

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

WA.No.2607 of 2015 () IN WP(C).33724/2015

AGAINST THE JUDGMENT IN WP(C) 33724/2015 of HIGH COURT OF KERALA
DATED

APPELLANT/RESPONDENT IN WPC NO.33724/2015:

M/S. SUNDARAM BNP PARIBAS HOME FINANCE LIMITED AGED 24 YEARS
TC 32/49, 2ND FLOOR, (ABOVE SUNDARAM FINANCE)
CALICUT ROAD, MANJERI, MALAPPURAM-678 121
REPRESENTED BY ITS AUTHORISED OFFICER, MR.ASWIM RAM
S/O. K.K.ASOKAN.

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENTS/PETITIONER IN WPC NO.33724/2015:

NISHA, AGED 37 YEARS
W/O. RASHEED, CHAZHIYATTUPEEDIYAKKAL HOUSE
THEKKE VAVANNUR P.O., KOOTTANAD, PALAKKAD-672 621.

BY SRI.JACOB SEBASTIAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.No.2607 of 2015

Dated this the 9th day of December 2015

J U D G M E N T

Ashok Bhushan, J

This writ appeal has been filed against the judgment dated 06/11/2015 passed by the learned Single Judge in W.P.C.No.33724/2015 filed by the respondent. Respondent has taken financial assistance from the appellant, which is a financial institution. A loan of Rs.50,00,000/- was disbursed to the writ petitioner in 2013 which was to be repaid over a period of 20 years. Certain default was committed by the writ petitioner. Consequently, the appellant initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act). Thereafter a possession notice dated 14/07/2015 (Ext.P2) was issued. The writ petitioner filed the writ petition praying for the following reliefs:

“i) Call for the records leading to exhibit P2 and quash it, issuing a writ in the nature of certiorari;

ii) Issue a writ in the nature of mandamus or any other appropriate writ or order or direction commanding the first respondent to furnish to the petitioner a detailed statement of accounts pertaining to his housing loans;

iii) Issue a writ of mandamus, order or direction commanding the respondent to permit the petitioner to regularize the loan accounts;"

2. When the writ petition was heard, the sole prayer pressed before the learned Single Judge was to permit the petitioner to remit the balance amount outstanding to the bank in easy instalments. Considering the aforesaid plea of the petitioner, the learned Single Judge disposed of the writ petition with the following two directions:

"i) The total overdue amount, in respect of the loan as on 30.10.2015, is stated to be Rs.10,55,662/- together with accrued interest. Accordingly, if the petitioner remits the aforesaid amount of Rs.10,55,662/- together with accrued interest in ten equal and successive monthly installments, commencing from 30.11.2015, and continues to keep up the regular installment payments as per the original loan schedule, then the recovery steps

initiated against her by the respondent bank shall be kept in abeyance.

ii) It is made clear that if the petitioner commits a default in respect of any of the installments, she will lose the benefit of this judgment and the respondent bank will be free to continue the recovery proceedings against her from the stage at which they presently stand."

3. The appellant, aggrieved by the said direction, has come up in the writ appeal. Adv.Sri.C.Varghese Kuriakose, learned counsel for the appellant contended that the learned Single Judge ought not to have exercised jurisdiction under Article 226 of the Constitution of India by interfering in a proceedings under the SARFAESI Act. It is submitted that the Apex Court in **United Bank of India v. Satyawati Tondon and Others** [2010 KHC 4518] has held that the Supreme Court, in exercise of writ jurisdiction under Article 226 of the Constitution of India, should not interfere in matters under the SARFAESI Act and no such interim order be granted staying the SARFAESI Act. He placed reliance on another judgment of the Apex Court in **Devi Ispat Ltd. and another v. State**

Bank of India and Others [2014 KHC 4262] where the same proposition has been laid down. Another judgment relied upon by the learned counsel for the appellant is **Federal Bank Ltd. v. Sagar Thomas** [2003 KHC 1206]. He referred to another judgment in **Mardia Chemicals v. Union of India** [2004 KHC 584].

