

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 4381 OF 2008

ORDER:

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Heard learned counsel for the petitioner and learned counsel for the respondents.

The present Writ Petition came to be filed seeking to declare the action of the respondents in pressing into service the Securitization Act into force in a post-haste manner and bringing the property of the petitioner for sale contrary to the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002'), as illegal and arbitrary.

The averments in the affidavit filed in support of the Writ Petition would show that the petitioner was running oil business under the name and style of New Padma Enterprises. She is said to have availed a cash credit loan facility from the third respondent – State Bank of India on 14.11.2005 and also hypothecated the stock. Initially, the credit limit was Rs.15 lakhs, which was subsequently enhanced to Rs.25 lakhs. While things stood thus, a fire accident took place in the shop of the petitioner and the entire stock, furniture, account books etc., got burnt which was informed to the bank officials with a request to see that the insurance amount be released enabling her to continue her business. As per the directions of the respondents, the petitioner has submitted a certificate from the fire department to the bank officials. It is stated that till date, no insurance claim amount was settled and the same is being postponed on one pretext or the other. While things stood thus the second respondent issued a notice dated 04.09.2007 under Section 13 (2) of the Act of 2002. Immediately, the petitioner approached the bank authorities and brought to their notice about the fire accident and requested them to recover the amount from the insurance company as the stock was insured. Without responding to the same, the respondents are said to have issued notice under Section 13 (4) of the Act of 2002 on 15.11.2007 and thereafter they were alleged to have issued a paper notification. It is stated that the petitioner made a representation on

18.01.2008 to the respondents requesting them to clear her account through insurance amount, but the respondent did not consider her application till date. Challenging the inaction of the respondents, the present Writ Petition came to be filed.

While issuing notice before admission, this Court on 29.02.2008 granted interim stay on condition of the petitioner depositing Rs.2,50,000/- within a period of six weeks from the date of the order. A counter affidavit came to be filed by the respondents opposing the Writ Petition. It is stated that a notice under Section 13 (2) of the Act of 2002 came to be issued in the month of September, 2007 on the petitioner and her husband who is a guarantor to the loan account. As there was no response, the respondent-bank issued possession notice under Section 13 (4) of the Act of 2002 on 15.11.2007. It is said that the petitioner ought to have availed the remedy of appeal under Section 17 of the Act, instead of filing the present Writ Petition before this Court.

The Apex Court in **Commissioner of Income Tax v.Chhabil Dass Agarwal** held that “ *the High Court will not entertain a petition under Article 226 of 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 still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*”

In view of the above, learned counsel for the petitioner submits that he may be permitted to file an appeal under Section 17 of the Act of 2002, which may be directed to be disposed of at the earliest.

Having regard to the circumstances stated above, the present Writ Petition is disposed of leaving it open to the petitioner, if so advised, to prefer an appeal under Section 17 of the Act of 2002, in which event, the same shall be dealt with, in accordance with law, at the earliest. Interim stay granted by this Court on 29.02.2008 shall remain in force for a period of five weeks from today. No costs.

Consequently, the Miscellaneous Petitions, if any, pending in this Writ Petition shall also stand closed.

JUSTICE C. PRAVEEN KUMAR

24.11.2015

Note:

Issue CC in a week.

B/o.

vhb