IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4171 OF 2017

Jaspal A. Wig & Anr. ...Petitioners

Versus

Bank of Baroda & Ors. ...Respondents

.....

Mr. Amir Arsiwala for the Petitioners.
Mr. Amod B. Shinde for the Respondent No.1.
Mr. Nikhil A. Mergde for the Respondent No.2.
Mr. Sujit Pathak for the Respondent No.6.
Mr. S.R. Shinde, APP for the Respondent No.7-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th OCTOBER, 2017.

P.C.:-

The Petitioners herein had challenged the order dated 18th September, 2017 passed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act').

2. In the course of hearing the learned counsel for the Respondent No.1 submitted that the impugned order can be challenged before the Debt Recovery Tribunal under Section 17(1) of the SARFAESI Act. In support of his contention he has relied upon paragraphs 42 and 43 of the judgment of the Apex Court in ***United***

Bank of India Vs. Satyawati Tondon and Ors. (2010) 8 SCC 110, which reads as under :-

> *"42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression `any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.*
>
> *"43.Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in*

mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

3. In the light of the said statement, the learned counsel for the Petitioners, under instructions, seeks leave to withdraw the Petition with liberty to challenge the action under Section 13(4) and 14 of the SARFAESI Act by filing an application under Section 17(1) of the SARFAESI Act. Leave with liberty as prayed for is granted.

4. The Petition is dismissed as withdrawn.

5. The learned counsel for the Petitioners, under instructions submits that no coercive steps will be taken for a period of three weeks from the date of this order. The statement is accepted.

(ANUJA PRABHUDESSAI, J.)