

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 434 of 2017

(Arising out of order dated 24.08.2017 in WPC No. 1809 of 2017 of the learned Single Judge)

- Smt. Sarita Bajpai W/o Late Sanjay Bajpai Aged About 51 Years R/o Flat No. 402 , Exotica Grand , Shankar Nagar Raipur , Civil & Revenue District Raipur Chhattisgarh.

---- Appellant

Versus

- PNB Housing Finance Limited, a Nationalized Company duly incorporated under the relevant provisions of the Companies Act, 1956 And also National Housing Act , 1987 Having Its Corporate Office At 9 Th Floor, Antarikshbhawan, 22 K . G. Marg New Delhi - 110001 And Inter - Alia Amongst Other Offices A Branch Office At Offices No. 111 & 112 , 1 St Floor Plot No. 1 Block No. 9 , D B Corporate Park , Dainikbhaskar Bhawan , Rajbandhamaidaan, Raipur Chhattisgarh Through Its Authorized Officer. Email W W W . pnbhousing . Com

---- Respondent

 For appellant : Shri BP Sharma, Advocate
 For Respondent : None appears

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

13.11.2017

1. Heard learned counsel for the appellant/writ petitioner.
2. The proceedings initiated by the respondent as a secured creditor in terms of the provisions of SARFAESI Act (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) were challenged before the learned Single Judge. The learned Single Judge held that having regard to the ratio of the decisions of the Hon'ble Apex Court in **Mardia Chemicals Limited Vs Union of India**¹, **United Bank of India Vs Satyawati Tondon and others**² and **Devi Ispat**

¹ (2004) 4 SCC 311

² (2010) 8 SCC 110

Limited and another Vs State Bank of India and others³, the writ petition is not to be entertained in view of the availability of adequate and efficacious alternate remedies. We do not find any legal infirmity or jurisdictional error in the decision of learned Single Judge having done that.

3. Learned counsel for the appellant, however, making reference to the decisions in **TR Murugan Vs Housing and Urban Development Corporation Limited** (WP-17530 of 2012 of Madras High Court) and **Sheeba Philominal Merlin and another Vs The Repatriates Co-op Finance & Development Bank Limited (Govt of India Enterprise) and others** (WP- 15272 of 2009 reported in 2010 (4) LW 497), argued that the action has been taken against a dead person and it is not binding. Relying on the said decisions, it is argued on behalf of the appellant that action taken against a dead person would amount to deprivation of fundamental rights. That is an issue which can also be raised by a proper claimant in statutory proceedings. We are of the view that the Debt Recovery Tribunal and other parties vested that jurisdiction under the SARFAESI Act have the power to render verdict on issues referable to due procedure. Merely because a situation may tantamount to possible violation of fundamental and other constitutional rights as well, the refusal of relief on the ground of alternate remedy as done by the learned Single Judge cannot be found fault with.

4. For the aforesaid reasons, leaving open the right of the appellant to seek remedy from appropriate jurisdiction, we affirm the decision of the learned Single Judge on the ground that the appellant has adequate

³ (2014) 5 SCC 762

alternate statutory remedies. Preserving all such remedies, this Writ Appeal is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge

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