HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.34987 OF 2015

ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

The instant petition for Writ of Certiorari is filed to call for the records and the order, dated 05.10.2015, in S.A. No.190 of 2014 dismissing the same for default by the Debts Recovery Tribunal, Hyderabad, and to set aside the same directing the Tribunal to adjudicate the main Securitisation Appeal (S.A. No.190 of 2014) on merits by receiving written submissions on the ground that the order impugned is perverse, unreasonable, arbitrary and contrary to the principles of natural justice and due process of law offending the fundamental rights of the petitioner as contained in Articles 13, 14 and 21 besides Article 300 of the Constitution of India to enable the petitioner's right to have adjudication of the case on merits by way of legal remedy.

2. Petitioner states that she filed S.A. No.190 of 2014 questioning action of respondent Nos.1 and 2 - M/s. Punjab National Bank, Lakdi-ka-pool, Hyderabad, and its Chief Manager, Authorized Officer, respectively, in conducting the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Act 54 of 2002 (for short 'the Act') in so far as item No.3 of the e-auction sale notice, dated 07.02.2014, issued by the bank concerning the house property in her possession. It is stated that the Tribunal had permitted the bank authorities to

proceed with the auction/sale while directing not to evict the petitioner without following the due process of law.

3. While the matter stood thus, she filed W.P. No.15868 of 2014. While disposing of the said writ petition, this Court granted leave to her t raise various issues of law in the pending appeal (S.A.) or by filing another appeal before the Tribunal. Accordingly, she filed two applications i.e., I.A. No.3996 of 2014 seeking amendment of appeal and I.A. No.3997 of 2014 for appointment of Advocate-Commissioner to cause legal inspection and the Tribunal has allowed the amendment application on 24.11.2014 and the amendment was duly carried out and even the bank has filed its additional reply.

4. The petitioner states that since the regular Presiding Officer is not posted, the appeal had undergone certain adjournments and when in charge Presiding Officer from Calcutta Bench of Debts Recovery Tribunal was deputed, the bank moved an application on 06.07.2015 for advancement of the date and on 07.07.2015, the said application was posted for counter, but the Tribunal called the appeal and dismissed it for default. The petitioner moved C.R.P. No.2791 of 2015 under Article 226 of the Constitution of India since there was no sitting of the Tribunal immediately and this Court having heard the matter restored the appeal directing the Tribunal to dispose of the appeal as expeditiously as possible preferably within two (2) months from the date of order passed on 03.08.2015. When the matter came up on 20.08.2015, petitioner filed two applications in I.A. No.2785 of 2015 to receive documents and I.A. No.2786 of 2015 seeking a direction to the bank to produce

the documents pertaining to the mortgage from the records. Even respondent Nos.5 and 6 filed an application in I.A. No.2784 of 2015 seeking to implead them in the appeal. All the three applications were allowed by the Tribunal on 20.08.2015 directing to list the matter on 02.09.2015 before the Registrar for carrying out amendment and posted the case for hearing on 11.09.2015. The said order was complied with. The petitioner's grievance is that along with the applications, on 20.08.2015 she has also submitted written submissions, but they were returned when all the three applications were allowed on the ground that respondent Nos.5 and 6 ought to be brought on record and the documents ought to be produced by the bank and to file written submissions later.

Later, the appeal stood posted to 05.10.2015. On 05.10.2015, initially, the bank sought pass-over, but, however, at about 12-30 p.m., when the case was called, her counsel was not present and the Tribunal making note of the absence of her counsel, dismissed the appeal for default. The petitioner states that unfortunately her counsel, on his way to the Tribunal, had met with an accident and could reach the Tribunal at 12-40 p.m. and though, her counsel tried to represent the matter, the Tribunal refused to give audience.

5. The petitioner has made certain other submissions in the form of levelling allegations against the Tribunal, which, in our view, unnecessary to refer to in extenso. But, it is clear from the remaining averments that the petitioner filed applications on 06.10.2015 seeking restoration of the appeal in M.A.I.R. No.49 of 2015 along with the petitioner seeking stay of all further

proceedings in the auction proceedings, which are yet to be completed in I.A.I.R. No.3563 of 2015 and an out of order application seeking to call the applications on 06.10.2015 for consideration in I.A.I.R. No.3562 of 2015.

