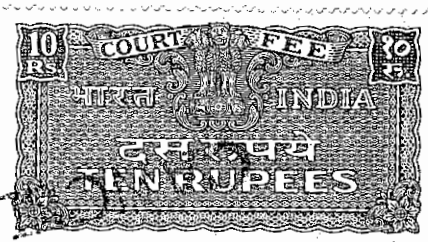


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**IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR**

W.P. (227) No. : 1331 /2010

**PETITIONER
NON - APPLICANT**

- : 1) Luv Kumar Sharma, S/o Late Shri
Durga Prashad Shrama, R/o House - about 53 u
No. 1, Radhika Vihar, Sipat Road,
Bilaspur (C.G.)

VERSUS

**RESPONDENTS
APPLICANT/
NON - APPLICANT**

- : 1) Collector Cum District Magistrate,
Bilaspur, (C.G.)
- 2) Smt. Malti Sharma, W/o Kush Kumar
Sharma, aged about 49 years, R/o
L.I.G.-29 Yadunandan Nagar, Tifra,
District Bilaspur (C.G.)
- 3) Housing Development Finance
Corporation Limited, through its
General Manager, Devendra Nagar
Road, Raipur (C.G.)



PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA



HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION (227) NO.1331 OF 2010

PETITIONER/
NON-APPLICANT

Luv Kumar Sharma

RESPONDENTS/
APPLICANT/
NON-APPLICANT

Versus

Collector Cum District Magistrate,
Bilaspur & Others

(Writ Petition under Article 227 of the Constitution of India)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri Ashish Shrivastava, Advocate for the petitioner.
Shri V.V.S. Murthy, Dy. Adv. General for the State.
Shri Ali Asgar, Advocate for the respondent No.2.
Ms. Sunita Punjabi, Advocate for the respondent No.3.

ORDER (ORAL)

(Passed on this 30th day of June, 2011)

1. Heard learned counsel for the parties.
2. By this petition, the petitioner prays for quashing and setting aside the entire proceedings initiated and orders passed in the order sheets (Annexure - P/1) by the respondent No.1 in case No. 02/B-121/2008-09 being illegal, non-est, inoperative and void ab initio in the eyes of law and also seeks an appropriate writ restraining the respondents No.2 & 3 from taking any steps pursuant to the impugned proceedings initiated by the respondent No.1 against the petitioner.
3. According to the petitioner, on 23-7-2003 the petitioner approached the Municipal Corporation, Bilaspur for allotment of the house. The respondent No.2 executed an agreement dated 28-7-2003 in favour of the petitioner in respect of house LIG 29 under the Yadunandan Nagar Housing Scheme for a consideration of Rs.4,00,000/-. Thereafter, the petitioner obtained the housing loan of Rs.3,50,000/- from the respondent No.3 Bank. On account of default committed by the petitioner in repayment of the loan

amount, the respondent No.3 initiated proceedings under the provisions of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act, 2002") and, thereafter, auction proceedings commenced.

4. On 4-6-2009 the respondent No.1 while proceeding with the application passed an order and directed for registration of case and further granted stay in favour of the respondent No.2 by which the auction and entire proceedings initiated by the respondent No.3 under the Act, 2002 were stifled. On 20-7-2009 the petitioner appeared before the respondent No.1 and submitted his objection, which was rejected. Again on 3-8-2009 the petitioner appeared before the respondent No.1 through the Advocate and requested for copy of the documents. However, by order dated 31-8-2009 the respondent No.1 illegally directed the respondent Bank to give one consolidated offer to the respondent No.2 and directed the matter to the Additional Collector for its enquiry. On 25-9-2009 the Additional Collector, Bilaspur recommended for closure of the matter in view of settlement arrived in between the respondent No.2 and the respondent No.3.
5. Learned counsel appearing for the petitioner submits that the respondent No.2 has initiated a proceeding under Section 14 of the Act, 2002 before the District Magistrate, which is not maintainable under the abovestated provisions, as the possession of the secured assets by the secured creditor only, the respondent No.2 is not secured creditor, thus the application filed by the respondent No.2 was not maintainable.
6. On the other hand, learned counsel appearing for the respondent No.2 submits that the property in dispute has been declared as Non Performing Asset (for short "NPA") under the provisions of Section

13 of the Act, 2002. The respondent No.2 being in possession of the said house made an application to the respondent No.1 to ensure her possession, as she had advanced money to the petitioner. It was further stated that an auction notice was issued without informing the respondent No.2. Thus, the application was maintainable at the instance of respondent No.2. Thereafter, the Bank entered into a settlement with the respondent No.2. The petitioner is not prejudiced, as he was defaulter and the property has been declared as NPA. After completion of proceedings under Section 13 of the Act, 2002 the petitioner has no right on the secured asset, which has been declared as NPA, as the same has been settled between the respondent No.3/Bank and the respondent No.2.

7. Learned counsel appearing for the respondent No.3 submits that the petitioner should not have any grievance, as no step has been taken by the petitioner on completion of proceedings under Section 13 (4) of the Act, 2002. After the possession of the property was taken over by the Bank, it was for the Bank to enter into any settlement to secure the money. The application was moved by the Bank also under Section 13 (12) of the Act, 2002 for re-possession of the mortgaged property and the dispute is between the respondent No.3 and the respondent No.2.
8. Be that as it may, without going into the merits of the case as to whether the petition under Section 14 at the instance of the respondent No.2 who has entered into a settlement with the Bank after possession in dispute was taken over by the Bank is maintainable or not. This question cannot be decided at the instance of the petitioner, as the petitioner has not taken any steps. Once the possession of the property has been taken for non payment of the loan under the provisions of law, the petitioner has

no other remedy except to take recourse to statutory provisions as provided under Section 17 of the Act, 2002.

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9. Thus, in the case on hand, it is not necessary to decide the question of maintainability when the respondents No.2 & 3 both have filed applications for settlement of their *inter se* dispute, which arises after the possession of the property in dispute was taken under Section 13 (4) of the Act, 2002.

10. The Supreme Court in *Kanaiyalal Lalchand Sachdev and Others v. State of Maharashtra and Others*¹ observed as under :

"21. In *Indian Overseas Bank v. Ashok Saw Mill* 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: (SCC pp. 375-76, paras 35-36 & 39).

"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 relief 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

¹ (2011) 2 SCC 782

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". (emphasis supplied by us)

22. 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.

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 and SBI v. Allied Chemical Laboratories*)".

11. This Court in *Ind Synergy Limited & Another v. The Authorised Officer & Others*², observed as under :

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"9. In view of the well settled principle of law that the efficacious statutory remedy of appeal under the provisions of Section 17 of the Act, 2002 is available to the petitioners and, as such, no interference is warranted by this Court in exercise of its power under Article 226/227 of the Constitution of India."

12. For the reasons and analysis mentioned hereinabove, the writ petition is shorn of merit and is accordingly dismissed. No order as to costs.

Sd/-
SATISH K. AGNIHOTRI
Judge

Gowri

² WP (C) No.2960 of 2011 (decided on 22-6-2011)