(2018) 10 P&H CK 0296

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21454 Of 2018

Santosh Rani APPELLANT

Vs

Gic Housing Finance Limited And Anr RESPONDENT

Date of Decision : 15-10-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13(2), 13(4), 13(13), 14
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 17, 17(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 10 P&H CK 0296

Hon'ble Judges : Ajay Kumar Mittal, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Karan Garg, Sorabh Sharma, Varun Mehta

Final Decision : Disposed off

Judgement

1. The present writ petition has been filed seeking quashing of order dated 17.06.2018 (Annexure P-2) passed by District Magistrate, Patiala.

2. The petitioner is the borrower of loan. G.I.C. Housing Finance Ltd., Chandigarh and Additional District Magistrate, Patiala have been arrayed as

respondents No.1 and 2 respectively in the present writ petition.

3. The petitioner obtained a loan of Rs.4,50,000/- from respondent No.1. The loan was sanctioned in the year 2004 and agreed rate of interest was

8.25% per annum. In order to secure the credit facility availed property measuring 2.1/2 Marlas out of the total land measuring 1 Kanal 8 Marla,

Khewat/Khatoni No.261/763, 806 comprised in Khasra No.44/17/2/1 (0-18), 20/1(0-10) situated at Patran, Tehsil Samana, District Patiala, was

mortgaged with the bank.

4. The petitioner defaulted in repayment of loan. She lost her husband on 07.05.2014. Respondent No.1 issued notice under Sections 13(2) read with

Section 13(13) of the Act on 31.08.2017. As per the notice, there was outstanding amount of Rs.8,65,265/- Respondent No.1 moved an application

under Section 14 of the Act. Respondent No.2 vide order dated 17.06.2018 allowed the application and directed that the possession of the mortgaged

property be taken over and handed over to respondent No.1. Aggrieved of the proceedings under Section 14 of the Act, the present petition has been

filed.

5. The petitioner has an efficacious remedy under Section 17 of the Act against the order passed under Section 14 of the Act.

6. Section 17(1) of the Act is reproduced below :-

â??17. Application against measures to recover secured debtsâ?

(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 alongwith 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 this sub-section.

7. Section 17 provides for filing of an application by any person aggrieved of any of the measures taken under Section 13(4) of the Act. Section 17

provides remedy even for an action taken after the stages contemplated under Section 13(4) of the Act.

8. The Supreme Court in the case of Kaniyalal Lalchand Sachdev & others Vs. State of Maharashtra 2011(2) SCC 782 relied upon its earlier decision

in Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill, (2009) 8 SCC 366 and observed as under:-

â??19. In Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill, (2009) 8SCC 366 the main question which fell for determination was

whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act

will be confined to the stage contemplated under Section 13(4) of the Act?

On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court, held as under :

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the

banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower,

aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having

jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for

recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority

after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have

been made over to the transferee.

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39. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the

action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it

contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status

quo ante can be restored by the DRT.

20. We are in respectful agreement with the above enunciation of law on the point. 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.

21. 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. & Anr., 2003(1) R.C.R.(Civil) 772 :

(2003) 3 SCC 524,

Surya Dev Rai v. Ram Chander Rai & Ors., 2004 (1) R.C.R. (Civil) 147 : (2003) 6 SCC 675, State Bank of India v. Allied Chemical Laboratories &

Anr., (2006) 9 SCC 252. In City and Industrial

Development Corporation v. Dosu Aardeshir Bhiwandiwala & Ors., (2009) 1 SCC 168 this Court had observed that :

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.

22. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act,

non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the

Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court

was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.â??

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9. Further, the Supreme Court in United Bank of India Vs. Satyawati Tondon and others (2010) 8 SCC 110, held as under :-

â??It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory

remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact

on the right of banks and other financial institutions to recover their dues.

10. Keeping in view the availability of alternative remedy against the impugned order and the law laid down by the Supreme Court on the issue, the

writ petition is disposed of with liberty to the petitioner to avail the alternative remedy in accordance with law.