IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1064 OF 2018

M/s Windermere Hotels Pvt. Ltd.
Through its Director,
Mr. Farrokh Maneckshaw … Petitioner

Versus

Citizens Credit Co-operative Bank
Ltd. … Respondent

Mr. G. Agni and Mr. R. Kantak, Advocates for the petitioners.

Mr. Shirin Naik, Advocate for the respondent.

Coram : R. M. Borde &
Prithviraj K. Chavan, JJ.

Date : 26th November 2018.

P.C. :

Heard Mr. Agni, the learned counsel appearing for the petitioners and Mr. S. Naik, the learned counsel appearing for the respondent.

2. The petitioners are objecting to the notice issued by the respondent- bank under Section 13(2) of the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, contending to be illegal and bad in law.

3. The petitioners are the borrower of the respondent- bank herein. It is informed by the counsel appearing for the bank that the dues recoverable from the petitioners as on 31st October 2018, are to the tune of Rs.91,08,134.33 together with interest thereon. The petitioners have been issued notice under Section 13(2) of the Act by the respondent- bank which has been replied by the petitioners. Further the action is contemplated under Section 13(4) of the Act to take possession of property of the petitioners. The petitioners contend that at this stage of the proceeding, since there is no remedy available, the petition is entertainable. It is further pointed out that the remedy is provided under Section 17 of the Act, only after taking action by financial institutions by taking recourse under Section 13(4) of the Act.

4. It is not the matter of dispute that there was restructuring agreement entered into at the request of the petitioners on 6th October 2015. The payment structures provided under the restructuring scheme allows tenure of 10 years. The amount of Rs.131.33 lakhs was expected to be repaid in 74 equal monthly instalments of Rs.1,77,500/- after a moratorium of 6 months. The first instalment was due on 30th April 2016

and the interest was to be serviced monthly. Since the petitioners did not adhere to the repayment schedule provided in the restructuring agreement, the bank has proceeded to take action by issuing notice under Section 13(2) of the Act.

5. The petitioners contend that they have deposited total sum of Rs.43 lakhs on 9th August 2018 and 31st October 2018 and therefore the respondent is not entitled to take coercive action against the petitioners. In rebuttal, in the reply filed by the respondent it is stated that the petitioners are aware about the terms of the restructuring agreement and has failed to make the payments from October 2015, except the lumpsum payment in part made on 9th August 2018 and 31st October 2018. It is contended that the petitioners have just paid 33% of the total outstanding amount which is far less than the amount recalled by the bank in its demand notice dated 4th June 2018. The major portion of Rs.91,08,134.33 together with interest thereon and further interest accrued, incidental expenses, costs, charges incurred are recoverable from the petitioners and as such the demand notice was issued. The petitioners contend that the ongoing business of the petitioners would be affected and they are willing to abide by the terms of the agreement and the coercive action against the petitioners at this stage is unwarranted. The petitioners relied on the judgment of the Allahabad High Court in the matter of *Rita Bagga and others Vs Union of India and*

others[1]. In the matter before the Allahabad High Court, a notice within the contemplation of 13(2) of the Act was issued by the bank and the account of the petitioner therein has been classified as non performing asset. However, in the instant case in our view since the petitioners have not adhered to the terms of the restructuring agreement, they need not be granted any indulgence. The petitioners place reliance on the Circular issued by the Reserve Bank of India in support of their claim that the action of the bank is unwarranted. It is observed by us that inspite of restructuring of loan by the bank, the petitioners have not adhered to the terms settled and have failed to pay the regular instalments along with interest for a period of last three years and as such the petitioners cannot now claim that default is not willful. The petitioners are not entitled for any relief in exercise of extraordinary jurisdiction. Apart from this, by order dated 22 November 2018, we called upon the petitioners to state whether the petitioners are willing to deposit the amount of Rs.45 lakhs with the respondent-bank. However, the petitioners have expressed inability to deposit the same. It would be appropriate at this stage to refer to the judgment of the Supreme Court in the matter of *United Bank of India V/s Satyawati Tondon and others*[2]. It would be appropriate to refer to the observations made by the Supreme Court in paragraphs 43 to 46 and 55 which read thus:

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1 2015(5) ADJ 55

2 (2010) 8 SCC 110

"*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, 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.

46. 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 an appropriate interim order.

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 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."

6. For the reasons recorded above, no interference is called for in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India at this stage of the proceedings. The writ petition stands rejected.

Prithviraj K. Chavan , J. ***R. M. Borde , J.***

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