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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8516/2015 & CMs No.223/2016 & 21758/2016 (both u/S 151 CPC)

AMISH JAIN & ANR ..... Petitioners

Through: Mr. Amish Jain, petitioner no.1 in person.

Versus

ICICI BANK LTD. ..... Respondent

Through: Mr. Punit K. Bhalla & Ms. Chetna Bhalla, Advs.

AND

\+ W.P.(C) 9317/2015, CM No.23662/2015 (for filing additional documents & CM No.224/2016 (u/S 151 CPC)

AMISH JAIN AND ANR ..... Petitioners

Through: Mr. Amish Jain, petitioner no.1 in person.

Versus

ICICI BANK LTD. ..... Respondent

Through: Mr. Punit K. Bhalla & Ms. Chetna Bhalla, Advs.

AND

\+ W.P.(C) 9383/2015, CM No.23663/2015 (for filing additional documents & CM No.222/2016 (u/S 151 CPC)

AMISH JAIN & ORS ..... Petitioners

Through: Mr. Amish Jain, petitioner no.1 in person.

Versus

ICICI BANK LTD. ..... Respondent

Through: Mr. Punit K. Bhalla & Ms. Chetna Bhalla, Advs.

AND

\+ W.P.(C) 858/2016

AMISH JAIN & ANR ..... Petitioner

Through: Mr. Amish Jain, petitioner no.1 in person.

Versus

ICICI BANK LTD. ..... Respondent
Through: Mr. Punit K. Bhalla & Ms. Chetna Bhalla, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 04.02.2016

CM No.3772/2016 in W.P.(C) 858/2016 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

W.P.(C) Nos.8516/2015, 9317/2015, 9383/2015 & 858/2016

3. W.P.(C) Nos.8516/2015, 9317/2015 & 9383/2015 have in the past been adjourned on four occasions on the request of the petitioner no.1 who appears in person that he needs to prepare the matter and / or file further documents. W.P.(C) No.858/2016 has come before this Court for the first time today.

4. The petitioner no.1 appearing in person today also states that the petitions be adjourned to enable him to file documents.

5. The petitioners ought not to have filed these petitions, if were not ready and / or prepared to argue the matters. Such repeated listing of petitions cannot be permitted.

6. The petitioner no.1 then states that he is ready to argue the matters today itself and has been heard.

7. It is the case of the petitioners that they had availed of a 'home loan' and a 'loan against property' from the Meerut branch of the respondent Bank and had mortgaged their property at Meerut to secure the same. The petitioner no.1 states that the respondent Bank in the year 2011 instituted proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 with respect to the loan subject matter of W.P.(C) No.9383/2015 in the year 2012 and with respect to the loan subject matter of W.P.(C) No.858/2016 no proceeding has been initiated as yet. On enquiry, it is informed that one property was mortgaged for loan subject matter of W.P.(C) Nos.8516/2015 and 858/2016 and the other property was mortgaged for loan in W.P.(C) Nos.9317/2015 & 9383/2015. It is further stated that though in the year 2014 application under Section 14 of the SARFAESI Act was filed with respect to loan subject matter of W.P.(C) No. 8516/2015 but the said proceeding was withdrawn and the proceeding with respect to loan subject matter of W.P.(C) No.9383/2015 was closed by the Additional District Magistrate (ADM),

Meerut for non filing by the respondent Bank of the requisite documents. It is further informed that proceedings under Section 14 of the SARFAESI Act were initiated in the year 2013 with respect to loan subject matter of W.P.(C) No.9317/2015 but were also closed by the ADM, Meerut because of non filing of documents by the respondent Bank.

8. The challenge in these petitions is to the action by the respondent Bank under Sections 13(2), 13(4) and 14 of the SARFAESI Act.

9. The petitions are listed subject to the office objections as to the maintainability and territorial jurisdiction.

10. The petitioner no.1 states that this Court would have territorial jurisdiction since the notices under Section 13(2), 13(4) and the petition under Section 14 were issued from and filed by the Delhi branch of the respondent Bank.

11. The counsel for the respondent Bank appearing on advance notice states that all notices under the SARFAESI Act with respect to entire northern region are issued from the Delhi branch of the respondent Bank.

12. The petitioners had earlier filed W.P.(C) No.3957/2012, with respect to the loan subject matter of W.P.(C) No.9317/2015, impugning the order of the Debt Recovery Tribunal (DRT), Delhi holding that it had no jurisdiction

to entertain the appeal then preferred by the petitioners under Section 17 of the SARFAESI Act for the reason of the petitioners being residents of outside Delhi and for the reason of the loan having been sanctioned by the branch of the respondent Bank at Meerut and being repayable at Meerut and the mortgaged property also being at Meerut; the DRT further held that merely because the notice under Section 13(2) of the SARFAESI Act had been issued by the Jhandewalan Branch of the respondent Bank would not vest the DRT, Delhi a jurisdiction to entertain the appeal in Delhi and that the Bank under Section 14 of the SARFAESI Act would also have to approach the concerned District Magistrate at Meerut and not the CMM at Delhi.

