
(2018) 09 P&H CK 0267

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22152 Of 2017 (O&M)

Shashi Bala And Others

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 10-09-2018

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 14

Citation : (2018) 09 P&H CK 0267

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

Bench : Division Bench

Advocate : Suvineet Sharma, R.S. Bhatia

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed seeking directions to the respondent-bank to settle the account of defaulter firm M/s Arjun Agro Foods in an amicable manner so that the residential house mortgaged by the petitioners No.1 and 2 can be spared from ignominy of an auction.

2. Petitioner No.11 is a partnership firm and petitioners No.1 to 10 are the guarantors of the loan facilities availed by petitioner No.11. Punjab National Bank, Head Office 7, New Delhi and Chief Manager, Punjab National Bank, Khanna have been arrayed as respondents No.1 and 2 respectively in the writ petition.

3. Petitioner No.11 established a rice shelling unit in 2008. The unit was 100% Export Oriented Unit (EOU). The petitioners availed following credit facilities from respondent No.2 :

A. Working capital Limit Hypothecation Stock Rs. 22,50,00,000/-

B. Working Capital Limit Hyp. (Book Debt) Rs. 5,00,00,000/-

C. Working Capital Limit CC-WHR Rs. 5,00,00,000/-

D. Term Loan (P&M & Fixed Block) Rs. 5,25,00,000/-

Total amount sanctioned Rs. 37,75,00,000/-

4. All the petitioners jointly and severally mortgaged following properties to secure the credit facilities :-

S. No.

Security Description

Area

Ownership

1

Building and plant and machinery and land situated in village Bardhalan on Khanna-Samrala road.

25K-12M 1/3rd

Smt. Shivali Singla and Smt. Monika Rani

2

Double Storey Residential Property in Uttam Nagar, near Pehalwana Da Khooh, KhannaQ

0K-7M

Ved Parkash s/o Sh. Roop Chand

3

Double Storey Residential Property in Mohini Karyana Store Street, Khalsa school road, Uttam Nagar, Khanna

0K-8- 1/2M

Ashwani Kumar and Smt. Monika Rani.

4

Double Storey Residential Property at Uttam Nagar opp. Bhagat Colony, Khanna

2K-14M

Shashi Bala and Anju Bala

5

Factory Land and Building

38K-13M

Aman Rice and General Mills

5. The petitioner firm defaulted in repayment and the accounts were declared as Non-Performing Assets (NPAs) on 29.10.2015. A notice dated 04.11.2015 was issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act'). As per notice, an amount of Rs. 38,01,05,664/- was outstanding upto 30.09.2015. The respondent-bank moved an application before the District Magistrate, Khanna under Section 14 of the Act. On that application, order was passed on 15.11.2016 directing the Tehsildar, Khanna to take over possession of the mortgaged properties. Thereafter, the hypothecated machinery and two mortgaged properties were auctioned and an amount of Rs.3,37,60,000/- was realised.

6. On 21.07.2017, a notice under Section 13(4) of the Act was issued. Aggrieved of the issuance of notice, the petitioners have filed the present writ petition.

7. The contention raised by learned counsel for the petitioners is that the amount demanded by the respondent-bank in the notice is highly excessive and the amounts already paid by the petitioners have not been considered by the bank. He contended that if the already paid amounts are considered, the other properties mortgaged with the bank except the residential house situated at Uttam Nagar, opposite Bhagat Colony, Khanna would suffice to realise the outstanding dues.

8. Notice of motion was issued. During the pendency of the writ petition, the respondent-bank produced the account statement w.e.f.

1. 11.2014 and copy of the same was handed over to the learned counsel for the petitioners.

9. Heard learned counsel for the parties.

10. The petitioners have raised disputed questions of fact in the writ petition. The grievance raised in the writ petition is against the proceedings under Section 13(4) of the Act. The petitioners have statutory remedy available under the Act.

11. The Supreme Court in case of Kaniyalal Lalchand Sachdev & others Vs. State of Maharashtra 2011(2) SCC 782 relying upon its earlier decision held :-

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"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*

Bhiwandiwalla & 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."

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12. There is alternative remedy with the petitioner. There were disputed questions of fact raised like non consideration of certain amounts of repayment made etc. Hence, we do not find any ground to interfere in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, the writ petition is hereby dismissed with liberty to petitioners to avail alternative remedy as per law.