
(2016) 10 P&H CK 0181
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 21326 of 2016.

**Ashok Khipal and another - Petitioners @HASH District Magistrate,
Barnala and Others**

Date of Decision : 07-10-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2017) 1 DRTC 439 : (2016) 4 PLR 753

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Mr. Munish Gupta, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J. (Oral)—The petitioners have approached this Court under Articles 226/227 of the Constitution of India, inter alia seeking quashing of proceedings initiated by respondent-Bank vide petition dated 16.03.2016 (Annexure P-5) under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act").

2. Few relevant facts necessary for adjudication of the present petition as narrated therein are that the petitioners have raised a term loan by mortgaging their house from Indian Overseas Bank, Barnala. The said loan was being repaid with interest @ 13.5%. The respondent-Axis Bank, Barnala gave offer to the petitioners to shift their loan to the respondent- Bank with lower rate of interest @ 13% per annum. The petitioners have taken one term loan of Rs. 40 lacs and overdraft limit (facility) for Rs. 30 lacs in the year 2012 which was reduced to Rs. 27 lacs in the year 2013 and thereafter, from Rs. 27 lacs to Rs. 24 lacs in the year 2015. In lieu thereof, seven blank cheques bearing Nos. 129624 to 129630 were taken by the respondent-Bank and the petitioners were also forced to take an insurance policy-MAX Life and they are continuously paying Rs. 50,000/- per year towards premium. The petitioners also did the work on condition basis of

the bank under the Axis Gold Loan Appraiser Scheme and Axis Retail Forex Services and the commission worth more than Rs. 2 lacs was due towards the respondent-Bank. Neither the said amount had been paid by the respondent-Bank nor the same was adjusted towards the loan amount. The petitioners were also operating two current accounts with the respondent-Bank. Although, the petitioners were complying with the payment schedule as sanctioned but unwarranted demands were made by the respondent-Bank from time to time. The petitioners have made a request for closure of both the aforesaid current accounts and submitted list of documents with the respondent-Bank but the bank had only supplied the details qua the Term Loan Account which was duly paid and cleared by the petitioners and "No Dues Certificate" was also issued by the respondent-Bank. The petitioners were not able to make payment in time and vide email dated 30.12.2014 (Annexure P-1) they requested for extension of time for making payment of due amounts. In response thereto, the respondent-Bank asked the petitioners to pay the pending interest of Rs. 2,21,912/- and to pay 10% annual drop down but despite repeated requests, the respondent-Bank had not acceded to the request of the petitioners. The petitioners could not repay some amounts and the respondent-Bank issued a demand notice dated 16.01.2015 (Annexure P-2) demanding a sum of Rs. 1,54,56,095/-. The petitioners apprised the respondent-Bank that the said amount was not possible, the respondent-Bank issued another notice dated 16.01.2015 (Annexure P-3) by making correction and bringing down the outstanding amount of Rs. 28,49,309/-. Since, the petitioners' property was put to sale by the respondent-Bank vide notice under Section 13(4) of the Act, the petitioners have approached this Court by way of filing CWP-2912-2015 in which they undertook to make the payment in intervals to the extent of Rs. 23 lacs and interim protection was granted to the petitioners. However, the petitioners could not comply with the entire undertaking and were able to deposit Rs. 12.5 lacs only. During the interregnum period the Overdraft Limit of the petitioners had fallen within the sanctioned limits, therefore, the Overdraft Limit Account was allowed to be operated by the respondent-Bank and the petitioners were permitted to withdraw the amounts to the tunes of Rs. 17,000/- and Rs. 50,000/- on 02.03.2015. The statement of account is Annexure P-4. Vide order dated 23.08.2016, this Court granted liberty to the petitioners to take recourse of the remedies as may be available to them in accordance with law.

3. In the meantime, the respondent-Bank had initiated proceedings under Section 14 of the Act for seeking possession of the residential accommodation of the petitioners vide order dated 16.03.2016 (Annexure P-5). The petitioners have moved an application dated 12.04.2016 (Annexure P-6) before the District Magistrate, Barnala requesting for restructuring of the loan account as the respondent-Bank had imposed penalties/interest etc. on the outstanding amount without any cause. The petitioners' enterprises were registered under Micro Small and Medium Enterprises Development Act, 2006 as per Section 7 of the Act and certificates issued by the Government of India in this regard are

Annexures P-7 and P-8. The Ministry of Finance as well as the Government of India have issued directions to the financial institutions and alike institutions from time to time for framing policies to help registered MSMEs who are facing insolvency/bankruptcy to avoid legal implication. Under the said mechanism, the petitioners have requested the respondent-Bank for settlement of accounts vide letters dated 03.09.2016 and 24.09.2016 (Annexures P-9 and P-10, respectively) but no action has been taken so far. Hence, the present writ petition.

4. We have heard learned counsel learned counsel for the petitioners.

5. Admittedly, the order under challenge is an appealable order under Section 17 of the Act, which provides right to appeal where under 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, 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 measure had been taken. Section 17 of the Act reads thus:-

17. Right to appeal

(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, 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 measure 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 this sub-section.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the 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 business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures

referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and 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 13 to recover his secured debt.

(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).

(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 part 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.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.

6. The Apex Court in the case of Kanaiyalal Lalchand Sachdev & others v. State of Maharashtra & others 2011 (2) SCC 782 has held as under:

"22. xx xx xx xx xx

It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

23. In our opinion, therefore, the High Court rightly dismissed the petition on the

ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: *Sadhana Lodh v. National Insurance Co. Ltd.*, *Surya Dev Rai v. Ram Chander Rai & State Bank of India v. Allied Chemical Laboratories*).

24. In *City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla*, this Court had observed that:

"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether: (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved; (b) the petition reveals all material facts; (c) the petitioner has any alternative or effective remedy for the resolution of the dispute; (d) person invoking the jurisdiction is guilty of unexplained delay and laches; (e) ex facie barred by any laws of limitation; (f) grant of relief is against public policy or barred by any valid law; and host of other factors."

7. Further, this Court in *Kunal Garg v. Punjab National Bank*, II (2014) BC 517 (P&H) while following the observations in *Kanaiyalal Lalchand Sachdev & others* (supra), dismissed the petition in limine.

8. In such a situation, we refrain ourselves to entertain this petition, at this stage.

9. Dismissed.