IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE BHAVANI SUBBAROYAN

Writ Petition No.6852 of 2017
W.M.P.Nos.7428 and 7429 of 2017

M/s.Srikals Graphics Pvt. Ltd.,
Represented by its Managing Director,
Mr.S.Kalyanasundram ... Petitioner

Vs.

1. The Authorised Officer,
M/s.Indian Overseas Bank,
Saidapet Branch,
No.84, Karuneeswarar Koil Street,
Saidapet, Chennai 600 015.

2. The General Manager (Recovery),
M/s.Indian Overseas Bank,
Head Office, 763, Anna Salai,
Chennai 600 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to their impugned possession notice, dated 08.03.2017, published in the New Indian Express, dated 14.03.2017, in and by which, the 1st respondent claims to have taken symbolic possession of the immovable properties, morefully and particularly described in the Schedule in the petition herein, quash the same and consequently, forbear the respondents from interfering with the petitioner's possession of the immovable properties, morefully described in the schedule to the petition.

For Petitioner : Mr.K.Alakendran

For Respondent : Mr.Ashok Rajaraman

ORDER

[Order of the Court was made by S.MANIKUMAR, J]

Contending inter alia that more than 80% of the loan amount, has been paid and that the petitioner-borrower would fall under the exempted category of Section 3(j) of the SARFAESI Act, 2002, instant writ petition has been filed for a

Writ of Certiorarified Mandamus, to quash the proceedings of the 1st respondent, pertaining to impugned possession notice, dated 08.03.2017, published in the New Indian Express, dated 14.03.2017, in and by which, the 1st respondent has claimed to have taken symbolic possession of the immovable properties, morefully and particularly described in the Schedule in the petition herein and consequently, to forbear the respondents from interfering with the petitioner's possession of the immovable properties.

2. Record of proceedings shows that on 21.03.2017, a Hon'ble Division Bench of this Court, while ordering notice to the respondents in the writ petition, granted limited interim stay, in respect of house property. Interim stay granted has been extended periodically.

3. On this day, when the matter came up for hearing, though by inviting the attention of this Court to the notice, under Section 13(2) of the SARFAESI Act, 2002, issued by the Bank, Mr.K.Alakendran, learned counsel appearing for the petitioner submitted that as against the demand of Rs.10,86,56,222/-, a sum of Rs.11,59,85,934/-, has already been paid and that the abovesaid ground is reiterated, inasmuch as the same is a question of fact and when there is an effective and alternative remedy, available under Section 17(1) of the SARFAESI Act, 2002, we are not inclined to delve into the factual aspect.

4. Time and again, the Hon'ble Supreme Court has consistently held that when there is an effective and alternative remedy, provided under the statute, writ should not be entertained. Reference can be made to the few decisions,

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

> "This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13 (4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under:—
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> > "The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant

bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added)

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193, at Paragraphs 16 to 18 and 27 to 29, held as follows:

"16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.

17. 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. 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.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for re-dressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the

financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

(iii) The above judgment has been followed in Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560.

5. In the light of the above discussion and decisions, we are not inclined to entertain this writ petition. Interim order already granted is vacated and hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions arealso closed.

6. It is represented that a sum of Rs.14 Crores has been paid, as against the demand of Rs.10,86,56,222/-. Liberty is given to the petitioner to approach the Tribunal under Section 17(1) of the SARFAESI Act, 2002, by making all

tenable grounds. Registry is directed to return the original possession notice, dated 08.03.2017, after getting attested copy from the learned counsel for the petitioner. While entertaining the Regular Appeal, the Tribunal may consider the time spent in prosecuting the writ petition, from 20.03.2017 till date.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Authorised Officer,
   M/s.Indian Overseas Bank,
   Saidapet Branch,
   No.84, Karuneeswarar Koil Street,
   Saidapet, Chennai 600 015.

2. The General Manager (Recovery),
   M/s.Indian Overseas Bank,
   Head Office, 763, Anna Salai,
   Chennai 600 002.

+1cc to Mr.F.B.Benjamin George, Advocate, S.R.No.50253
+1cc to Mr.C.Alagendiran, Advocate, S.R.No.50229

W.P.No.6852 of 2017

AK(CO)
CA(24/07/2017)