NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 831 of 2015

Sitaram Agarwal S/o Shri Radhe Shyam Agarwal Aged About 56 Years Resident Of Village Neora, Tilda, Dist Raipur (Chhattisgarh), Civil & Revenue District Raipur (Chhattisgarh)

---- Petitioner

Versus

1. I.C.I.C.I. Bank, A Banking Company Duly Incorporated Under The Relevant Provisions Of The Law And A Bank Within Its Meaning Under The Banking Regulation Act, Carrying On The Business Of Banking All Over The India, Having Its Office At RNAG, Khajrani, Malav Parisar, A.V. Road, Indore (Madhya Pradesh), And A Branch Office At Civil Lines, Raipur.

2. The Collector/District Magistrate, Raipur (Chhattisgarh)

3. The Superintendent Of Police, District Raipur.

4. The Naib Tahsildar, Tilda, District Raipur

5. Anil Agrawal S/o Shri Radhe Shyam Agrawal Aged About 48 Years Proprietor Of M/s Shyam Rice & Parboiling Unit, Neora, District Raipur (Chhattisgarh)

6. Girdhari Agarwal S/o Shri Radhe Shyam Agarwal Aged About 42 Years Resident Of Village Tilda, Post Neora, District Raipur.

---- Respondents

Shri B.P.Sharma, counsel for the petitioner/s.
Smt. Fouzia Mirza, counsel for respondent No.1.
Shri D.R.Minj, Dy.G.A. for the State / respondents 2 to 4.
Shri Adil Minhaj, counsel for respondent No.5.

Order On Board

13/10/2015

Heard on the question of maintainability.

Learned counsel for the respondent / bank seriously opposed admission of the petition and raised an objection by submitting that against the order passed by the Collector, in exercise of powers under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act of 2002'), the petitioner has an efficacious remedy of filing appeal under Section 17 before the Debt Recovery Tribunal. It is submitted that in view of the authoritative pronouncement of the Supreme Court in the cases of **Transcore v. Union of India and another, 2008 (1) SCC 125, Kanaiyalal Lalchand Sachdev and ors. v. State of Maharashtra and others, 2011 (2) SCC 782** and **Standard Chartered Bank v. Noble Kumar and others** with **Senior Manager, State Bank of India and another v. R.Shiva Subramaniyan and anr., 2013 (9) SCC 620**, the petition is liable to be dismissed.

2. On other hand, learned counsel for the petitioner, relying upon the judgment of the Supreme Court in the case **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others, 2014 (6) SCC 1** submits that in view of finality clause contained in Section 14 (3) of the Act of 2002, the order passed under Section 14 of the Act of 2002 by the District Magistrate (Collector) is final and cannot be called in question except by filing petition before this Court under Article 226 / 227 of the Constitution of India. He submits that in the case of **Kanaiyalal Lalchand (supra)**, the effect and impact of finality clause as contained in Section 14 (3) of the Act of 2002 was not considered. Therefore, the law declared in the case of **Harshad Govardhan (supra)** will hold field. It is next contended that as the bank has already filed original application before the Debt Recovery Tribunal for a declaration and recovery, the provisions under Section 14 of the Act of 2002 are not applicable. It is further submitted that the very fact that the petitioner has sought a declaration shows that his right is under cloud and therefore, unless a prior declaration as sought is given in his favour, no proceedings could be drawn under Section 14 of the Act of 2002.

3. As to whether pendency of application before the Debt Recovery Tribunal would operate as a bar to simultaneous remedy that may be taken by the secured credit under the Act of 2002, the issue was considered and decided by the Supreme Court in the case of **Transcore (supra)**. In the said decision, the Supreme Court, after examination of the statutory claim of the Act of 2002 and provisions contained in Section 37 thereof held thus-

> **"68.** The object behind introducing the first proviso and the third proviso to Section 19(1) of the DRT Act is to align the provisions of the DRT Act, the NPA Act and Order 23 CPC. Let us assume for the sake of argument, that an OA is filed in DRT for recovery of an amount on a term loan, on credit facility and on hypothecation account. After filing of OA, on account of non-

disposal of the OA by the tribunal due to heavy backlog, the bank finds that one of the three accounts has become substandard/loss, in such a case the bank can invoke the NPA Act with or without the permission of DRT. One cannot lose sight of the fact that even an application for withdrawal/leave takes time for its disposal. As stated above, with inflation in the economy, value of the pledged property/asset depreciates on day-to-day basis. If the borrower does not provide additional asset and the value of the asset pledged keeps on falling then to that extent the account becomes non-performing. Therefore, the bank/FI is required to move under the NPA Act expeditiously by taking one of the measures provided by Section 13(4) of the NPA Act. Moreover, Order 23 CPC is an exception to the common law principle of non-suit, hence the proviso to Section 19(1) became a necessity.

69. For the above reasons, we hold that withdrawal of the OA pending before DRT under the DRT Act is not a precondition for taking recourse to the NPA Act. It is for the bank/FI to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw. We do not wish to spell out those circumstances because the said first proviso to Section 19(1) is an enabling provision, which provision may deal with myriad circumstances which we do not wish to spell out herein."

4. As to whether a remedy under Section 17 of the DRT Act of filing of appeal would be available against an order passed by the District Magistrate under Section 14 of the Act of 2002, the issue is no longer *res integra*. Hon'ble Supreme Court in the case of **Kanaiyalal (supra)** held-

"22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13 (4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any

> person affected by an action under Section 13 (4) of the Act, by providing for an appeal before the DRT."

The aforesaid law laid down by the Supreme Court leaves no manner of doubt that the petitioner has a remedy of appeal before the Debt Recovery Tribunal. There are no extra ordinary reasons, why this Court should not insist on exhaustion of alternative remedy available to the petitioner.

5. In view of above, objection to the maintainability is sustained. The petition is dismissed with liberty to the petitioner to avail the remedy of appeal under Section 17 of the Act of 2002 before the Debt Recovery Tribunal.

Considering that there is an interim order operating in favour of the petitioner, it is directed that for a period of 45 days, status quo with regard to possession shall be maintained so that the petitioner can approach the Debt Recovery Tribunal for appropriate relief including the interim relief.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti