

Court No. - 17

Case :- WRIT - C No. - 8568 of 2023

Petitioner :- Pawan Ramesh Aswani

Respondent :- State Bank Of India Stressed Assets Recovery Branch -Ii Thru. Its Authorized Officer And 5 Others

Counsel for Petitioner :- Abhishek Khare,Aahuti Agarwal

Counsel for Respondent :- Ankit Srivastava,Pratish Kumar,Shivanshu Bajpai

Hon'ble Alok Mathur,J.

1. Heard Mr. Abhishek Khare learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. Learned counsel for the petitioner submits that against the impugned order dated 22.09.2023 a writ petition was preferred before this Court at the behest of State Bank of India being Writ-C No. 8989 of 2023 which has been dismissed by this Court on the ground of availability of efficacious and alternative remedy against the impugned order. In the said petition, it is submitted that was given liberty to file an appeal before the appellate authority and the appellate authority was directed to decide the same expeditiously. Learned counsel for the petitioner submits that the present case would be squarely covered by the judgement of this Court in the aforesaid case.

3. Accordingly, this petition is decided similarly, the judgement is quote here-in-below:

"1. Heard Sri Shivanshu Bajpai, learned counsel for petitioner-bank as well as Sri Pratish Kumar, Advocate who has filed his Vakalatnama on behalf of respondent No. 1 and Sri Abhishek Khare, learned counsel for respondent No. 6.

2. By means of present writ petition, the petitioner has challenged the order dated 22.09.2023 passed by Debt Recovery Tribunal, Lucknow where the issue of limitation has been decided in favour of respondent Nos. 1 to 3 who were the applicants before the Debt Recovery Tribunal and further direction has been given to the petitioner-bank to issue ten days' prior notice to the applicant in case of taking physical possession.

3. It has been submitted by learned counsel for petitioner that total 9 loan/credit facilities for a total amount of Rs. 4,82,00,000/- was sanctioned by the petitioner-bank and disbursed to respondent Nos. 1 to 5.

The said respondents had duly availed the aforesaid loan but neglected in repayment of the outstanding amount and accordingly the loan was classified as Non-Performing Asset on 16.10.2021 and proceeding under Section 13(2) of the SARFAESI Act were initiated. Subsequently notice under Section 13(4) were also issued and publication was made in two newspapers on 01.06.2022.

4. After completion of the aforesaid proceedings, the petitioner-bank had moved an application under Section 14 of SARFASI Act to take possession of the immovable property of the secured assets. The mortgaged property has also been auctioned and the same has been purchased by respondent No. 6.

5. It is in the aforesaid circumstances that the respondent Nos. 1 to 3 approached Debt Recovery Tribunal by filing a securitization application for setting aside the application., possession notice as well as order passed under Section 14 by the District Magistrate. In the Securitization Application No. 605 of 2023 notices were issued to the petitioner as well as auction purchaser where they filed their objections with regard to maintainability of the said application and also on merits of the said case.

6. It seems that the petitioner-bank had raised a preliminary objection with regard to maintainability of the said application in light of the fact that the same was barred by limitation.

7. On the other hand, respondent nos. 1 to 3 had assailed the application of the petitioner-bank on the ground that there was no service of notice prior to taking possession. By means of impugned order, the bank has been granted time to place the postal receipts on record and surprisingly at this stage itself the presiding officer has recorded a finding that issue of limitation is decided in favour of the applicant.

8. A preliminary objection has been raised by the respondents stating that the petitioner has an equally efficacious remedy of an appeal under Section 18 of SARFAESI Act, 2002 before the appellate authority.

9. It has further been submitted that the Supreme Court has repeatedly held that in a situation where any equally efficacious remedy is available before the appellate authority then proceeding under Article 226 of the Constitution of India by the High Court should not be entertained.

10. They have relied upon the judgment of the Hon'ble Supreme Court in the case of Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. & Ors., AIR OnLine 2023 SC 427 wherein in paragraph No. 96, held as under:-

"96. 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 (supra), it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the

11. Hon'ble the Supreme Court in the case of Varimadugu OBBI Reddy Vs. B. Sreenivasulu, AIR ONLINE 2022 SC 1041, held as under :-

"32. The order of the Tribunal dated 1st August, 2019 was an appealable order under Section 18 of the SARFAESI Act, 2002 and in the ordinary course of business, the borrowers/person aggrieved was supposed to avail the statutory remedy of appeal which the law provides under Section 18 of the SARFAESI Act, 2002 in the absence of efficacious alternative remedy being availed, there was no reasonable justification tendered by the respondent borrowers in approaching the High Court and filing writ application assailing order of the Tribunal dated 1st August, 2019 under its jurisdiction under Article 226 of the Constitution without exhausting the statutory right of appeal available at its command.

33. This Court in the judgment in United Bank of India vs. Satyawati Tondon & Others², was concerned with the argument of alternative remedy provided under the SARFAESI Act, 2002 and dealing with the argument of alternative remedy, this Court had observed that where an effective remedy is available to an aggrieved 2(2010) 8 SCC 110 person, the High Court ordinarily must insist that before availing the remedy under Article 226 of the Constitution, the alternative remedy available under the relevant statute must be exhausted. Paras 43, 44 and 45 of the said judgment are relevant for the purpose and are extracted below:

"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 a 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, the 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."

12. Hon'ble the Supreme Court in the case of *United Bank of India Vs. Satyawati Tondon and Ors.*, AIR 2010 SC 3413, held as under:-

"17. 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 and 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. 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."

13. In light of the above pronouncements of the Supreme Court, this Court is of the considered opinion that the petitioner has an efficacious alternative remedy of appeal before the appellate authority, and no circumstances exist for exercise of power of the Court under Article 226 of the Constitution of India to interfere with the impugned order at his stage.

14. Learned counsel for petitioner on the other hand has fairly submitted that the petitioner can approach appellate authority but submits that indulgence should be made by this Court for expeditious disposal of the appeal in case the same is filed.

15. In light of the above, the writ petition is disposed of with a liberty to the petitioner to file an appeal before the appellate authority within a period two weeks from today. In case the appeal is filed within next two weeks, the appellate authority shall make all endeavours to decide the same in accordance with law expeditiously, say, within a period of six months thereafter, if possible."

4. Considering the above, this writ petition is **disposed of** with a liberty to the petitioner to file an appeal before the appellate authority within a period two weeks from today. In case the appeal is filed within next two weeks, the appellate authority shall make all endeavours to decide the same in accordance with law expeditiously, say, within a period of six months thereafter, if possible.

(Alok Mathur,J.)

Order Date :- 18.11.2023/Vipul