13. The question of territorial jurisdiction raised in the aforesaid petition filed by the petitioners was referred to a Full Bench of this Court and which has vide judgment dated 13th September, 2012 upheld the order of the DRT.

14. The petitioner no.1 on enquiry states that though the petitioners had preferred SLP(C) No.33516/2012 against the aforesaid judgment of this Court and leave was granted therein converting it into a Civil Appeal No.9195/2012 but the petitioners on 20th July, 2015 withdrew the same.

15. The petitioner no.1 states that though in the aforesaid view, the petitioners cannot approach the DRT, Delhi and will have to approach DRT, Lucknow for redressal of their grievance but are entitled to maintain the present petitions against the actions of the respondent bank originating from the jurisdiction of this Court at Delhi. It is further argued that owing to the availability of the alternative remedy under the SARFAESI Act, the remedy under Article 226 cannot be deprived.

16. The petitioner no.1 also states that though the petitioners, with the grievance as urged in W.P.(C) Nos.8516/2015, 9317/2015 & 9383/2015, had approached the Supreme Court by way of writ petitions under Article 32 of the Constitution of India being writ petitions no.1056/2015, 3205/2015 and 535/2015 but the said petitions were withdrawn with liberty to take appropriate action and it is thereafter that writ petitions 8516/2015, 9317/2015 & 9383/2015 have been filed.

17. The counsel for the respondent Bank has in response drawn attention to the judgment dated 9th December, 2014 of the Division Bench of this Court in LPA No.784/2014 titled ***M/s Sigma Generators Pvt. Ltd. Vs. Oriental Bank of Commerce*** holding a writ remedy to be not appropriate

owing to the SARFAESI Act being a self-contained code and the remedies provided therein being alternative efficacious remedy. Attention in this regard is also invited to the judgment dated 22nd November, 2013 in W.P.(C) No.2132/2012 titled ***Bijender Kumar Gupta Vs. Corporation Bank of India***. Attention is also drawn to the judgment dated 9th April, 2014 in Civil Appeal No.4453/2014 titled ***Jacky Vs. Tiny @ Antony***, though not in relation to SARFAESI Act on the general proposition of non maintainability of a writ petition if alternative remedy is provided.

18. Per contra, the petitioner no.1 has relied on ***Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.*** (2003) 2 SCC 107 and ***United Bank of India Vs. Satyawati Tondon*** (2010) 9 SCR 1.

19. I may record that the Supreme Court, in relation to Income Tax Act, 1961, in ***CIT Vs. Chhabil Dass Aggarwal*** (2014) 1 SCC 603 has held a writ petition, on the grounds of non compliance of principles of natural justice and lack of jurisdiction also to be not maintainable when alternative remedy is provided in the special statute and when the said grounds can also be taken therein. Following the said judgment the Division Bench of this Court

in ***Yashwant Singh Vs. Indian Bank*** 220 (2015) DLT 667 has observed that Article 226 of the Constitution of India has virtually been done away with wherever the remedy against the order of a Tribunal or an authority constituted under a special statute is provided for.

20. As far as the reliance by the petitioner no.1 on ***Satyawati Tondon*** supra is concerned, the same was considered by the Division bench in ***M/s Sigma Generators Pvt. Ltd.*** supra and thereafter held the writ petition to be not maintainable in the context of the SARFAESI Act. It was observed that SARFAESI Act being a special Act brought in the larger public interest and finding the banks to be unable to expeditiously realise their dues by encashment of the securities, interference in a writ jurisdictions would be counterproductive.

21. I therefore hold the writ petitions to be not maintainable on the said ground alone.

22. Even otherwise, once the loan is found to have been disbursed from the branch of the respondent Bank at Meerut and was / is re-payable at Meerut and the security is also situated at Meerut and the question that it is

the DRT or the Magistrate at Meerut only would have jurisdiction has been authoritatively settled by the Full Bench of this Court, if this Court starts entertaining these writ petitions, it will lead to a conflict, with the authorities in the State of Uttar Pradesh who are not under the supervisory control of this Court, passing orders inconsistent to the orders which may be passed in these petitions if were to be entertained.

23. For all these reasons, I do not find any merit in these petitions which are dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 04, 2016

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