IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11799/2018

Shivaji Vitthal Kade & Ors. ... Petitioners

V/s.

State of Maharashtra & Ors. ... Respondents

Mr. Shailendra S. Kanetkar for the Petitioners
Mr. A. P. Vanarase, AGP for Respondent State.
Mr. Anand S. Kulkarni for Respondent No.5

CORAM: K.K. TATED &
N. J. JAMADAR, JJ.
DATED : OCTOBER 15, 2018

P.C. :

1 Heard. By this petition under Article 226 and 227 of the Constitution of India the Petitioner challenges the order dated 20.07.2018 passed by the District Magistrate u/s.14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 allowing the Respondent Bank's Application for taking possession of the secured assets.

2 The learned counsel for the Petitioner submits that the apex court in the matter of ***Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd. & Ors. (2014) 6 SCC 1*** held that a borrower can challenge the order passed by the District Magistrate u/s.14 of the said Act, before the High Court under Article 226 of the Constitution of India.

3 The learned counsel for the Respondent Bank submits that the Petitioner has an alternate remedy available. He submits that the Petitioner may move the Debts Recovery Appellate Tribunal u/s.17 of the said Act.

4 It is to be noted that the Apex Court in the matter of ***Punjab National Bank Vs. O.C. Krishnan & Ors. (2001) 6 SCC 569*** held that if an alternate remedy is available, then the High Court should not entertain the petition under Article 227 of the Constitution of India and should direct the party to take recourse to the appeal mechanism provided by the Act. Paragraph 6 of the said judgment reads thus:

> *"6 The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."*

Similarly, the Apex Court, in the matter of ***General Manager, Sri Siddeshwara Cooperative Bank Ltd. & Ors. Vs. Ikbal and Ors. (2013) 10 SCC 83*** held that if an alternate efficacious remedy is available under the SARFAESI Act, the High Court should not exercise the powers under Article 226 of the Constitution of India in respect of the matters arising from SARFAESI Act. Portion of paragraph 28 reads thus:

> *"28. ....In our view, there was no justification whatsoever for the learned Single Judge to allow the borrower to bypass the efficacious remedy provided to him under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts indicated above. The Division Bench also erred in affirming the erroneous order of the Single Judge."*

The Apex Court also in the matter of ***Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C. (2018) 3 SCC 85*** held that the SARFAESI Act is a complete Code by itself providing for expeditious recovery of the dues out of loans granted by the Financial Institutions, the remedy of appeal by the aggrieved under section 17 before the DRT is provided. It is also held by the Apex Court that the normal Rule is that a Writ Petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available. Paragraphs 3, 7 and 8 of the said judgment read thus:

> *3. The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debts Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first*

date, without an opportunity to the Appellant to file a reply. Reliance was placed on United Bank of India Vs. Satyawati Tandon and Others 2010 (8) SCC 110 and Sri Siddeshwara Cooperative Bank Ltd. Vs. Iqbal and Others *2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same.*

7. The Section 13(4) notice along with possession notice under Rule 8 was issued on 21.04.2015. The remedy under Section 17 of the SARFAESI Act was now available to the Respondent if aggrieved. These developments were not brought on record or placed before the Court when the impugned interim order came to be passed on 24.04.2015. The writ petition was clearly not instituted bona fide, but patently to stall further action for recovery. There is no pleading why the remedy available under Section 17 of the Act before the Debt Recovery Tribunal was not efficacious and the compelling reasons for by-passing the same. Unfortunately, the High Court also did not dwell upon the same or record any special reasons for grant of interim relief by direction to deposit.

8. The statement of objects and reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. The Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts due to Banks and Financial

> *Institutions Act, 1993, (hereinafter referred to as 'the DRT Act') with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order.*

5 In view of the subsequent judgments of the apex court, the contention raised by the learned counsel for the Petitioner is not maintainable in law.

6 In view of these facts and as the Petitioner has an alternate remedy available, the Writ Petition stands rejected.

(N. J. JAMADAR, J.) **(K. K. TATED, J.)**