

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****PUBLIC INTEREST LITIGATION NO.251 OF 2014**

Shri Mahadev Pandurang Kadam & Ors.] ... Petitioners

Versus

Maharashtra State Co-Operative Bank]
Ltd. and Ors.] ... Respondents

Mr. Surel S. Shah for Petitioners.

Mr. G. S. Godbole a/w Mr. Bhushan Walimbe for Respondent No.1.

Mr. A. A. Kumbhakoni, Senior Advocate, a/w Mr. Ashutosh M. Kulkarni for Respondent No.2.

Ms. Sushma Bhende, AGP for Respondent No.3 and 5.

Mr. Y. S. Jahagirdar, Senior Advocate, a/w Mr. S. S. Patwardhan for Respondent No.4.

CORAM :- S. C. DHARMADHIKARI, AND
B. P. COLABAWALLA, JJ.

DATE :- OCTOBER 19, 2016

P. C. :-

1. The petitioners have filed this PIL highlighting the alleged illegalities and fraud committed by the respondent no.1 in collusion with the respondent no.2 and the purchaser respondent no.4. This fraud would deprive the public of their legitimate dues.

2. It is the case of the petitioners that the respondent no.2 - sugar factory obtained some credit facilities from the respondent no.1

- bank as also one Sangli District Central Co-Operative Bank Ltd. That was for operating the sugar factory. As and by way of security for the facilities, the respondent No.2 mortgaged immovable properties in favour of these entities. The sugar factory was facing a financial crisis. The Sangli District Central Co-operative Bank Ltd. has taken various measures including instituting proceedings in Co-operative Court which are pending. According to the PIL petitioners, however, the respondent no.1 took recourse to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). A notice under Section 13 (2) of the said Act was issued in the year 2012. Measures under Section 13 (4) of the said Act were also taken, pursuant to which a sale of the assets took place. It is stated that the respondent no.4 to this Writ Petition acquired these assets at the said auction.

3. However, it is alleged that the properties which were auctioned have been sold at a meagre price and their market price is much more. These properties have been sold purportedly at an auction and held under the provisions of the SARFAESI Act and the rules, but the allegation is that the Sale Deed has not been executed. The respondent no.4 has not paid the entire price. The actual physical possession is still with the management and members of the respondent no.2.

4. We have perused this PIL. We have perused the affidavit tendered by Mr. Surel Shah. We have also perused the annexures

thereto. The PIL projects the grievances of those claiming to be members of the cooperative society, namely, respondent no.2. If these members are aggrieved and dissatisfied with an auction sale of the properties which were mortgaged to the banks and by taking recourse to the SARFAESI Act, then we have no doubt in our mind that their remedies are within the SARFAESI Act itself.

5. Section 17 of the SARFAESI Act provides that any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken, provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower. That remedy was once styled as 'Right to Appeal' but now 'an application made to recover secured assets'.

6. It is not in serious dispute before us that if the petitioners approach such a Tribunal and request it to intervene, also by further praying that members of the sugar factory are awaiting payment of their dues and which is legitimate, it would not be possible for them to arrange for payment of Court-fees and that burden be not imposed on them. It would be open for the petitioner to point out to the Tribunal that the right to appeal / an application against measure is a

remedy available to them for they are persons aggrieved. We have no doubt in our mind that if such an application is filed despite any objections raised to its maintainability, it will be the Tribunal's duty to decide it and pass a reasoned order. Such an order of the Tribunal styled as DRT can be challenged further by taking recourse to Section 18 of the Act. Section 18 of the SARFAESI Act provides for an appeal to the Appellate Tribunal. The DRT Appellate Tribunal is presided over by a retired Judge of a High Court. Therefore, the Chairperson can also be requested to intervene in the event of any adverse order or direction.

7. In the teeth of these remedies and the matter being covered by SARFAESI Act, we do not think that a PIL can be entertained. In a PIL, this Court exercises powers under Section 226 of the Constitution of India. Those powers can be exercised provided there are no disputed questions of fact, whether a sale or public auction has been conducted in accordance with the Act and Rules and whether any reserve price was determined by obtaining proper valuation, whether all bids forwarded and received were genuine and *bona fide* and whether the price obtained is competitive or there is dispute about it. In this case, the allegations of the petitioners are denied by the authorized officer. In such circumstances, we do not think that the PIL can be entertained. We are also aware of the judicial discipline inasmuch as in several decisions including in the case of *United Bank of India Vs. Satyawati Tandon and Ors.*¹, the

1 2010 (8) SCC 110

Hon'ble Supreme Court has held that a writ petition under Article 226 of the Constitution of India should not be entertained to bypass the SARFAESI Act, the Tribunal and the Appellate Tribunal. In such circumstances, we decline to entertain this PIL. It is dismissed by leaving open all remedies available to the petitioners in law.

8. We clarify that we express no opinion on the rival contentions, particularly on maintainability of the proceedings under the SARFAESI Act.

(B. P. COLABAWALLA, J.)

(S. C. DHARMADHIKARI, J.)