IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

269 **CWP-22717-2024 (O&M)**
Date of decision : 20.01.2025

JC Flowers Asset Reconstruction Private Limited
... Petitioner

Versus

District Magistrate, Gurugram and others
.. Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present:- Mr. Aalok Jagga, Advocate,
Mr. Karan Inder Singh, Advocate and
Mr. Harkirat S. Jagdev, Advocate for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. Suvir Sidhu, Advocate and
Mr. Kamal Gupta, Advocate for respondent No.5.

Mr. Sukhcharan S. Gill, Advocate for proposed respondent.

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Anupinder Singh Grewal, J. (Oral)

Learned counsel for the petitioner submits that the petitioner-Financial Institution had furnished a loan to respondents No.3 and 4 (borrowers) and on their inability to pay the outstanding amount, the physical possession of the secured asset was taken in pursuance of the order dated 06.04.2022 (Annexure P-3) passed by the District Magistrate under Section 14 of the SARFAESI Act. Subsequently, the property was put to auction vide notice dated 07.06.2024 (Annexure P-12) and the date of auction was fixed for 16.07.2024. The respondents No.3 and 4 (borrowers) had preferred a writ petition before the Delhi High Court seeking some time to hand over the possession of the mortgaged property to the petitioner as there was a marriage in the family. The writ was disposed of by order dated 20.03.2024 (Annexure P-9) vide which the borrowers were granted a period of 07 days to hand over the possession of the mortgaged property to the petitioner. Thereafter, respondent No.5 claiming himself to be the tenant of the mortgaged premises, preferred Securitization Application No.236 of 2024 and the interim relief sought therein was specifically declined by the DRT-II Delhi vide order dated 16.07.2024 (Annexure P-14). During the pendency of Securitization Application before DRT-II Delhi, respondent No.5/tenant had also filed a civil suit on 12.07.2024 against the borrowers wherein an interim order was passed on 17.07.2024 (Annexure P-15) restraining the defendants/borrowers (respondents No.3 and 4 herein) from alienating the suit property. Furthermore on the basis of statements made by the counsel for the parties that there were chances of amicable settlement, the matter was also referred to the Mediation Centre, Gurugram.

2. Learned counsel further submits that the suit which had been preferred by respondent No.5/tenant against the borrowers is manifestly collusive and they are trying to defeat the recourse, which the petitioner had successfully taken under the Securitization Act. He also submits that respondent No.5/tenant had concealed the factum of rejection of his interim prayer by DRT-II, Delhi in his civil suit. Now, vide the impugned order dated 22.08.2024 (Annexure P-19), the Tehsildar-respondent No.2 has refused to register the sale certificate issued by the petitioner-financial institution on the

ground that a stay granted by the Civil Court, Gurugram was operating over the premises of the secured asset although it is settled law that the secured creditor has the first charge over the secured asset and any injunction granted in a civil suit, cannot deprive the secured creditor of its right over the secured asset. He has relied upon the judgment of this Court in the case of **Allahabad Bank versus District Magistrate, Ludhiana and others' 2021(4) RCR (Civil) 571.**

3. On the other hand, learned counsel for respondent No.5/tenant submits that the injunction had been granted by the Civil Court and therefore, the order passed by the Tehsildar on 22.08.2024 (Annexure P-19) was in accordance with law. He further submits that as the auction purchaser has backed out, thus, the auction stands unsuccessful and consequently, the impugned order dated 22.08.2024 (Annexure P-19) refusing to register the sale certificate has been rendered infructuous at this stage.

4. Learned State counsel submits that the Tehsildar had passed the impugned order dated 22.08.2024 (Annexure P-19) solely in compliance of the order passed by the Civil Court. He being a Government servant was duty bound to comply with the order.

5. Heard.

6. It is apparent that the petitioner-financial institution is the secured creditor. The asset had been mortgaged to it on 08.09.2017 as respondents No.3 & 4 (borrowers) had taken a loan of Rs.23 crores. The petitioner had sought recourse to the SARFAESI Act by issuing a notice under Section 13(2) for a sum of Rs.27,48,97,017.72/- on 15.07.2021 (Annexure P-2) followed by a notice under Section 13(4). Thereafter, they had preferred an application under

Section 14 of the SARFAESI Act and the District Magistrate vide the order dated 06.04.2022 (Annexure P-3) had directed that the physical possession of the secured asset be delivered to the petitioner.

