

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 373 of 2023

Date of Decision: 27.02.2024

M/s KBS Motors & Anr.

Vs.

State Bank of India

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) :

Mr. A. Sahu, Adv.

Ms. A. Pradhan, Adv.

For the Respondent(s) :

Mr. S. Dutta, Adv.

Ms. P. Riahtam, Adv.

i) Whether approved for reporting in
Law journals etc:

Yes/No

ii) Whether approved for publication
in press:

Yes/No

JUDGMENT AND ORDER (ORAL)

1. The petitioner No. 2 herein, owned and operated a Tata Motors Vehicle Dealership known as M/s KBS Motors, (petitioner No.

1). To operate the said business, the petitioner took financial assistance from the respondent Bank, which had advanced the same, as per the arrangements and terms as agreed upon. The Tata Motors Dealership however, ran into huge financial losses and its operations, closed down in the year 2015. Due to the non-payment of the loan amount, the respondent Bank filed an Original Application being O.A. No. 78 of 2017, before the Debt Recovery Tribunal, at Guwahati on 14.03.2017. The said O.A. was then heard and final orders were passed on 30.08.2022, allowing the application of the respondent Bank. Sum and substance of the order was that, the petitioners/defendants therein, were held jointly and severally liable to pay the respondent Bank, a sum of Rs.8,39,81,509.10 (Rupees Eight Crores Thirty-Nine Lakhs Eighty-One Thousand Five Hundred Nine and Ten Paise) only, with pendente lite and future interest @ 14.80% with monthly interest from 08.03.2017, till the date of full payment/realization and also cost of the application. A Recovery Certificate for the said sum was then issued on 12.10.2022.

2. As per the order dated 30.08.2022, and Recovery Certificate dated 12.10.2022, 3(three) properties of the petitioner were sold on auction, and the total recoveries made by the Bank stood at Rs.8,69,00,000 (Rupees Eight Crores and Sixty-Nine Lakhs) only, and certificates of Sale all dated 03.10.2023, were issued to the Successful

Auction Purchasers. However, as the total dues with pendente lite interest, for an amount of Rs.13,30,41,076.16 (Rupees Thirteen Crores Thirty Lakhs Forty-One Thousand Seventy-Six and Sixteen Paise) only, remained outstanding, the respondent Bank initiated the sale of the remaining mortgaged properties of the petitioner No. 2. The petitioners on the ground that, the amounts due of Rs.8,39,81,509.10 (Rupees Eight Crores Thirty-Nine Lakhs Eighty-One Thousand Five Hundred Nine and Ten Paise) only, as per the Recovery Certificate having been satisfied with the earlier sale of the three properties, are before this Court alleging that the respondent Bank has acted arbitrarily and illegally in proceeding for further realization of the amounts as claimed.

3. Mr. A. Sahu, learned counsel for the petitioners has drawn the attention of this Court to the Recovery Certificate dated 12.10.2022, and submits that the amounts indicated therein is of Rs.8,39,81,509.10 (Rupees Eight Crores Thirty-Nine Lakhs Eighty-One Thousand Five Hundred Nine and Ten Paise) only, which have since been satisfied with the sale of the three properties. He further submits that in the table of dues as shown in the Recovery Certificate, the amount of interest due is not indicated anywhere, and that if the remaining two plots of the petitioners are also auctioned, the petitioners and the family will have

nowhere to live. It is also contended that the amounts already received by the respondent Bank is more than one and a half times of the loan amount, and as such, any further recovery will be unjust, arbitrary and discriminatory. The learned counsel then lastly submits that, the petitioners are seeking relief under Article 226 of the Constitution, inspite of the availability of statutory appeal due to the gross illegality, which has been committed in violation of fundamental and other rights. Learned counsel has placed reliance on a judgment of a Division Bench of the High Court of Madhya Pradesh, in the case of ***Mani Sharma vs. Bank of India & Anr.*** in ***Writ Petition No. 2285 of 2022***, decided on 22.06.2022, to advance his arguments, that powers under Article 226 can be invoked in certain cases.

4. Mr. S. Dutta, learned counsel for the respondent Bank has at the outset submitted that, the writ petition is not maintainable on the ground that, there is a specific efficacious and alternate remedy available to the petitioners under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993, whereby any person aggrieved by an order of the Recovery Officer made under the Act, within 30(thirty) days from the date on which a copy of the order is issued to him, could prefer an appeal to the tribunal. He therefore submits that, on this ground alone the writ petition deserves no consideration.