On 06.10.2015, according to the petitioner, though, her counsel made oral representation requesting to take up the applications, the Tribunal has not taken up the applications, despite her counsel also expressing his readiness to argue the appeal itself. Hence, sought the aforesaid relief.

6. Manager of the bank filed counter affidavit on its behalf and on behalf of respondent No.2 stating that the instant writ petition is not maintainable since the petitioner has an alternate and efficacious remedy and even, admittedly, availed the said remedy before the Tribunal seeking restoration of the appeal.

7. Respondent Nos.1 and 2, bank and its Chief Manager, would admit the petitioner filing interlocutory applications referred to above and the orders passed by the Tribunal, but denied the averment that the petitioner was ready with the written submissions on

20.08.2015. According to the respondents, after amendment was carried out on 02.09.2015, the matter was posted to 05.10.2015 for arguments and on that date, the petitioner and her counsel deliberately remained absent and the order, dated 05.10.2015, is elaborate and records all the events. The petitioner having filed M.A.I.R. No.49 of 2015 for restoration of the appeal cannot invoke jurisdiction of this Court since she has alternate efficacious remedy available, which is already resorted to. Concerning allegation made against the Presiding

Officer, according to the respondents, the same is of no consequence and made with *mala fide* intention to prejudice the mind of this Court. They state that the petitioner being wife of the owner - cum - mortgager of the property, she is fully aware that she has no case on merits. According to them, in the appeal, the petitioner has raised only two grounds viz., (i) she has right to stay in the property since she has invested money in developing part of the same, and

(ii) the e-auction procedure is illegal; and this court in W.P. No.15868 of 2014 filed by the petitioner, having discussed the entire case law on the subject, arrived at the conclusion that the sale of property in

e-auction was not against the provisions of the Act. The petitioner has extracted the relevant observations contained in paragraph No.14, thus:

> "14. The principle laid down in the above judgment can straight away be applied to the present facts of the case, since Rule 8 of Rules framed is silent with regard to specific mode of inviting tenders from public by e-auction. Therefore, sale of the property by e-auction cannot be said to be in contravention of the Rule 8 of Rules 2002 and also under the SARFAESI Act. Hence, the action of the respondents - Bank, in auctioning the property by way of
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> e-auction cannot be said to be arbitrary and against Rule 8 of Rules 2002 and also under the SARFAESI Act and the same cannot be set-aside."

8. Thus, respondent Nos.1 and 2 strongly contend that the petitioner is making all possible efforts to drag the matter on one pretext or the other and conduct of the petitioner demonstrates the same and since the petitioner approached this Court with unclean hands to dismiss the writ petition with

exemplary costs.

9. Heard Sri R.A. Achuthanand, learned counsel for the petitioner, and Sri G.K. Deshpande of M/s. G.K. Law Associates, learned counsel for respondent Nos.1 and 2 - bank, and perused the material on record.

10. The petitioner has mentioned in the cause title of the writ petition that respondent Nos.3 to 6 are proforma parties.

11. We are of the view that it is unnecessary to refer to the submissions of learned counsel on either side once again in view of the petition affidavit and counter affidavit averments referred to above.

12. It is an admitted fact that the petitioner has moved applications to set aside the order, dated 05.10.2015 passed in S.A. No.190 of 2014 by the Tribunal dismissing the appeal for default and to restore the appeal. The said applications are still pending disposal on the file of the Tribunal. Thus, the petitioner has already resorted to the alternate and efficacious remedy by filing M.A.I.R. No.49 of 2015 seeking restoration of the appeal. In fact, when a similar situation arose earlier, the petitioner moved this Court by filing C.R.P. No.2791 of 2015. The relief sought therein was to set aside the order dismissing the appeal i.e., S.A. No.190 of 2014, dated 07.07.2015, for default passed by the Tribunal. This Court referred to the order passed in W.P. No.15868 of 2014, dated 23.06.2014, also. While acceding to the request of the petitioner, this Court directed the Tribunal to dispose of S.A. No.190 of 2014 itself as expeditiously as possible preferably within a period of two (2) months from the

date of that order observing thus:

> "8. When the matter was listed for hearing on 2.7.2015, it was adjourned to 8.10.2015. After advancement of the appeal, only on one occasion, the petitioner was absent on 7.7.2015, on which date, the appeal was dismissed for default. Therefore, we deem it appropriate to dispose of the civil revision petition by setting aside the impugned order dated 7.7.2015 with a direction to the Debts Recovery Tribunal, Hyderabad, to dispose of S.A. No.190 of 2014 itself, as expeditiously as possible, preferably within a period of two months from today. The respondent shall file a Memo before the Tribunal requesting for disposal of the matter expeditiously, duly enclosing a copy of the order dated 23.06.2014 in W.P. No.15868 of 2014."

