*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

***THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

+ CIVIL REVISION PETITION NOS: 2937 OF 2024 & 569 OF 2020

% **11.12.2024**

Boddu Prasad Rao

……Petitioner

And:

$ Punjab National Bank

….Respondent.

!Counsel for the petitioner : Penjuri Venugopal

^Counsel for the respondent : Sravan Kumar Mannava

<Gist:

>Head Note:

? Cases referred:

1. AIR 2001 SC 3208
2. (2014) 1 SCC 479
3. (2024) 6 SCC 579
4. AIR 1964 SC 1819

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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CIVIL REVISION PETITION NOS: 2937 OF 2024 & 569 OF 2020

DATE OF JUDGMENT PRONOUNCED: ***11.12.2024***

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

1. *Whether Reporters of Local newspapers may be allowed to see the Judgments?* — *Yes/No*

2. *Whether the copies of judgment may be marked to Law Reporters/Journals* — *Yes/No*

3. *Whether Your Lordships wish to see the fair copy of the Judgment?* — *Yes/No*

RAVI NATH TILHARI,J

CHALLA GUNARANJAN,J

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

WEDNESDAY ,THE ELEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

CIVIL REVISION PETITION NOS: 2937 OF 2024 & 569 OF 2020

COMMON ORDER :- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri Penjuri Venugopal, learned counsel for the petitioner and Sri Sravan Kumar Mannava, learned Standing Counsel for the respondent-Bank, in both the petitions.

2. The respondent-bank filed O.A.No.98 of 2014 before the Debts Recovery Tribunal, at Visakhapatnam, (in short 'Tribunal') against the petitioner and others. The petitioner is the 3rd defendant in the said O.A., The O.A., was allowed, by order, dated 18.08.2017.

3. The grievance of the petitioner is that on 18.08.2017, the Tribunal closed the evidence of defendant as there was no evidence on behalf of the defendant, and passed the aforesaid *exparte* order. As there was 10 days delay in filing the restoration application to set aside the *exparte* decree dated 18.08.2017, he filed M.A.No.106 of

2017 in O.A.No.98 of 2014 for condonation of delay. The application was dismissed on 10.01.2020, on the ground that the O.A., was allowed on merits, and it was not an *exparte* order.

4. Challenging the same order, the petitioner filed present two revision petitions, one with respect to rejection of the application for condonation of delay and the other against the order refusing to set aside the order, dated 18.08.2017.

5. Learned counsel for the petitioner submits that the order was *exparte.* Learned Standing Counsel for the respondent-bank submits that the order in O.A. was not *exparte*. The petitioner filed written arguments as well. This has been disputed by the petitioner's counsel submitting that the written arguments were not taken on record.

6. Be that as it may. We are not on the point if the order, dated 18.08.2017 was *exparte* or not.

7. On our specific enquiry to the entertainability of the present Civil Revision Petitions on the ground of alternate remedy, the learned counsel for the petitioner submits that the orders under challenge are not appealable. He submits that only those orders are appealable by which the Tribunal either grants stay or rejects the stay.

8. We are not satisfied. The submission deserves rejection.

9. Section 20 of the Recovery of Debts and Bankruptcy Act,1993 (in short 'Act 1993') provides as under :

"20. Appeal to the Appellate Tribunal.:-

(1) Save as provided in sub-section (2), any person **aggrieved by an order made**, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal **from an order made by a Tribunal with the consent of the parties**.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of [thirty days] [Substituted by Act No. 44 of 2016.] if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), [or under sub-section (1) of section 181 of the Insolvency and Bankruptcy Code, 2016] [Inserted by Insolvency and Bankruptcy Code, 2016, Section 249.] the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

> (5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.
>
> (6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal."

