

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 1827 OF 2014

Nirmala Ramesh Kulkarni and another .. Petitioners

versus

I.C.I.C.I. Home Finance Company Limited .. Respondents
and others

Mr Amol S. Gandhi, Advocate for petitioners

Mr Umesh Shete, Advocate for respondent no.1

Mr S.N. Kendre, Asstt. Government Pleader for respondent no. 3

CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ

DATE : 5th December, 2018

ORDER :

1. Petitioners purport to pose challenge to notices issued to them under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) as well as to order passed by the Debt Recovery Tribunal under present writ petition.

2. Learned counsel for respondent no. 1 submits that writ petition is untenable in view of the order passed by supreme court as recently as on 05-10-2018 in Civil appeals bearing no. 10243-10250 of 2018 (arising out of Special Leave to Appeal © bearing no. 9145-9152 of 2014) in the case of ICICI Bank Ltd. Etc. ETC. versus Umakanta Mohapatra Etc. Etc.. He tenders across a photocopy of said order reading, thus :

" Delay condoned.

Leave granted.

Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C. (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).

The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-

" 18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. And Another, (1997) 6 SCC 450, observing :-

" 32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops. "

The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.

The appeals are allowed in the aforesaid terms.

Pending applications, if any, shall stand disposed of. "

3. In view of aforesaid observations of supreme court, we are not inclined to entertain writ petition and keep the matter pending.

4. Writ petition, thus, is disposed of.

5. At this stage, learned counsel for petitioners submits that in case of approach to alternate remedy, the same may be impeded by consumption of time in pendency of writ petition.

6. It does not appear that this order would undermine any approach by petitioners to alternate remedy as permissible in law. In case of permissible approach, time spent in pendency of this writ petition may receive its due.

7. Needless to refer to that interim relief, if any, would cease to operate.

S. M. GAVHANE
JUDGE

SUNIL P. DESHMUKH
JUDGE

pnd/-