

Court No. - 2

Case :- WRIT - C No. - 5582 of 2024

Petitioner :- M/S Hindustan Traders, Lakhimpur Kheri Thru.
Its Proprietor Namely Sri. Uzair Khan

Respondent :- Zila Magistrate, Lakhimpur Kheri And Others

Counsel for Petitioner :- Anil Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

Hon'ble Arun Kumar Singh Deshwal,J.

Heard Sri Anil Kumar Singh, learned counsel for the petitioner as well as learned Standing Counsel on behalf of respondent Nos.1 and 2.

Vakalatnama has been filed by Sri Praveen Dwivedi, Advocate on behalf of respondent No.3-Bank, which is taken on record.

It has been submitted by the counsel for petitioner that petitioner had availed a term loan and C.C. limit in the year 2017 for his firm i.e. M/S Hindustan Traders and the Bank has sanctioned the term loan of Rs. 4 Lakh and C.C. limit of Rs. 5 Lakh. The petitioner had made a default in servicing the said loan and repayment was not made by him within the time provided and accordingly declared Non-Performing Assets and the proceedings under SARFAESI Act have been initiated and notice under Section 13(2) was also issued to the petitioner.

It is further stated that the District Magistrate has also passed an order under Section 14 of SARFAESI Act for taking possession of secured assets and in the aforesaid circumstances, present petition has been filed by the petitioner challenging the said notice issued by the respondent-Bank. He also submits that Bank should be directed to accept One Time Settlement and the petitioner is also ready to pay outstanding amount in

installments.

Learned counsel for the respondent-Bank has opposed the writ petition and submits that petitioner has an efficacious remedy of filing of application under Section 17 of SARFAESI Act. He submits that the proceedings initiated by the Bank as well as the order passed by the District Magistrate under Section 14 of SARFAESI Act can be assailed by him before the Debt Recovery Tribunal. He has also relied upon the judgment of the Hon'ble Supreme Court passed in the case of ***Union Bank of India vs. Satyawati Tondon & Others; (2010) 8 SCC 110*** and submits that a writ petition under Article 226 of the Constitution of India would not be maintainable considering the fact that petitioner has equally efficacious remedy before the Debt Recovery Tribunal.

After hearing the parties and perusing the record, this Court is of the considered view that proceedings have been initiated by the respondent-Bank against the petitioner as he has made default in making payment in installments due to the Bank and notices under Section 13(2) and 13(4) of SARFAESI Act were duly issued and even an appropriate order has been passed by the District Magistrate in exercising of power under Section 14 of SARFAESI Act.

Considering the judgment of the Hon'ble Supreme Court passed in ***Satyawati Tondon (Supra)***, this Court is of the considered view that petitioner has an efficacious remedy before the Debt Recovery Tribunal and all the grievances raised by him can be duly considered.

Considering the argument of the petitioner that respondents are trying to dispossess the petitioner, it is provided that in case the application is filed by the petitioner before the Debt Recovery

Tribunal within 2 weeks alongwith an application for interim relief, the Debt Recovery Tribunal shall proceed to consider and decide the application within three weeks thereafter, in accordance with law.

Learned counsel for the petitioner as well as Sri Praveen Dwivedi, Advocate, learned counsel appearing on behalf of Bank have assured that they will cooperate in the proceedings before the Debt Recovery Tribunal to enable them to decide the said application with expedition and within the time provided by this Court.

Subject to the aforesaid directions, the petition is ***dismissed*** on the ground of alternative remedy.

Order Date :- 25.6.2024

Vinay/-