10. The Act,1993, thus provides that an order made by the Debts Recovery Tribunal is appealable before the Appellate Tribunal. The order of the present nature is also covered under the expression 'any order'. It is not confined to order granting or refusing stay. A bare reading of Section 20 of the Act shows that any person aggrieved by an order made or deemed to have been made by a Tribunal under the Act may prefer an appeal to an appellate Tribunal having jurisdiction in the matter. The Right of appeal is against an 'order made' or 'deemed to have been made'. The order rejecting the application for condonation of delay or/and the application for setting aside the *exparte* order, is an order within the meaning of this expression under Section 20. The only restriction on the right of appeal is under sub section (2) of Section 20. As per Sub Section (2), no appeal shall lie to the appellate Tribunal from an order made by a Tribunal 'with the consent of the parties'. Present is not an order with the consent. So,

we are of the considered view that the petitioner has the alternative remedy against the orders impugned in the present petitions.

11. In **Punjab National Bank vs. O.C. Krishnan and others**[1] the Hon'ble Apex Court held that the order which was passed by the Tribunal directing the sale of mortgaged property was appealable under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993. The High Court ought not to have exercised its jurisdiction under Article 227 of the Constitution of India in view of the provision for alternative remedy contained in the Act. The Hon'ble Apex Court held that when there is an alternative remedy available judicial prudence demands that the court refrain from exercising its jurisdiction under the constitutional provisions under Articles 226 and 227 of the Constitution of India.The relevant part from **O.C. Krishnan** *(supra)* reads as under:

> *"In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We Jo not propose to go into the correctness of the decision of the High Court an I*

[1] AIR 2001 SC 3208

whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this last track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the court refrains from exercising its jurisdiction under the said constitutional provisions. *This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."*

12. In ***Jagdish Singh v. Heeralal***[2]***,*** the Hon'ble Apex Court held as under:

18. Any person aggrieved by any order made by the DRT under Section 17 may also prefer an appeal to the Appellate Tribunal under Section 18 of the Act.

[2] (2014) 1 SCC 479

19. The expression "any person" used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the judgment of this Court in Satyawati Tondon case {(2010) 8 SCC 110}

13. Recently, in ***PHR Invent Educational Society V. UCO Bank & others***[3], the Hon'ble Apex Court reiterated that in such matters the High Court should not entertain the petitions when there is statutory alternative remedy. Paragraph Nos. 28, 29 & 41 of ***PHR Invent Educational Society*** (supra) deserves reproduction as under:

"28. It could thus be seen that this Court has strongly deprecated the practice of entertaining writ petitions in such matters.

29. Recently, in Celir LLP {(2024) 2 SCC 1}, after surveying various judgments of this Court, the Court observed thus:

"101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after the decision of this Court in Satyawati Tondon {(2010) 8 SCC110}, it appears that the High

[3] (2024) 6 SCC 579

Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act."

41. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in Satyawati Tondon (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act inspite of availability of an effective alternative remedy:

"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"."

14. Learned counsel for the petitioner submits that against an *exparte* decree, the aggrieved party has three remedies. (1) To file appeal (2) To file application to set aside the ex parte decree and (3) To file review. In support of his submission, he placed reliance on

Koushik Mutually Aided Cooperative Housing Society vs. Ameena Begum and another[4]**.**

15. There is no dispute on the proposition of law that the *exparte* decree can be challenged by way of various remedies provided under law subject to the statutory provisions. In ***Koushik Mutually Aided Cooperative Housing Society*** (supra) the Hon'ble Apex Court observed that an *exparte* decree is also appealable. So, the petitioner had the remedy of appeal against the alleged *exparte* order. Even if he filed the application under Order 9 Rule 13 C.P.C, on rejection of the application by order impugned herein, it cannot be said that such an order is not appealable. The petitioner has got statutory alternative remedy. Consequently we are not inclined to entertain the petition.

16. We are of the considered view that though the petition under Articles 226 or 227 of the Constitution of India is maintainable, but in view of the statutory alternate remedy, it is generally not to be entertained. Any exceptional circumstance, to cover the present case within the well recognized exceptions to the doctrine of exhaustion of alternative statutory remedy could not be argued. So, we are not inclined to invoke the power under Article 226/227 of the Constitution of India in the nature of the present case.

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[4] AIR 1964 SC 1819

17. The Civil Revision Petitions are dismissed on the aforesaid ground.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN,J

Date :11.12.2024.
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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

(DISMISSED)

CIVIL REVISION PETITION NOS: 2937 OF 2024 & 569 OF 2020

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