

THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

-
WRIT PETITION No.14395 OF 2015

ORDER:- (per Hon'ble Sri Justice K.C.Bhanu)

This writ petition is filed seeking to issue a writ of mandamus declaring the demand notice, dated 12.2.2015, and consequential possession notice, dated 6.5.2015, issued by the respondent/Bank cautioning the petitioner not to deal with the property as illegal, arbitrary and against the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act").

2. Heard.

3. A statutory effective alternative remedy of filing an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal is available to the petitioner. No doubt, availability of statutory remedy is not a bar for exercising the jurisdiction under Article 226 of the Constitution of India, but the petitioner must show that its case falls under any one of the three grounds viz., 1) violation of principles of natural justice, 2) proceedings were wholly without any jurisdiction and 3) violation of fundamental rights, as enumerated in a decision of the Apex Court reported in **WHIRLPOOL CORPORATION Vs. REGISTRAR OF TRADE MARKS, MUMBAI**, wherein it was held at para No.15 as under:

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would

not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

The case of the petitioner does not fall under anyone of the aforementioned three grounds. Therefore, the Writ Petition is liable to be dismissed.

4. Accordingly, the Writ Petition is dismissed leaving open the remedy of filing an appeal under Section 17 of the SARFAESI Act before the Tribunal. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE K.C.BHANU

JUSTICE M.S.K.JAISWAL

Date: 14.5.2015

AMD/PRV

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