

Court No. - 17

Case :- WRIT - C No. - 9436 of 2023

Petitioner :- M/S Al Huda Frozen Foods Exports Pvt. Ltd. Delhi, Thru. Mr. Naushad Alam And Others

Respondent :- Learned Debts Recovery Tribunal, Lucknow Thru. Registrar And Others

Counsel for Petitioner :- Fuhar Gupta

Counsel for Respondent :- C.S.C., Vinay Shankar

Hon'ble Alok Mathur,J.

Heard learned counsel for the parties and perused the record.

The petitioner has invoked a writ jurisdiction of this Court assailing the order dated 03.10.2023, passed by the Presiding Officer, Debts Recovery Tribunal, Lucknow whereby the amendment application filed by the petitioner has been rejected on the ground that the same was not accompanied by an application for condonation of delay.

This Court prima facie noticing that the order was without jurisdiction and that there was no period prescribed under the Act for filing of an amendment application and gave time to learned counsel for the Bank to inform this Court about the statutory provision providing for condonation of delay.

Learned counsel for the Bank despite time being granted could not indicate any section under which application for amendment has to be accompanied by application for condonation of delay but on the other hand has submitted that the petitioner has efficacious remedy of an appeal before the Debts Recovery Appellate Tribunal.

In support of his submissions he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Celir Llp vs. Bafna Motors (Mumbai) Pvt. Ltd. & Others.***

The Hon'ble Supreme Court in the said case has relied upon the previous judgment in the case of Satyawati Tandon and in his para 92 has held that " this Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act." This Court in Satyawati Tandon (supra) made the following observations :-

"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."

Learned counsel for the Bank has categorically informed this Court that the petitioner has an efficacious remedy of appeal before the appellate Tribunal where they can take all the grounds available to them in assailing the impugned order passed by the DRT, Lucknow.

The submissions of the learned counsel for the respondent- bank has force and specially considering the judgment of the Hon'ble Supreme Court in the case of ***Celir Llp vs. Bafna Motors (Mumbai) Pvt. Ltd. & Others***, this Court is of the considered view that the petitioner has an adequate remedy of appeal before the appellate Tribunal and consequently on the said ground the petition is ***dismissed***.

Order Date :- 31.10.2023

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(Alok Mathur, J.)