13. The sequence of events that transpired subsequent to restoration of the appeal has been mentioned in the above while narrating the averments of the petition affidavit and counter affidavit. It is not in dispute that the Tribunal did take up the matter on 05.10.2015 to hear the appeal. It is an admitted fact that when the matter was called at 12-30 p.m., there was no representation on behalf of the petitioner. The Tribunal has recorded the events and dismissed the appeal for default. The said order *ex facie* reflects the indolent attitude of the petitioner in prosecuting the appeal. We would like to extract the order, which is thus:

> "The Applicant is enjoying an order of statusquo since 12.03.2014. On the application moved by the Applicant in W.P.15868/14 by order dt.23.06.2014, the Hon'ble High Court directed this Tribunal to expedite the hearing within 3 months. An application was filed by the Ld. Advocate for the Bank being I.A.2406/15 on 06.06.2015, copy of which was received by the Ld. Advocate for the Applicant. But none appeared on 06.06.2015. The matter was placed on 07.07.2015 for hearing and accordingly, a

> notice was served on 06.06.2015 evening. Ld. Advocate for the Respondent filed the letter intimating the date of hearing which is received by the Ld. Advocate on record for the Applicant. The Applicant despite notice, did not appear on 07.07.2015. Hence, the SA was dismissed for default on 07.07.2015 as there was no representation for the Applicant.
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> The Applicant again filed C.R.P. No.2791/15 Before the Hon'ble High Court challenging the dismissal orders dt.07.07.2015 passed by this Tribunal and the Hon'ble High Court was pleased to pass an order setting aside the order of this Tribunal dt.07.07.2015 and directed the Tribunal to dispose of the matter as expeditiously as possible preferably within a period of 2 months from the date of receipt of copy of the order.
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> The matter again came on 20.08.2015. The Applicant filed two applications. The Applications are allowed and the amendment was directed to be carried out before Registrar.
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> Matter was listed for further hearing on 11.09.2015.
> On 11.09.2015, the parties sought for adjournment.
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> The matter is listed today. Ld. Advocate for the Respondents No.5 & 6, newly added parties appeared and filed counters.
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> Ld. Advocate for the Respondent Bank is present. However, none appeared for the Applicant.
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> I feel this is a delaying tactic played by the Applicant who is enjoying statusquo since 12.03.2014. Since the Applicant is not present, the SA is dismissed for default."

14. Though, it is pleaded that learned counsel for the petitioner met with a minor accident while approaching the Tribunal and the learned counsel even attempted to represent the matter at 12-40 p.m., the same was turned down by the Tribunal, we would like to observe that once the aforesaid order

was passed, when there was no representation on behalf of the petitioner, certainly, it was not open for the petitioner to re-agitate it.

15. Since the petitioner has already resorted to the remedy available under the provisions of the Act, it was not open for the petitioner to avail the instant writ petition seeking the relief of certiorari. She cannot prosecute parallel proceedings one before the Tribunal and the other before this Court for one and the same relief. It is needless to mention that in the present context in **United Bank of India v. Satyawati Tandon and others**[1]**,** the Hon'ble Supreme Court emphasized that if the petitioner has any alternate or effective remedy for resolution of the dispute, the writ jurisdiction under Article 226 of the Constitution of India is not maintainable. The same was
re-emphasized by the Hon'ble Supreme Court in the case of **Kanaiyalal Lalchand Sachdev and others v. State of Maharashtra and others**[2]**.**

16. In the present case, the petitioner has already resorted to the legal remedy available by filing an interlocutory application seeking to set aside the order of dismissal of the Securitisation Appeal for default under the relevant provisions of the Act before the Tribunal. Hence, the writ petition is not maintainable. However, we are of the view that the Tribunal would dispose of the restoration petition in M.A.I.R. No.49 of 2015 uninfluenced by the observations, if any, made by this Court.

17. Accordingly, the Writ Petition is dismissed as not maintainable. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

December 21, 2015.
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[1] (2010) 8 SCC 110
[2] (2011) 2 SCC 782