Sr.No.220

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-COM No. 40 of 2016
Date of decision:24.04.2017

Gurmeet Kaur

.........Petitioner

versus

Debt Recovery Tribunal-II, Punjab National Bank Building & others

..........Respondents

Coram: **Hon'ble Mr.Justice Rakesh Kumar Jain**

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. V.K.Sachdeva, Advocate
for the petitioner.

Mr. Rakesh Gupta, Advocate
for respondent Nos. 2 and 3.

Rakesh Kumar Jain, J.(Oral)

This petition is filed against the order dated 8.12.2006, passed by the DRT-II, Chandigarh, on an application filed by the petitioner/applicant No. 4 bearing SA No. 224 of 2016 for seeking a direction to respondents No. 1 and 2 therein, to demarcate the mortgaged property, which is sought to be sold, pursuant to the proceedings initiated under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(in short, 'the Act').

Learned counsel for the petitioner has submitted that the dispute is about the identity of the area of the mortgaged land as according to the petitioner she had mortgaged 477.50 sq.yards out of plot measuring 626 sq.yards as a guarantor whereas the respondent bank is bent upon to sell the land measuring 626 sq. yards which forms part of residential house. The said application of the petitioner was dismissed by the Tribunal, declining the prayer on the ground that it does not have the power to issue such a direction as has been sought by the petitioner.

After notice, respondent has put in appearance and has raised a preliminary objection about the availability of statutory remedy under Section 18 of the Act before the DRAT.

I have heard learned counsel for the parties on the issue of maintainability of the writ petition.

Counsel for the petitioner has submitted that dehors the availability of the remedy under Section 18 of the Act, this Court, in its extraordinary jurisdiction, conferred under Article 226 of the Constitution of India can interfere in this petition because the Tribunal has committed a patent error of law while observing that it does not have the jurisdiction to pass order of demarcation of the property to find out as to whether which part of land measuring 626 sq. yards has to be sold after deducting 148.5 sq. yards as according to the petitioner, the property which has been mortgaged is 477.5 sq. yards and not 626 sq. yards. In support of his submission, he has relied upon the decision of Supreme Court in *Jagdish Singh vs. Heeralal and others (2014) 1 Supreme Court Cases 479* to contend that jurisdiction to demarcate the mortgaged property vests with the Tribunal and not with the any other court. He has also relied upon a division bench judgment of this Court in *M/s IAA Hospital Pvt. Ltd. and another vs. The Authorized Officer, UCO Bank and others AIR 2014 P&H 161* in which this Court had entertained the writ petition despite the objection having been raised by the respondent therein about the availability of alternative remedy under Section 18 of the Act.

On the other hand, counsel for the respondent bank has relied upon a decision rendered by the Supreme Court in the cases of *United Bank of India vs. Satyawati Tandon 2010 AIR(SC) 3413 and GM, Sri Siddeshwara Co-operative Bank Ltd. and another vs. Sri Ikbal and others 2013(8) SCR 532* on the issue that once alternative statutory remedy is available, the writ jurisdiction should not be exercised which is extra ordinary in nature. He has also relied upon a decision of the division bench in the cases of *Nippo Foods vs. State of Punjab and others 2013 AIR (Punjab) 89, Mahesh Kumar vs. Punjab and Sind Bank and others passed in CWP No. 4704 of 2016* decided on 28.07.2016 and *M/s Munjal Rice and General Mills vs. Canara Bank and others CWP No. 12386 of 2016* decided on 16.11.2016 to contend that if there is a dispute with regard to the identity of the mortgaged property, the only remedy lies with the DRT or DRAT. He has also relied upon the decisions in the case of *M.P.Mittal vs. State of Haryana and others 1984 AIR(SC) 1888* and *State of Maharashtra vs. Prabhu 1994 SCC(L&S) 676* to contend that *where quashing of order results in greater harm to the society then Court may restrain from exercising the power.*

I have heard both the learned counsel for the parties and examined the available record with their able assistance.

In order to answer the question about the maintainability of the writ petition, it would be relevant to refer to Section 18 of the Act which is reproduced as under:-

18. Appeal to Appellate Tribunal.—

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal 1[under section 17, may

> *prefer an appeal along with such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal 2 [under section 17, may prefer an appeal along with such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal." 2[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:] 3[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less: Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]*

Counsel for the petitioner has been fair enough in not disputing that the impugned order is amenable to appeal before the DRAT but it is contended that the appeal would have been filed, had there been on decision on merits and since the application has been dismissed by the Tribunal only on the ground that it does not possess the jurisdiction to decide the application of the petitioner, therefore, extra ordinary jurisdiction of this Court has been invoked. This argument cannot be accepted only for the reason that scheme of the Act gives the remedies in which Section 18 of the Act is the remedy for an order passed by the Tribunal available to any person who is aggrieved by the order made by the Tribunal. Extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India can be invoked when there is no ordinary remedy available under the statute. If the ordinary remedy under the statute is available, then the petitioner should have availed the said remedy instead of availing the extraordinary remedy of writ jurisdiction. The petitioner has also said in the petition that the jurisdiction of this Court has been invoked because of the jurisdictional error committed by the Tribunal and also to protect the fundamental rights as there is no other immediate efficacious remedy available to her which is patently incorrect because the remedy of appeal is specifically provided under Section 18 of the Act which is efficacious and also speedy remedy, if it had been availed by the petitioner. There is no doubt in the mind of this Court that the appellate authority would not be in a position to decide the question as to whether the Tribunal has the power to decide the application seeking for segregation of the mortgaged land from the unmortgaged land. Thus, in my considered opinion, the judgments relied upon by counsel for the petitioner specially in the case of *IAA(supra)* is not applicable because in that case, the Court was quite conscious while invoking its jurisdiction in the presence of the statutory remedy of appeal and has used the words time and again "*in the facts and circumstances*". Whereas in the present case, the facts and circumstances are not such which can pursuade this Court to entertain the petition and overrule the objection raised by secured creditors in regard to the availability of the alternative remedy.

With these observations, the present writ petition is hereby dismissed only on the ground of the availability of the alternative statutory remedy to the petitioner which the petitioner may avail, if so advised, in accordance with law.

[Rakesh Kumar Jain]
Judge

24th April, 2017
Shivani Kaushik

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*