IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24/4/2018
C O R A M
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.10676 of 2014

Mrs.Uma Maheswari ... Petitioner

Vs

1. The Presiding Officer
Debt Recovery Tribunal No.1
Chennai.

2. John Prabakar

3. M/s. India Bulls Housing Finance Ltd
rep. By its Authorised Officer
Mr.R.Inbasekaran
No.20 Apex Chamber, I Floor
Sir Thyagaraya Road
Chennai 600 017.

4. C. Venkatesh

5. Smt.V.Vijayalakshmi

6. M/s. E Soft Tek Pvt Ltd
rep. By its Managing Director
Mr.C.Venkatesh
Chennai 600 040. ... Respondents

(R.R.4 to 6 - given up, as per order, dated 9/9/2014 by NPVJ & KRCBJ, vide memo, dated 5/9/2014 in W.P.No.10676 of 2014).

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records pertaining to order, dated 27/3/2014 made in S.A.No.28 of 2014, on the file of the Debts Recovery Tribunal No.1, Chennai and quash the same.

For Petitioner ... Mr.A.E.Ravichandran

For respondents ... Mr.R.Vivekananthan for R.2.

Mr.C.Uma Shankar for R.3.

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Order, impugned in S.A.No.28 of 2014, dated 27/3/2014, is as follows:-

"Counsel for the applicant present. M/s. C.Umashankar and B.P.Vinoth filed vakalat for first respondent. Counter and typed set of papers filed by the respondent and copy served on the applicant counsel. Additional typed set filed by the applicant and copy served on the respondent counsel.

The Applicant claims to be a tenant in the schedule mentioned property protected under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and in possession of the property since 2001 whereas the first respondent has lent loan to the borrower and obtained order of vacation from the CMM which is under challenge. During the course of arguments, both the counsels sought some time for an amicable settlement. Accordingly, the parties have made an endorsement in the SA papers signed and countersigned by the parties and their respective counsels.

The endorsement made by the applicant reads as under:-

(i). The appellant shall remit a sum of Rs.2.50 crores towards purchase of Appeal schedule mentioned property to the first respondnet as follows:-

(a). Rs.75 lakhs on or before 3/4/2014

(b). Balance Rs.1.75 crores shall be remitted within 3 weeks from 3/4/2014 i.e., on or before 24/4/2014.

(ii). On receipt of such payments, the first respondent shall execute and register

Sale Deed/Sale certificate in favour of the appellant or his nominee for the appeal schedule mentioned property and also handover all the original title deeds pertaining to the appeal schedule mentioned property to the appellant.

(iii). If the payments as aforesaid in clause 1 is not made by the appellant, the first respondent is at liberty to execute the order under Section 14 of the SARFAESI Act in Crl.M.P.No.7332 of 2013 and take possession of the appeal schedule mentioned property.

The endorsement made by the first respondent reads as under:

This respondent is ready to receive the

amounts in A/c.No.HHE CHE 00005195 and HHE CHE 00005201. The respondent agrees to the above conditions and they are willing to execute the sale certificate as and when this Hon'ble Tribunal directs them to do so. The sale certificate is issued as "as is where is" condition and this respondent is relieved from all the legal issues in this regard. If the payment schedule is not followed, the respondent is at liberty to forfeit the paid money to the loan account.

Accordingly,respondent No.1 after receiving the amounts as agreed shall execute the sale certificate in favour of the applicant or his nominee. Further, respondent may seek extension of the orders passed by CMM in Cr.M.P.No.7332 of 2013 and in the event, the applicant fails to comply with the commitments endorsed, liberty is granted to the respondent to take physical possession. With these observations, the SA is disposed of as a consented order."

2. Order passed in S.A.No.28 of 2014 is assailed, in the S.A.No.28 of 2014, filed by the tenant, seeking permission to purchase the subject property, on the grounds that no notice was given by the Tribunal. According to the petitioner, there was collusion between the Bank and the applicant in S.A.No.28 of 2014.

3. Material on record discloses that John Prabakar, claiming himself to be a tenant, deposited a sum of Rs.75 lakhs, on 2/4/2014, filed W.M.P.No.3928 of 2018 in W.P.No.10676 of 2014, for a direction to the third respondent/ financial institution to refund/return the said sum with interest. S.A.No.28 of 2014 has been ordered, as above.

4. Statute provides for an alternative remedy. Fraud, collusion, violation of natural justice and other tenable grounds raised herein, can be adjudged in an appeal before the appellate forum. Further, Courts have consistently held that when there is an effective and alternative remedy, writ is not maintainable. We deem it fit to consider the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW0 86, this Court held as follows:

"This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under: –

> "The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added) "

(ii) In Union Bank of India v. Satyawati Tondon, reported in 2010 (5) LW 193 (SC), the Hon'ble Apex Court at paragraph Nos.16 to 18 and 27 to 29, held as follows:

> "16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.
>
> 17. There is another reason why the impugned order should be set aside. If respondent No. 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 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. 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 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.

18. 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. 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 re-dressal of his grievance. 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=1999-2-L.W. 200 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 appropriate interim order.

27. 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.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the

respondent has not appeared to contest the appeal, the costs are made easy."

(iii) In Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India, reported in (2010) 5 LW 560, the Court held as follows:

"The petitioner has filed this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the possession notice dated 16.09.2004 issued by the respondent under the SARFAESI Act and consequently direct the respondent to effect the settlement in accordance with the SBI OTS-SME 2010 Scheme as contained in its letter dated 18.03.2010 and unconditionally restore physical possession of the six rooms taken physical possession by it at No. 29, Sarojini Street, T. Nagar, Chennai - 17 with such damages.

... When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition...."

5. In the light of the above discussion and decisions stated supra, we are not inclined to entertain the instant writ petition. Accordingly, the writ petition is dismissed, with liberty to the petitioner to move the appellate forum, within three weeks, from the date of receipt of a copy of this order. Time spent in prosecuting W.P.No.10676 of 2014 is excluded. If any appeal is preferred, appellate forum is directed to process the same, without insisting on limitation, subject to the procedural laws. No costs. Consequently, the connected Miscellaneous Petition is closed.

mvs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer
   Debt Recovery Tribunal No.1
   Chennai.

Copy to:The Section Officer,
VR Section,
High Court, Madras dt.21.6.2018

+1cc to M/s.R.Vivekananthan,Advocate sr.No.30203
+1cc to M/s.C.Umashankar, Advvocate SR.No.30306
+1cc to M/s.N.Anand Venkatesh, Advocate SR.No.30305

KAKN(CO)
sm:18.5.2018

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