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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 203 OF 2015

1. M/s Vijeta Construction Company (A Unit ff VB Properties & Infrastructure Ltd.), C-177/5, Opp: MLA Rest House, Tagore Nagar, Police Station Tikrapara, Raipur, Civil & Revenue District Raipur-492001 (Chhattisgarh), represented by Managing Director, Mr. Basant Bagde (Petitioner No.1 in the writ petition)

2. Mr. Basant Bagde S/o Mr. Nathuji, aged about 54 years, Occ. Business, R/o C-177/5, Opp. MLA Rest House Tagore Nagar, Raipur-492001 (Chhattisgarh) (age wrongly mentioned as 63 years) (Petitioner No.2 in the writ petition)

… Appellants

Versus

1. Debts Recovery Tribunal, 797-II, Shanti Kunj, South Civil Lanes, Jabalpur- 482001, MP, represented by Recovery Officer (Respondent No.1 in the writ petition)

2. Allahabad Bank, Telibandha Branch, Telibandha Chowk, Shyam Nagar, Raipur 492001 (Chhattisgarh), represented by Assistant General Manager (Respondent No.2 in the writ petition)

3. M/s Pegasus Asset Reconstruction Pvt. Ltd., through its Managing Director, 55/56, 5th Floor, Free Press House, Nariman Point, Mumbai- 400021 (Maharastra) (Respondent No.3 in the writ petition)

... Respondents

For Appellants	:	Mr. Prafull Bharat and Mr. Kashif Shakeel, Advocates.
For Respondent No.2	:	Mr. Kishore Bhaduri and Mr. Saleem Kazi, Advocates.
For Respondent No.3	:	Mr. Amrito Das, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

03/11/2015

1. The present appeal arises from order dated 10.2.2015 dismissing Writ Petition (C) No. 1505 of 2013 holding that the Appellants had an alternative statutory remedy under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (hereinafter called 'the Securatisation Act') read with Section 30 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter called 'the DRT Act').

2. Learned Counsel for the Appellants acknowledges that on the date the loan taken was declared a non-performing asset, there was an outstanding of Rs. 17,72,26,851/-. In a proceeding by the Bank under Section 19 of the DRT Act, a compromise decree was passed on 14.9.2012 by the Debt Recovery Tribunal for payment of Rs. 16,36,64,849/- with future interest till payment at the rate of Rs. 16.5% in a tripartite agreement.

3. M/s R.R. Steels made payment of Rs. Ten Crores only within the stipulated period of three months. The compromise thus failed. Fresh auction notice was issued under Section 25 of the DRT Act on 10.9.2013. But the reserve price was not fixed according to the current value of the property as on the date of auction notice. The auction was stayed by the writ Court on 18.1.2013. Yet fresh auction notice was published mentioning the reserve price as Rs. Fourteen Crores only. Notwithstanding the interim order, the debt was assigned to Respondent No.3 for a paltry sum of Rs. 7.95 Crores only. On 20.3.2015 in the Execution case, notwithstanding the objections filed by the Appellants with regard to the reserve price fixed, the auction has been knocked down in favour of M/s R.R. Steels for Rs. 14 Crores only with regard to property no.2.

4. In essence the submission of the Learned Counsel for the Appellant was that the Bank, even if it had a right in the law to proceed with the auction, it was not acting bonafide by fixing the reserve price properly in accordance with the value of the property as on the date of the fresh auction notice. The action of the Bank in fixation of an artificial reserve price was malafide as it had a duty to obtain the best price in auction. The objections filed by the Appellants had been wrongly rejected. Reliance was placed on 2012 (11) SCC 511 (Ram Kishun and others Vs. State of Uttar Pradesh) and 2011 (4) SCC 171 (Kerala Financial Corporation Vs. Vincent Paul).

5. Learned Counsel for the Respondents submitted that the Appellants had an alternative statutory remedy under Section 30 of the DRT Act against the fixation of the reserve price by the Recovery Officer. The writ Court does not entertain a writ petition when a statutory alternative remedy is available under the DRT Act which lays down a complete procedure with regard to the same. The Appellants acknowledge subsequent developments after the dismissal of the writ petition, leading to creation of third party rights which has been allowed to fructify and the third party purchaser in auction M/s. R.R. Steels which is bound to be affected by any order that may be passed by the Court has not been impleaded as party Respondent and neither is there any challenge to the subsequent developments which is also an entirely new cause of action. The writ petition was rightly dismissed and the order under appeal calls for no interference.