7. However, respondent No.5, who is stated to be the tenant, had preferred a Securitization Application before the DRT-II Delhi and the prayer for interim relief had been specifically declined by the DRT-II, Delhi vide order dated 16.07.2024 (Annexure P-14). During the pendency of SA before DRT-II, Delhi, he preferred a civil suit before the Civil Court, Gurugram wherein respondents No.3 & 4 were impleaded as parties, but the petitioner-financial institution was not impleaded as a party in that suit. The Civil Court, Gurugram by the interim order dated 17.07.2024 (Annexure P-15) had referred the matter to the Mediation and Conciliation Centre and respondents No.3 & 4 (borrowers) were also restrained from alienating the suit property.

8. It is trite that the secured creditor has the first charge in terms of the SARFAESI Act and any order passed by a Civil Court wherein the secured creditor has not been impleaded as a party, cannot frustrate the rights of the secured creditor under the SARFAESI Act.

9. Reference can be made to the judgment of the Supreme Court in the case of **Jagdish Singh versus Heeralal, 2014(1) SCC 479**. The relevant extract has been reproduced hereunder:-

> "21. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the Court or tribunal but in accordance with the provisions of the Securitisation Act.
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> 22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, subsection (4) of Section 13

envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in subsection (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil Court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under subsection (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub- section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

23. We are of the view that the Civil Court jurisdiction is completely barred, so far as the "measure" taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the "measures" taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos. 6 to 8 have been crystalised, before creating security interest in respect of the secured assets. In such circumstances, we are of the view that the High Court was in error in holding that only civil Court has jurisdiction to examine as to whether the "measures" taken by the secured creditor under subsection (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High Court is set aside. There shall be no order as to costs.”

10. The judgment in **Jagdish Singh's case (supra)** has been followed by this Court in **Allahabad Bank versus District Magistrate, Ludhiana and others(supra)** wherein it was reiterated that the Civil Court would not have jurisdiction to negate the rights of a secured creditor or the enforcement of any right under the Securitization Act, 2002, qua the secured asset, in a civil suit instituted by the borrower or the guarantor or any third party. The relevant extract of the same is reproduced hereinbelow:-

> "(15) Keeping in view the aforesaid principles, it is evident that the Civil Court would not have jurisdiction to negate of a secured creditor or its enforcement under the Act, 2002, qua the secured asset, in a civil suit or proceedings instituted by the borrower / guarantor / any third party. This is for the reason that such disputes would specifically fall within the ambit of jurisdiction of DRT under Section 17 of the Act, 2002. Moreover, it shall also be contrary to the very object and scheme of the Act, 2002 which provides a single forum for faster and efficient adjudication of such disputes. Only for a limited category of disputes as highlighted in para 51 of the judgment in Mardia Chemicals (supra), the jurisdiction of Civil Court involving challenge to an action of the secured creditor to enforce the security under the Act, 2002 would be maintainable. Consequently, if any person is aggrieved of such measure initiated by the secured creditor pursuant to an action taken under Section 13(4) of the Act, 2002, the appropriate remedy would be to invoke the jurisdiction of the Tribunal under Section 17 of the Act, 2002. We thus answer the first issue in Negative and hold that the Civil Court would not have jurisdiction to negate any right of the secured creditor under the Securitisation Act, 2002, qua the secured asset in a civil suit instituted by the borrower / guarantor / any third party qua the secured asset."

11. It is, thus, manifest that an order passed in the civil suit preferred by respondent No.5/tenant against respondents No.3 & 4 (borrowers) without impleading the petitioner-financial institution cannot defeat the rights of the petitioner to recover the dues under the SARFAESI Act. Consequently, the

petition is allowed and the impugned order dated 22.08.2024 (Annexure P-19) is set aside.

Pending application, if any, shall stand disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

January 20, 2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No