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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 2383 of 2014

1. Makhan Lal Verma, aged about 37 years, S/o Shri Laxman Prasad Verma,
2. Namita Verma, aged about 34 years, W/o. Shri Makhan Lal Verma

   Both residents of Village Tulsi, Police Station and Post Newra, Tahsil Tilda, District Raipur (C.G.)

---- Petitioners

Versus

1. Laxmi Mahila Nagrik Sahkari Bank Maryadit, Head Office at First Floor, Millennium Plaza Complex, Bans Tall Road, Raipur, Civil and Revenue District Raipur (C.G.)
2. Authorized Signatory, Luxmi Mahila Nagrik Sahkari Bank Maryadit, Head Office at First Floor, Millennium Plaza Complex, Bans Tall Road, Raipur, Civil and Revenue District Raipur (C.G.)
3. M/s. Mahesh Plaza, Partner Mahesh Agrawal, Station Chowk, Tilda, Raipur, Civil and Revenue District Raipur (C.G.)

---- Respondents

For Petitioners	:	Shri Y. C. Sharma, Advocate.
For Respondents No. 1 & 2	:	Shri Jitendra Pali, Advocate.
For Respondent No. 3	:	Shri Sachin Singh Rajput, Advocate.

Order On Board

20/03/2018

(1) This writ petition has been filed by the petitioners questioning the action of the respondents No. 1 & 2/Bank in auctioning the property and by notice dated 25.11.2014, the respondent No.1- Bank has directed the respondent No. 3 to deposit the auction amount.

(2) Learned counsel for the petitioner would submit that the notice dated 25.11.2014 is bad and unsustainable in law.

(3) Per contra, counsel counsel for respondent No.1 – Bank would submit that issue

raised in the instant writ petition is covered by the decision rendered by this Court in Writ Petition (C) No. 5527/2010 decided on 9.01.2018, in which this Court has held that respondent No. 1- Laxmi Mahila Nagrik Sahakari Bank Maryadit, is a bank covered within the meaning of Section 2(1)(c)(v) of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth "the SARFAESI Act') read with notification dated 28-1-2003 and therefore, the provisions of the SARFAESI Act would be applicable to respondent No.1- Bank which is a Co-operative Bank and, therefore, the petitioners' remedy would lie to the Debts Recovery Tribunal (henceforth "DRT")

(4) I have heard learned counsel appearing for the parties.

(5) In a recent decision rendered by the Supreme Court in the matter of **Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.**[1], their Lordships of the Supreme Court reiterated the principle of law laid down in the matter of **United Bank of India Vs. Satyawati Tandon**[2] and held as under:-

> "**11.** In *Satyawati Tandon* (supra), the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding:-
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> > "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

1 2018 SCC OnLine SC 55
2 (2010) 8 SCC 110

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 Legislature 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 dues but also envisage constitution of quasi-judicial bodies for redressal of the grievances 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.

* * *

55. 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 the SARFAESI Act and exercise jurisdiction under Article 226 of 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."

(6) In view of the aforesaid principles of law laid down by the Supreme Court in the aforesaid case, the writ petition as framed and filed before this Court is not maintainable. However, the petitioner is at liberty to approach before the DRT under Section 17 of the SARFASI Act in accordance with law.

(7) At this stage, learned counsel appearing for the petitioner would submit that interim order is operating in favour of the petitioner with effect from 9-12-2014, therefore, the same may be extended for a limited period to facilitate the petitioner to approach to

the DRT.

(8) Prayer appears to be fair and reasonable and accordingly the same is allowed.

(9) Interim relief granted on 9-12-2014 shall remain in operation for a period of one month from today facilitating the petitioner to approach to the DRT in accordance with law.

(10) With the aforesaid observations, the writ petition stands finally disposed of.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-