IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM:

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

W.P.No.17077 of 2017
and
WMP No.18555 of 2017

M/s.Swarnarekha Agencies Pvt. Ltd.,
Rep. by its Authorised Signatory/Director,
Mr.V.Vasanth. ... Petitioner

vs.

1. City Union Bank Ltd.,
Rep. by its Branch Manager,
Rangarajapuram Branch No.99/1.
Viswanathapuram Main Road, Rangarajapuram,
Chennai - 600 024.

2. The Authorised Officer,
City Union Bank Ltd.,
No.24-V, Gandhi Nagar,
Kumbakonam - 612 001. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for records in relation to proceedings No.C.O/REC/251/2016-2017 dated 02.08.2016 initiated by the respondent bank under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the petitioner in relation to the Loan account number OSL 50181208004503 & OLCC251120000175794 and quash the consequential proceedings, further direct the respondent Bank to consider the one time settlement proposed by the petitioner.

For Petitioner : Mr.V.Raghavachari
for Mrs.Rohini Ravikumar

ORDER

(Order of the Court was delivered by S.MANIKUMAR, J)

Though Mr.V.Raghavachari, learned counsel for the writ petitioner assailed the correctness of a demand notice dated 02.08.2016 issued under Section 13 (2) of the SARFAESI Act, 2002 on various grounds, we have gone through the entire material on record, where similar grounds have been raised in W.P.No.4155 of 2017. While rejecting the prayer to quash the possession notice dated 04.02.2017, issued under Section 13(4) of the Act, at paragraph No.9 of the order made in W.P.No.4155 of 2017 dated 21.02.2017, this Court has observed as hereunder.

"9 In Satyawati Tondon's case [Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193], the Hon'ble Apex Court also held at Paragraphs 16 to 18 and 27 to 29, 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.
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> 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.
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> 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.
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> 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.
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> 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."

2. Subsequent to the dismissal of the abovesaid writ petition, the borrower has filed S.A.No.114 of 2017 on the file of the Debts Recovery Tribunal-III, Chennai, challenging the possession notice dated 04.02.2017 on various grounds.

3. In the instant writ petition, once again borrower has challenged the notice dated 02.08.2016 issued under Section 13 (2) of the SARFAESI Act, 2002 with the consequential prayer to direct the respondent bank to consider the one time settlement proposed. As stated supra, a similar prayer to quash Section 13(4) notice has already been rejected. Prayer sought for in this writ petition cannot be granted.

4. Learned counsel for the petitioner assailed the correctness of the notice issued under Section 13(2) of the Act, by drawing the attention of this Court to the record of proceeding of the Debts Recovery Tribunal-III, Chennai in S.R No.2451 of 2017 in S.A.No.114 of 2017 submitted that when

orders are reserved on 28.04.2017 in S.A.No.114 of 2017, it would not be appropriate on the part of the City Union Bank Ltd., Kumbakonam, the 2nd respondent to bring the property for auction on 10.04.2017. He further contended that if property has to be brought for auction, SA No.114 of 2017, would become infructuous. He therefore requested this Court to direct the Debts Recovery Tribunal-III, Chennai, to pass orders in S.A.No.114 of 2017.

5. Placing on record the above submission, we deem it fit to extract the record of proceedings in S.R No.2451 of 2017 in S.A.No.114 of 2017.

> "SA No.114/2017 04.04.2017
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> Ld. counsel for the appellant is present. This SA is filed challenging the Possession Notice dated 04.02.2017 issued by the respondent for recovery of a sum of Rs.2,94,91,505/- alongwith S.I.A.Nos.572/2017 and 573/2017 for urgent hearing and for stay respectively.
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> The respondent bank is on caveat and copy of SA paper book already served to the Ld. counsel for the caveator by the appellant's counsel. Ld. counsel for the respondent bank is present, who prays time for filing counter and typed set of documents.
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> S.I.A.No.572/2017 is allowed and hence S.I.A. No.573/2017 is taken up for hearing. Call on 07.04.2017 filing counter and typed set of documents by the respondent bank.
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> SA No.114/2017 07.04.2017
>
> Both sides are present. Counter and typed set of documents along with additional typed set of documents file don behalf of the respondent bank. Copies served on the other side. Heard Ld. counsels appearing for the respective parties. Call on 18.04.2017 for reporting payments by the appellant.
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> SA No.114/2017 18.04.2017
>
> Both sides are present. Heard Ld. counsels appearing for both sides in part. At request of appellant's counsel, call on 28.04.2017 for further arguments and disposal of SA.
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> Heard both the Ld. Counsels. Orders Reserved."

6. Contentions raised in the instant writ petition, are subject matter of S.A.No.114 of 2017 and when orders are reserved in S.A.No.114 of 2017, it would not be appropriate to make any observation. Section 13(4) of Act enables taking possession, bringing the property for sale, lease, etc. As rightly contended there is some urgency in the matter when the 2nd respondent bank, proposes to bring the property for

auction, that too when orders are reserved in S.A.No.114 of 2017, questioning the possession notice.

7. Having regard to the above, we direct the Debts Recovery Tribunal-III, Chennai, to pass orders in S.A.No.114 of 2017, as expeditiously as possible. Petitioner, is also permitted to file a memo to the Tribunal, alongwith the copy of this order.

8. The writ petition is disposed of in the above terms at the stage of admission itself. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To:
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2. The Authorised Officer,
City Union Bank Ltd.,
No.24-V, Gandhi Nagar,
Kumbakonam - 612 001.

3.The Debts Recovery Tribunal-III,
Chennai

W.P.No.17077 of 2017
and WMP No.18555 of 2017

br(co)
ss(19/7/2017)