

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.32002 of 2013
M.P.No.1 of 2013

Pradeen Ranganathan

.. Petitioner

versus

1. The Recovery Officer,
Debts Recovery Tribunal-2,
Dewa Towers - 4th Floor,
770-A, Anna Salai,
Chennai 600 002.

2. The Senior Manager,
Syndicate Bank,
Chennai Main Branch,
No.69, Armenian Street,
Chennai 600 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records pertaining to the attachment order passed by the 1st respondent in respect of the residential flat of the petitioner, bearing Flat No.1A, Cenotaph Court, Old No.13, New No.28, Cenotaph Road, Teynampet, Chennai 600 018, in DRC.No.63 of 2012, dated 15.10.2013 and quash the same.

For Petitioners : Mr.A.Sirajudeen,
Senior Counsel
for Mr.C.K.M.Appaji

For 2nd Respondent : Mr.V.Suthakar

ORDER

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

Material on record discloses that M/s.Metco Polymers (P) Ltd., represented by its Directors, Mr.Pradeep Ranganathan, writ petitioner herein and Mr.Rahul Ranganathan, have availed financial assistance from M/s.Syndicate Bank, Chennai Main Branch, Chennai. There was a default and therefore, M/s.Syndicate Bank, Chennai, has filed O.A.No.169 of 2009, on the file of the Debts Recovery Tribunal-II, Chennai, for recovery of Rs.37,07,970.54, with interest, at the rate of 16% per annum, with monthly rests, from the defendants 1 to 4 therein, jointly and severally, from the date of filing of O.A., ie., on 26.10.2009, till the date of realisation, with costs, and sale of hypothecated movable properties, described in the Schedule to the O.A.

2. Writ Petitioner is one of the Directors and 2nd defendant in the

abovesaid Original Application. On contest, the learned Debts Recovery Tribunal-II, Chennai, vide order, dated 14.03.2012, has granted the following reliefs,

"(a) The applicant Bank is entitled to recovery certificate to recover a sum of Rs.37,07,970.54p (Rupees Thirty Seven Lakhs Seven Thousand Nine Hundred Seventy and Paise Fifty Four Only), with interest at the rate of 14.50% p.a., with monthly rests, from the defendants 1 to 4 therein, jointly and severally, from the date of filing of O.A., ie., on 26.10.2009, till the date of realisation, with costs, and sale of the hypothecated movable properties described in Schedule to the O.A.

(b) OA is dismissed, as against the D5, M/s.ICICI Bank.

(c) The Applicant Bank is directed to produce costs memo within two weeks from the date of receipt of copy of the order.

(d) Issue Recovery Certificate in favour of the Applicant Bank in terms of the final order."

3. Pursuant to the order made in O.A.No.169 of 2009, dated 14.03.2012, Recovery Certificate in DRC.No.63 of 2012, has been issued.

Details of the Recovery Certificate, are as follows:

"2. It is hereby ordered and certified under the provisions of sub section (22) of section 19 of the Act for recovery of a sum of Rs.37,07,970.54p with interest at the rate of 14.50% p.a., with

monthly rests from the defendants 1 to 4 jointly and severally from the date of filing of O.A., (ie., 26.10.2009), till the date of realisation, with costs, and sale of the hypothecated movable properties described in Schedule to the O.A (Annexure-II). OA is dismissed as against the D5, M/s.ICICI Bank.

3. It is further ordered that the defendants 1 to 4 jointly and severally do pay the sum of Rs.53,65,068.59p comprising of Rs.37,07,970.54p as principal and Rs.15,22,098.05p as interest and Rs.1,35,000/- as costs, as per the schedule of costs annexed hereunder (Annexure-I) and further interest until realization.

Sd/-
[E.JACOB R. DANIEL]
PRESIDING OFFICER

ANNEXURE-I
DRC.No.63/2012 in
O.A.No.169/2009

DEBTS RECOVERY TRIBUNAL-2 AT CHENNAI

SCHEDULE OF COST

S.No.	Item of costs	Amount (Rs.)
1	Amount determined against the defendants 1 to 4 jointly and severally	37,07,970.54
2	Interest @ 14.50% p.a., on Rs.37,07,979.54p with monthly rests from 26.10.2009 till 14.03.2012	15,22,098.05
3	Application/Court fees	40,000.00
4	Advocate fees	80,000.00

S.No.	Item of costs	Amount (Rs.)
5	Others	15,000.00
	Total	53,65,068.59

(Rupees fifty three lakhs sixty five thousand and sixty eight and fifty nine paise only)

Sd/-
PRESIDING OFFICER
DRT-2, CHENNAI

ANNEXURE-I
DRC.No.63/2012 in
O.A.No.169/2009

DEBTS RECOVERY TRIBUNAL-2 AT CHENNAI

DETAILS OF HYPOTHECATED MOVABLES

SCHEDULE-A

Hypothecation of goods, viz., Raw materials in the form of PVC Calendered film/cotton sheetings, etc., semi finished goods in the form of water beds in 2/3 panels, etc., finished goods in various types of medical water beds, components, accessories, etc.

