Court No. - 46 **AFR**
Case :- WRIT - C No. - 17081 of 2020
Petitioner :- M/S. S.S. Company And Another
Respondent :- District Magistrate/Collector, Bijnor And 3 Others
Counsel for Petitioner :- Mohd. Afzal
Counsel for Respondent :- C.S.C., Sudha Pandey

Hon'ble Naheed Ara Moonis,J.
Hon'ble Vivek Varma,J.

Heard Sri Mohd. Afzal, learned counsel for the petitioner, learned Standing Counsel for respondent nos. 1 to 3, and Ms. Sudha Pandey, learned counsel appearing for respondent no. 4.

By means of the present writ petition the petitioners have come to this Court challenging the order of the District Magistrate, Bijnor dated 05.03.2020 passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the “Act”).

The proceeding under Section 14 of the Act is a consequential action of Section 13 (4) of the Act. Section 14 of the Act contemplates for handing over possession of the property to the secured creditor. The petitioners, if aggrieved by the aforesaid order, can approach the Debts Recovery Tribunal by filing an appeal under Section 17 of the Act.

The issue is no longer *res integra*. The Hon'ble Supreme Court in **United Bank of India v. Satyawati Tondon and others, (2010) 8 SCC 110**, has observed as under:

> *"42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression `any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 & 18 and are required to decide the matters within a fixed time*

schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

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55. 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 the 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. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

56. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

In **Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others, (2011) 2 SCC 782**, the Supreme Court held as under:

"24. In City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwala & Ors. (2009) 1 SCC 168, 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."

> *25. 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."*

Further, in the case of **Standard Chartered Bank Vs. Noble Kumar & Ors., reported in (2013) 9 SCC 620**, the Hon'ble Apex Court has held as under:

> *"27. The "appeal" under Section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available."*

In **GM, Sri Siddeshwara Co-operative Bank Limited and another Vs Sri Ikbal and others, (2013) 10 SCC 83**, the Apex Court

went on to observe that although alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226, yet, it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced consideration, statutory procedures cannot be allowed to be circumvented.

So far as invoking of writ jurisdiction in the matters of realization of loan by the financial institutions are concerned, the Hon'ble Apex Court in the case of **Authorized Officer, State Bank of Travancore & Anr. Vs. Mathew K.C., (2018)3 SCC 85**, while considering the earlier judicial pronouncements made in this regard, has held thus:

> *“16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in Satyawati Tandon (supra), has also not been kept in mind before passing the impugned interim order:-*
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> > *"46. It must be remembered that stay of an action initiated by the State and/or its agencies/ instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the*

> *dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in* ***Baburam Prakash Chandra Maheshwari Vs Antarim Zila Parishad, AIR 1969 SC 556; Whirlpool Corporation VS Registrar of Trade Marks, (1998) 8 SCC 1; and Harbanslal Sahnia Vs Indian Oil Corporation Ltd., (2003) 2 SCC 107*** *and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."*

17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in ***Dwarikesh Sugar Industries Ltd Vs Prem Heavy Engineering Works (P) Ltd and another, 1997 (6) SCC 450****, observing:*

> *"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing*

> *whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."*
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> *19. The impugned orders are therefore contrary to the law laid down by this Court under Article 141 of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed.*
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> *20. All questions of law and fact remain open for consideration in any application by the aggrieved before the statutory forum under the SARFAESI Act."*

In a recent judgment of Apex Court in **Civil Appeal Nos. 10243-10250 of 2018** titled as **"ICICI Bank Ltd Vs Umakanta Mohapatra"** decided on 5.10.2018, the Apex Court has not approved the practice of granting interim order in reference to the matters arising out of the SARFAESI Act, and held as under:-

> *"Despite several judgments of this Court, including a judgment by Hon'ble Mr.Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Another VS Mathew KC., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).*
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> *The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-*
>
> > *18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. Vs Prem Heavy Engineering Works (P) Ltd and another, (1997) 6 SCC 450, observing:-*
> >
> > *"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled*

> *decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops." The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside."*

Following the aforesaid judgments of the Hon'ble Supreme Court a Division Bench of this Court in the case of **Sushma Yadav and others v. State of U.P. And others, Writ-C No. 14645 of 2019**, decided on 15.05.2019, reported in **2019 (9) ADJ 102 (DB)**, has held as under:

> *“20. It is the solemn duty of the court to ensure that the trust imposed by the public in dealing with public money which is being lent by the Financial Institutions is not mis-utilized or mis-spent. It is not for the Court to distribute largessee or to show misplaced sympathy with borrowers who had taken the advantage of loan facility but are tardy in making repayments. There may be sometimes genuine reasons for the borrowers for being late in payments but such issues can be addressed by the appropriate forum provided for dealing with these matters. The extraordinary jurisdiction of Court is not to be invoked in such cases.”*

Thus, for the reasons indicated above, we decline to entertain the present petition and relegate the petitioners to pursue the alternative remedy as available to them under the law. The writ petition is accordingly dismissed.

No order as to costs.

Order Date :- 21.10.2020
SKT/-