NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1417 of 2018

1. Sanjay Kumar Dewangan S/o Shri Shyam Sunder Dewangan, Aged about 33 years, R/o Qtr. No.3-D, Street No.27, Sector 5, Bhilai, Tah. & Distt. Durg (CG)
2. Lalaram Chandravanshi S/o Shri Ghanshyam Chandravanshi, Aged about 57 years, R/o Qtr.No.4-C, Street Avenue-E, Sector-6, Bhilai, Tah. & Distt. Durg (CG)

---- Petitioners

Versus

1. Punjab National Bank Through Branch Manager Branch Nandani Road (Nehru Nagar), Bhilai, Tah. & Distt. Durg (CG)
2. Punjab National Bank Through-Zonal Office 2nd Floor, Madina Manzil, Kutchery Chowk, Raipur, Chhattisgarh 492001, Tah. & Distt. Raipur (CG)

---- Respondents

For Petitioner:- Mr.Mayank Chandrakar, Advocate
For Respondents No.1 and 2: -
Mr.Harsh Wardhan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/05/2018

1. The petitioners are auction purchasers of the secured assets auctioned by the respondent-Bank. They have filed this writ petition claiming that the respondent-authorities be directed to hand over vacant plot and also claimed other relief(s).

2. Learned counsel for the respondents would submit that the petitioners have a remedy of making an application under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

3. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the records with utmost circumspection.

4. The question relating to availability of remedy under Section 17(1) of the SARFAESI Act to the auction purchaser is no longer *res integra* and stands determined authoritatively by a recently delivered decision of the Supreme Court in the matter of **Agarwal Tracom Pvt. Ltd. v. Punjab National Bank and others**[1] in which Their Lordships have formulated a question in paragraph 18 of the judgment as under: -

> "18. The short question that arise for consideration in this appeal is whether the High Court was justified in holding that the remedy of the appellant (auction purchaser) lies in challenging the action of the secured creditor (PNB) in forfeiting the deposit by filing an application under Section 17 of the SARFAESI Act before the DRT or the remedy of auction purchaser is in filing the writ petition under Article 226/227 of the Constitution of India to examine the legality of such action."

5. Answering the issue, Their Lordships held that the expression "any person" occurring in Section 17(1) of the SARFAESI Act includes auction purchaser and succinctly observed as under: -

> "27. Reading of the aforementioned Sections and the Rules and, in particular, Section 17(2) and Rule 9(5) would clearly go to show that an action of secured creditor in forfeiting the deposit made by the auction purchaser is a part of the measures taken by

1 2017 SCC OnLine SC 1368

the secured creditor under Section 13(4).

28. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "**provisions of this Act and the Rules made thereunder**" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2), (3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?

29. We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction purchaser in case the auction purchaser commits any default in paying installment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses (a) to (d) and end

with measures specified in Rule 9.

30. In our view, therefore, the expression “any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer” in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).

31. The auction purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression “any person” as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act.

32. Learned counsel for the appellant placed reliance on the decision of the Division Bench of High Court of Bombay in **Umang Sugars Pvt. Ltd. vs. State of Maharashtra & Anr.**, 2014(4) Mh.L.J. 113 which, according to him, supports his submission. We have gone through the decision and unable to agree with the view taken therein. Their Lordships, while holding that Section 17(1) does not apply to auction purchaser and, therefore, writ petition filed by him can be entertained in such cases, did not notice the Rules, which deal with the measures taken under Section 13(4) and nor considered its effect on the measures.

33. In **United Bank of India vs. Satyawati Tondon & Ors.**, (2010) 8 SCC 110, this Court had the occasion to examine in detail the provisions of the SARFAESI Act and the question regarding

invocation of the extraordinary power under Article 226/227 in challenging the actions taken under the SARFAESI Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge the actions taken under the SARFAESI Act and made following pertinent observations which, in our view, squarely apply to the case on hand:

> "42. There is another reason why the impugned order should be set aside. If Respondent 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 the 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 a 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, the 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.
>
> 44. 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.
>
> 45. 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."

34. In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of SARFAESI Act before the concerned Tribunal to challenge the action of the PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the

> impugned judgment of the High Court.
>
> 35. The appellant is, accordingly, granted liberty to file an application before the concerned Tribunal (DRT) under Section 17(1) of the SARFAESI Act, which has jurisdiction to entertain such application within 45 days from the date of this order. In case, if the appellant files any such application, the Tribunal shall decide the same on its merits in accordance with law uninfluenced by any of the observations made by this Court and the High Court in the impugned judgment."

6. In view of the principle of law laid down in the above-stated judgment {**Agarwal Tracom Pvt. Ltd.** (supra)}, I am of the considered opinion that the petitioners auction purchasers have a remedy of filing appeal under Section 17(1) of the SARFAESI Act before the Debts Recovery Tribunal seeking possession of vacant plot as per auction and other reliefs (if any). Therefore, this writ petition is disposed of granting liberty to the petitioners to file an application before the DRT under Section 17(1) of the SARFAESI Act. If such an application is filed within 45 days, the DRT would decide it expeditiously in accordance with law. All the contentions are kept open to be decided by the DRT. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

B/-