4. We have considered the submission of the learned counsel for the appellant and perused the records.

5. It is clear from the judgment of the learned Single Judge as noted above that the learned Single Judge has considered the sole prayer of the petitioner to permit her to remit the balance amount outstanding to the bank in easy instalments. The petitioner thus accepted the liability as disclosed by the bank in the impugned notice. The only indulgence granted by the learned Single Judge was that the amount of Rs.10,55,662/- which was outstanding along with the accrued interest was permitted to be paid in ten equal and successive monthly instalments commencing from 30/11/2015. The said payment was in addition to the regular instalments. Under the second direction, it was directed that in the event the petitioner commits default in respect of any of the

instalments, she will lose the benefit of the judgment of the learned Single Judge and the bank was free to continue the recovery proceedings against her from the stage at which it stands at the relevant date. The judgment in **Satyawati Tondon** (supra), on which strong reliance has been placed by the learned counsel for the appellant was a case where, challenging the proceedings under the SARFAESI Act, a writ petition was filed and this Court had stayed the SARFAESI proceedings. The Apex Court noted the submissions of the parties and the order passed by the High Court by which the High Court had restrained the bank from taking proceedings under the SARFAESI Act with regard to the property of the petitioner. In paragraph 24, the Apex Court laid down the following:

“24. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression ‘any person’ used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any

other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. 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 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, 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."

6. There cannot be any dispute to the proposition laid down by the Apex Court that the High Court, in exercise of jurisdiction under Article 226 of the Constitution of India should not stay the proceedings under the SARFAESI Act and ordinarily the petitioner should be asked to avail statutory remedy provided under Section 17 of the SARFAESI Act. In **Satyawati Tondon** (supra), the High Court entertained the writ petition and stayed the further proceedings under Section 13(4) of the SARFAESI Act. Present is the case where, although possession notice was sought to be quashed in the prayer made, at the time of hearing, the only prayer pressed was that the petitioner may be permitted to clear the outstanding amount due to the bank in easy instalments. The only indulgence asked for was to grant her some time to clear the outstanding amount along with interest accrued together with regular instalments. The learned Single Judge exercised his discretion in granting ten instalments to pay the entire outstanding amount along with

interest accrued with regular instalments. The learned Single Judge did not stay the proceedings and, by the 2nd direction, gave liberty to the bank to proceed further from the stage at which it stands at the relevant date, in the event of any single default committed by the petitioner. We are of the view that the interest of the bank was protected by the judgment passed by the learned Single Judge and it cannot be said to be an order by which the proceedings of the bank were either stayed or interfered with.

7. The next judgment relied upon by the learned counsel for the appellant is **Mardia Chemicals** (supra). It was a case where the Apex Court had occasion to consider the provisions of the SARFAESI Act and the Apex Court held that the conditions laid down in Section 17(2) of the SARFAESI Act for making deposit for filing an application are unreasonable and arbitrary. It is contended by the learned counsel that in view of the condition of deposit having been held to be arbitrary and unreasonable, it is open for the petitioner to file an application under Section 17 for redressal of her grievance and this was not a case where the Court should have entertained a writ petition. There is no doubt regarding the

proposition laid down by the Apex Court in **Mardia Chemicals** (supra). Petitioner, of course, had a statutory remedy under Section 17 to approach the Debt Recovery Tribunal to challenge the proceedings under the SARFAESI Act. But, as noted above, petitioner in the writ petition having accepted the entire liability and the learned Single Judge exercised his discretion in granting a breathing time to the petitioner to clear the outstanding, we do not think that the learned Single Judge has committed any error in passing the judgment, as noted above.

8. We do not find any good ground to interfere with the the judgment of the learned Single Judge.

In the result, this writ appeal is dismissed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)
(sd/-)
(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr/11/12/2015