5. The learned counsel on the issues raised by the petitioners, has submitted that, there is no illegality or arbitrariness in the amounts arrived at which are payable by the petitioners. He submits that the same is as per the judgment and order dated 30.08.2022, and Recovery Certificate No. 114/2022, passed by the learned Debt Recovery Tribunal in O.A. No. 78/2017, wherein an outstanding amount of Rs.8,39,81,509.10 (Rupees Eight Crores Thirty-Nine Lakhs Eighty-One Thousand Five Hundred Nine and Ten Paise) only, w.e.f. 08.03.2017, till realization along with interest @ 14.80% per annum was payable. He submits that the respondent Bank had calculated the interest portion, which came to Rs.13,85,06,365.06 (Rupees Thirteen Crores Eighty-Five Lakhs Six Thousand Three Hundred Sixty-Five and Six Paise) only, as on 19.12.2023 and after deduction of Rs.8,94,46,798.00 (Rupees Eight Crores Ninety-Four Lakhs Forty-Six Thousand Seven Hundred and Ninety-Eight) only, including the sale proceeds of three properties, the total outstanding dues as on 19.12.2023, stood at Rs.13,30,41,076.16 (Rupees Thirteen Crores Thirty Thousand Forty-One Thousand Seventy Six and Sixteen Paise) only, which the petitioners in terms of the judgment and order dated 30.08.2022, were liable to pay. As such, he submits apart from there being efficacious and alternative remedy available to the petitioner, under Section 30 of

the Recovery of Debts and Bankruptcy Act, 1993, there has been no discrepancy in the computation of the amounts due or any illegality in the actions of the respondent Bank.

6. Having heard the learned counsel for the parties, and perused the materials on record. It is noted that the entire proceedings before the Debt Recovery Tribunal were conducted in accordance with the provisions contained in the Recovery of Debts and Bankruptcy Act, 1993, and no irregularity in this regard has been alleged or is present. The objection therefore, by the respondent Bank as to the maintainability of the writ petition, carries great weightage as in accordance with the Act itself, the petitioners are not left remedy less, and have recourse to an appeal to the Tribunal under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993, which reads as follows.

“30. Appeal against the order of Recovery Officer.- (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery

Officer in exercise of his powers under sections 25 to 28 (both inclusive).”

7. A perusal of the Recovery Certificate RC No. 114-2022, wherein the petitioners have maintained that, the dues payable as recorded therein is only for Rs.8,39,81,509.10 (Rupees Eight Crores Thirty-Nine Lakhs Eighty-One Thousand Five Hundred Nine and Ten Paise) only, however, does not support their contentions, inasmuch as, the amount recoverable as stated therein is with pendente lite and future interest @ 14.80% per annum, from 08.03.2017. The amounts demanded therefore, being as per the Recovery Certificate and order dated 30.08.2022, passed by the Tribunal, which have remained unchallenged, no materials exist to warrant interference under Article 226 of the Constitution of India, by this Court.

8. In such matters, where alternative remedy is available, the exercise of powers under Article 226 of the Constitution by the High Courts, as held in the judgment of the Supreme Court in ***Harbanslal Sahnia & Anr. vs. Indian Oil Corpn. Ltd. & Ors.*** reported in (2003) 2 SCC 107, is one of discretion and not of compulsion. The said judgment has in Para – 7 held as follows.

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was

available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged (See Whirlpool Corpn. v. Registrar of Trade Marks.) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

9. In the present case however, the three contingencies as given in the above noted judgment are however absent. Furthermore, in matters involving Debt, Financial and Monetary Laws, as has been held by the Supreme Court in many decisions the High Courts should not under Article 226 of the Constitution grant stay, except when the writ

petitioner is able to show, that the case falls within any of the exceptions carved out in judgments of the Supreme Court, and that High Courts should be more careful and circumspect in this regard. A noted case on this aspect, is that of *United Bank of India vs. Satyawati Tondon & Ors.* reported in (2010) 8 SCC 110, wherein in Paragraphs – 43, 44, 45 and 46 it has been held as follows.

“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.

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 v. Antarim Zila Parishad, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

10. The judgment placed by the learned counsel for the petitioner of the High Court of Madhya Pradesh is noted, but the same will have no application in the instant case, as it is on a different set of facts and circumstances altogether.

11. The instant writ petition therefore fails and no interference is called for under Article 226 of the Constitution. The writ petitioners, will be at liberty to pursue alternate remedy as provided under the Recovery of Debts and Bankruptcy Act, 1993. Needless to add, on such

remedy being availed of, the Tribunal shall also consider condoning the delay favourably.

12. With the above directions, the writ petition is accordingly closed and disposed of, however, with no order as to costs.

Judge

Meghalaya
27.02.2024
"D.Thabak-PS"