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**(2020) 08 CHH CK 0048**

**Chhattisgarh High Court**

**Case No:** Writ Petition (C) No. 1933 Of 2020

M/s Narmada Enterprises

APPELLANT

Vs

Punjab National Bank And Ors

RESPONDENT

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**Date of Decision:** Aug. 24, 2020

**Acts Referred:**

- Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 - Section 13(4), 17

**Hon'ble Judges:** P. Sam Koshy, J

**Bench:** Single Bench

**Advocate:** Dhiraj K Wankhede, Sachin Singh Rajput, Vivek Ranjan Tiwari

**Final Decision:** Disposed Of

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**Judgement**

@JUDGMENT-JUDGMENT

P. Sam Koshy. J

1. The challenge in the present Writ Petition is to the notice Annexure P/1, dated 14.07.2020 which is a notice issued under Section 13(4) of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, the Act, 2002).

2. The contention of the petitioner is that, when the notice was issued on 14.07.2020, as per the notice there was an outstanding amount against the

petitioner of an amount of Rs. 15,95,988/-. The contention of the petitioner is that the said amount is outstanding in respect of the loan which the

petitioner had availed for an amount of Rs.15 Lakhs way back in the year, 2006 and in between the petitioner has paid back more than Rs.33 Lakhs to

the respondents No.1&2 Bank. According to the petitioner, even before receipt of Annexure P/1 which is a notice under Section 13(4) of the Act,

2002 to the Guarantor Shri B.L. Gendre i.e. the father of the proprietor of the petitioner establishment a notice which was issued in the month of

February, the amount outstanding against the petitioner remained the same at Rs.15,95,988/- and after March, 2020, the petitioner has paid an amount

of Rs.10,20,000/- by now and therefore from the amount of Rs.15,95,988/-, according to the petitioner, it would be only around Rs.5,75,000/- which

would be left outstanding for the petitioner to settle his dues.

3. The further contention of the petitioner is that recently the Manager who was posted with the respondent Bank had asked the petitioner for settling

of the entire amount under the one time settlement scheme and the petitioner was asked to deposit the requisite fees for that which again was

deposited by the petitioner. The receipt of a payment of Rs.20,000/- for the same is also enclosed along with the writ petition. However, subsequently,

the bank officials refused permission to the petitioner for settling the same under one time settlement and on the 21.08.2020 he was intimated that the

property is being put to auction today i.e. on the 24.08.2020 and he has not even breathing time to approach the statutory authority under Section 17 of

the Act, 2002 to challenge the notice.

4. At this juncture, the counsel for the petitioner submits that since the amount left for payment by the petitioner is too meager an amount, a

reasonable period of 4-5 weeks time if granted to the petitioner, he shall settle the entire dues payable to the Bank and an interim protection from the

auction of his property be given only for that limited period of 4-5 weeks and the petitioner undertakes that he shall clear the entire outstanding amount

left to be paid by the petitioner.

5. The counsel for the petitioner submits that he has received instructions from the resources that DRT Jabalpur is not having its regular sitting and it

is only accepting filing at Jabalpur and hearing is being conducted from Cuttack Odisha, therefore little bit longer date may be granted to him to

approach the Tribunal.

6. Learned counsel appearing the Respondent No.1 to 3- Bank opposing the petition submits that the writ petition is not maintainable on two counts.

Firstly, the writ petition itself has been filed by a wrong person, inasmuch as, the guarantor whose property is being subjected to challenge has not filed

the writ petition, therefore, the petitioner, who is the borrower, does not have locus to challenge the said notice. The second ground raised by the

respondents is the non maintainability of the writ petition on account of petitioner having statutory alternative remedy under Section 17 of the Act,

2002. The counsel for the respondents Bank also relied upon a recent decision of this court in WP(C) No.1687 of 2020 whereby this court had

dismissed the writ petition on the ground of having an alternative statutory remedy.

7. The counsel for the respondents-Bank has also submitted that since he is on advance notice, the factual aspect so far as the payment of Rs.

10,20,000/- made by the petitioner between March till date are all subject to verification and also the fact that the amount of Rs.15,95,988/- also would

carry the periodical interest up till date and the amount therefore outstanding against the petitioner would further rise.

8. Be that as it may, if the contention of the petitioner is to be believed, then what is reflected is that from an amount of Rs.15,95,988/- which was

standing outstanding against the petitioner in February, 2020 and the amount reflected in Annexure P/1 also is the same which was issued on

14.07.2020, some amount of interest must have definitely accrued on the principal amount. However, if the petitioner is to be believed he has from

March till date deposited an amount of Rs.10,20,000/-which of course is subject to verification. If that amount has been realized by the Bank, the

amount now remaining to be paid by the petitioner is too negligible that is around Rs.5 Lakhs or so which the petitioner is left to be paid.

9. True it is that Section 17 of the Act, 2002 provides for an alternative remedy to the petitioner for approaching the concerned Debts Recovery

Tribunal questioning the action of the respondent Bank in the issuance of the notice under Section 13(4) of the Act, 2002. However in the instant case,

again if the petitioner is to be believed, he was only informed on 21.08.2020 that his claim towards one time settlement has been refused by the higher

officials in the respondent-Bank and that his property is being subjected to auction on the 24.08.2020. 22 nd and 23rd August, 2020 was Saturday and

Sunday which are non working for the DRT as well as for the High Court.

10. The petitioner has filed this writ petition only with a limited prayer that he may be given some interim protection in between apart from his undertaking and assurance of settling the entire amount within a period of 4-5 weeks.

11. This court under the given facts and circumstances of the case would only like to exercise its writ jurisdiction considering the fact that the DRT bench Jabalpur is not functioning normally on account of the Corona Pandemic, and also that since the petitioner has approached this court considering the short period of time available to him for questioning the action of auction by the respondent before the DRT, this court would like to dispose of the writ petition granting 15 days time for the petitioner to prefer an appropriate application under Section 17 of the Act, 2002 before the concerned DRT and seek for an appropriate relief.

12. Subject to petitioner's approaching the DRT within a period of 15 days from today, the auction proceedings that have been held today by the respondents-Bank shall not be finalized for the period of 15 days till the petitioner approaches the DRT in accordance with the provisions of law under Section 17 of the Act, 2002.

13. It is made clear that this interim protection is given by this court taking into consideration two aspects firstly the Corona Pandemic situation that is prevailing in the Country and the DRT not functional normally and secondly the short notice within which the petitioner was informed that his request for a one time settlement has not been entertained by the Bank and a short duration of time has been given where this property is being put to auction.

14. With the aforesaid observation, the Writ Petition stands disposed of.