6. We have considered the submissions on behalf of the parties. The DRT Act provides for establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith. The need for the law was felt to evolve a mechanism for expeditious resolution of such disputes considering that such loans are given by the Banks from public money. Since public money was involved, the person who takes the loan was required to act in the larger public interest by prompt re-payment of the same so that loan could then be given to other needy persons. If the Act provides a complete procedure and is a code by itself, with regard to such events, it shall be wholly inappropriate exercise of jurisdiction by a writ court to entertain an application under Article 226 of the Constitution permitting bypass of statutory remedies. Undoubtedly, the restriction under Article 226 of the Constitution to entertain a writ petition if an alternate statutory remedy exists is a self-imposed restriction. But, if an alternative statutory remedy has been provided, there has to be compelling reasons, such as the authority acting completely de hors the provisions of the law regulating its powers, violation of principles of natural justice etc., to justify entertaining of a writ petition directly under Article 226 of the Constitution, bypassing an alternative statutory remedy. Normally speaking, a writ court would be loath to interfere or entertain a writ petition encouraging bypassing of statutory alternative remedies especially when it is under a law specially codified for the purpose.

7. Elucidating the principles in 2015 (6) SCC 773 (Union of India and others Vs. Major General Shri Kant Sharma and another), it was observed at paragraph 36 as follows:-

> “36. The aforesaid decisions rendered by this Court can be summarised as follows:
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> *(ii)* The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act.

> *(iii)* When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.
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> *(iv)* The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance."

8. Section 30 of the DRT Act containing provision for statutory remedies against orders of the Recovery Officer 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.
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> (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 enquiry 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).

9. Once it is acknowledged that the Recovery Officer has statutory powers under the Act to fix the reserve price, any grievance with regard to fixation of the reserve price, on any ground, in our understanding, is clearly appealable before the DRT Tribunal created under Section 3 of the DRT Act. Nothing has been urged before us why the grounds sought to be urged in the writ petition cannot be raised or decided in appeal by the Tribunal.

10. The Learned Single Judge has rightly relied upon 2010 (8) SCC 110 (Union Bank of India Vs. Satyawati Tondon) and 2011 (2) SCC 782 (Kanaiyalal Lalchand Sachdev Vs. State of Maharashtra) with regard to the non-maintainability of the writ petition in view of the alternate statutory remedy available under the DRT Act. We may only add to the precedents in this regard from 2013 (10) SCC 652 (T.P. Vishnu Kumar Vs. Canara Bank, P.N. Road, Tiruppur), 2013 (14) SCC 622 (Punjab National Bank Vs. Imperial Gift House) and 2015 (5) SCC 574 (Sadashiv Prasad Singh Vs. Harendar Singh) that it shall be wholly inappropriate exercise of jurisdiction by us to entertain the writ petition.

11. The subsequent developments that have taken place after the dismissal of the writ petition by knocking down of the auction in favour of M/s R.R. Steels, not before us as a party, rejecting objections of the Appellants with regard to the reserve price not appealed by it under Section 30 of Act, 1993, have led to creation of third party rights for reasons attributable to the Appellants alone and which we are of the considered opinion cannot be considered subsequent developments integrally connected to be examined in the appeal especially when an alternative remedy was available to the Appellants and which was not been availed of with no satisfactory explanation for the same. There is also no separate challenge to the subsequent developments.

12. In Ram Kishun (supra) relied upon by the Appellants, an agricultural loan had been taken from the Bank prior to coming into force of the DRT Act. The Bank moved the Collector for issuance of a recovery certificate as a public demand. The case is completely distinguishable on its own facts. There is no dispute with regard to the fact that the reserve price must be in accordance with law. The question before us is limited as to what is the appropriate forum for raising that objection.

13. In Kerala Financial Corporation (supra), the matter related to the State Financial Corporation Act and absence of any rules under Section 29 of the same for sale of properties. It has no application to the facts of the present case and the issues for our consideration.

14. We therefore find no reason to interfere with the order of the Learned Single Judge.

15. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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