Sd/-
PRESIDING OFFICER
DRT-2, CHENNAI

4. Thereafter, on 15.10.2013, the Recovery Officer has issued an

order of attachment, which is extracted hereunder:

"Whereas you the defendant has failed to pay the sum of Rs.53,65,068.59p (Rupees fifty three lakhs sixty five thousand and sixty eight and paise fifty nine only) and further interest and costs, as per law payable by you, jointly and severally, to the applicant in terms of Debt Recovery Certificate No.63/2012, dated 18.04.2012, issued in O.A.No.169/2009, drawn up by the Hon'ble Presiding Officer, Chennai Debts Recovery Tribunal No.2.

It is hereby ordered that you, the said defendant, be and you are hereby prohibited and restrained, until further order of the undersigned, from transferring or charging the under mentioned property in any way and that all persons be, and that they are prohibited from taking any benefit under such transfer or charge.

Also note that unless the money is paid forthwith the under mentioned property will be sold by public auction and the money will be realized without any further notice or intimation.

DESCRIPTION OF PROPERTY

Flat No.1A, Cenotaph Court, Old No.13, New No.28, Cenotaph Road, Nandanam, Chennai 600 035, admeasuring an total extent of 4 grounds & 183 Sq.Ft., comprised in Survey No.3856/3 of Teynampet Village in THAT 430 Sq.Ft., of UDS bounded on the North by Door No.16, South by Door No.14, East by Cenotaph Road and West by Government Channel all lying within the Chennai Central Joint-I and Registration District of Chennai-Central."

5. Being aggrieved by the same, instant writ petition, has been filed, to call for the order of attachment, made in respect of the above mentioned property and quash the same.

6. Record of proceedings shows that so far, instant writ petition has not been admitted, and no interim order has been granted.

7. On this day, when the matter came up for hearing, Mr.A.Sirajudeen, learned Senior Counsel appearing for the petitioner submitted that the above mentioned property is brought for public auction on 15.02.2017. He further submitted that liability of the writ petitioner, has not been challenged. We place on record the said submission.

8. Reading of the attachment order, dated 15.10.2013, shows that M/s.Metco Polymers (P) Ltd., and others, have failed to pay a sum of Rs.53,65,068.59p, as on 15.10.2013. Section 30 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993, deals with Appeals against an

order of the Recovery Officer and it reads thus:-

(1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2). On receipt of an appeal under Sub-Section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Section 25 to 28 (both inclusive).”

9. When there is an efficacious and alternate remedy, under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act or the Securitisation And Reconstructions of Financial Assets Act, 2002, as the case may be, writ petition is not maintainable. We deem it fit to consider the following 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:-

“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 (SC)**, the Hon'ble Apex Court has 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 redressal 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) In *Saraspathy Sundararaj v. Authorised Officer and Assistant General*

Manager, State Bank of India, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition.

7. In this connection, we are fortified by the decision of the Honourable Supreme Court reported in (*United Bank of India v. Satyawati Tondon and others*) III (2010) BC 495 (SC) = 2010-5-L.W. 193, wherein in para Nos. 17 and 18, it was held thus:—

"17. ...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 redressal 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 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, (underlining added).

9. In the light of the above decision of the Honourable Supreme Court, the writ petition filed by the petitioner seeking to set aside the possession notice issued to her long back is legally not sustainable. We are of the considered view that this petition has been filed only to drag on the proceedings and to evade repayment of the loan. That be so, the petitioner has no legal right to compel the bank to accept the one time settlement offer made by her.

13. The present case is identical in nature and it is covered by the judgment of the Supreme Court mentioned supra. In this case, the petitioner has violated the condition of mortgage by transferring the secured asset in favour of her son and therefore, as per clause 1.7 of the OTS Scheme offered by the bank, the petitioner has to be excluded from extending the benefits of the scheme which was rightly done by the bank. In any event, without exhausting the alternative remedy, the relief sought for by the petitioner by invoking the discretionary remedy under Article 226 of The Constitution of India cannot be granted."

10. There is an effective and alternative remedy, under the provisions of the statute. On the facts and circumstances of the instant case, we do not find any justifiable cause, to depart from the procedure, envisaged under the Act, which provides for an appeal. Hon'ble Supreme Court has deprecated the action of the High Court, in entertaining writ petitions, when there is an effective and alternative remedy. In the light of the decisions stated supra, and on the facts and circumstances of the case, we are of the view that the

writ petition is not maintainable, both on law and facts.

11. Hence, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

[S.M.K., J.] [M.G.R., J.]
07.02.2017

Index: Yes/No
Internet: Yes/No

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