding the mortgage of the said property owned by Shri Dalip Singh has been produced. Copy of Rapat No.460 as mentioned in the revenue record does not exist as per the reply given to the service request made by the petitioner. The petitioner company has no relationship with the ownership of the said property. Shri Dalip Singh though not a party to any matter of the petitioner company had to deposit a sum of Rs. 31 lakhs with the Pathankot Branch of the Bank under pressure of unethical practices and falsification of the record. Despite that the said money has been kept in no Lien account of the bank and possession of the property has been taken.

5. We have considered the aforesaid submissions and perused the paper book. As per the copy of the OA 552 of 2019 filed by the

respondent Bank before the Debt Recovery Tribunal-III, Chandigarh (Annexure P-10), under Section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 against the petitioner company. Shri Sanjeev Singh and Dalip Singh have been impleaded as defendant Nos. 2 and 3 respectively. There is a categoric allegation in the said application that Shri Dalip Singh (defendant No.3) stood as a guarantor and executed the guarantee Deed in favour of the applicant bank to secure the credit facility availed by the petitioner company(defendant No.1) through its proprietor defendant No.2. The defendants had failed to regularize the accounts as such the petitioner company was categorised as NPA on 31.12.2017. There is also a reference that the house in question has an equitable mortgage executed by Shri Dalip Singh defendant No.3 in the said application. Copy of mortgage declaration of the proposed equitable mortgage dated 18.04.2016 and other related documents have also been relied upon in the said application.

6. We have also observed that it is further averred by the respondent bank in the said application that the bank has issued a demand notice under Section 13(2) on 04.01.2018 and thereafter taken the symbolic possession of property in question vide notice under Section 13(4) dated 16.03.2018. The District Magistrate Pathankot has passed the order dated 05.07.2018 (Annexure P-1) under Section 14 of the Act. As per notice dated 02.11.2019 (Annexure P-5) the physical possession of the property in question was taken in pursuance to the proceedings under the Act.

7. The petitioner has challenged the sale notice dated 18.11.2019 (Annexure P-4) which has been issued in pursuance to the aforesaid proceedings under the Act. The petitioner is mainly aggrieved of the fact that the residential property belonging to Shri Dalip Singh has been put to sale. It is to be noticed that there was huge outstanding to the tune of Rs. 95,92,026/- as on 12.03.2019 of the respondent bank against the petitioner company due to the loan of Rs.80 lakhs taken. Shri Dalip Singh is the father of Shri Sanjeev Singh who is representing the company. Shri Dalip Singh is alleged to be a guarantor having allegedly mortgaged his residential property with the Bank in question in order to secure the financial facilities from the respondent bank. In order to dispute the said facts, Dalip Singh has not filed any proceedings raising any such objection which have been raised on behalf of the borrower company. Neither he has challenged the said proceedings under the Act before the Debt Recovery Tribunal under of the Act nor is he a party to the present writ petition.

8. We are of the considered opinion that the remedy is available to the petitioner as well as to Shri Dalip Singh under Section 17 of the Act. As per the provisions, of sub Section (2) and (3) of Section Section 17 of the Act, the Debt Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties has ample power to set aside to any measures referred to in Section 13(4) of the Act, if the Tribunal comes to the conclusion that the secured creditors have not acted in accordance with the provisions of the Act and the Rules made thereunder. It has the power to order

restoration of the management or restoration of the possession of the secured assets to the borrower or to other aggrieved persons. The Tribunal has wide powers to pass such orders as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditors under sub Section (3) of the Act. Section 17 of the Act reads as under:-

> "**Application against measures to recover secured debts**:
>
> (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 1[may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:
>
> [Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]
>
> [Explanation.—For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.
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> [(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-----
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> (a) the cause of action, wholly or in part, arises;
>
> (b) where the secured asset is located; or
>
> (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]
>
> (2) <u>The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the</u>

secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order,

(a) declare the recourse to any one or more measures referred to in-sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower and

(b) restore the management of the secured assets to the borrower, as the case may be, and

(c) pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section l3 to recover his secured debt.

1 [(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as

> possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).
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> (6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.
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> (7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]
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> (emphasis supplied)

9. In SLP (Civil) Nos.22021-2202 of 2022 titled *M/s South Indian Bank Ltd. & others Vs. Naveen Mathew Philip & another,* decided on 17.04.2023, while taking into consideration the jurisdiction exercised by the Kerala High Court regarding Section 13(4) challenge, it was noticed by the Hon'ble Apex Court that financial transactions were being adjudicated upon despite 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** 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."

10. Keeping in view the settled principle of law, once securitization proceedings have been initiated after taking recourse to Section 13(4) of the Act and further possession has been taken under Section 14 and sale notice has been issued while taking recourse to the provisions of the 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.

11. In such circumstances and keeping in view the facts of the present case, we are of the considered opinion that it is not for the writ court to exercise its extraordinary writ jurisdiction under Article 226 and 227 of the Constitution of India where an equal and efficacious remedy is available with the petitioner as well as with Shri Dalip Singh. As such the present petition is dismissed with aforesaid liberty.

(G.S.Sandhawalia) **(Harpreet Kaur Jeewan)**
Judge **Judge**
26.04.2023
Shivani Kaushik

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No