

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.21336 of 2018 and
W.M.P.Nos.25013 & 25014 of 2018

SPN Krishnamurthy

..
Petitioner

Vs.

1.IDBI Bank Limited,
rep by its Deputy General Manager,
N.Venkateswaran,
NPA Management Group,
No.115, Annasalai, Saidapet,
Chennai - 15.

2.The Director,
M/s.Sabari Supermarket Pvt. Ltd.,
rep by its Director,
No.29, Thirumalaipillai Street,
T.Nagar, Chennai - 600 017.

3.K.R.V.Ramani

4.Aruna Ramani

5.The Managing Director,
Sabari Inn Limited,
No.29, Thirumalaipillai Street,
T.Nagar, Chennai - 600 017.

6.The Chief Metropolitan Magistrate,
Allikulam, Chennai - 3.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified mandamus, calling for the records of the 6th respondent in respect of the impugned possession order dated 14.03.2018 in CrI.M.P.No.507 of 2018 and quash the same as void, illegal and unenforceable as against the petitioner and direct the respondents 1 & 6 not to

dispossess the petitioner from the petition mentioned building i.e. in I, II & III Floor of the building bearing Old No.156, New Door No.29, Plot No.2, T.S.No.8345 situated at Chinmaya Street, T.Nagar, Chennai - 17 except under due process of law.

For Petitioner : Mr.T.N.Karthikeyan

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner, who is the alleged lessee in respect of the property which was mortgaged by the respondents 2 to 5 with the 1st respondent Bank, has filed the above Writ Petition to issue a Writ of Certiorarified mandamus to call for the records of the 6th respondent in respect of the impugned possession order dated 14.03.2018 in Crl.M.P.No.507 of 2018 and to quash the same and consequently direct the respondents 1 & 6 not to dispossess the petitioner from the property (i.e.) I, II & III Floors of the building bearing Old No.15, New Door No.29, Plot No.2, T.S.No.8345 situated at Chinmaya Street, T.Nagar, Chennai - 17 except under due process of law.

2.It is the case of the petitioner that he became a tenant in respect of the said property and entered into a Lease Agreement dated 18.02.2017 for a period of 11 months commencing from 01.03.2017 to 31.01.2018 and the lease was extended for another period of 11 months from 01.02.2018 to 31.12.2018 and separate Lease Agreements were entered into with the 2nd respondent on 18.02.2017 and 01.02.2018.

3.It is also the case of the petitioner that the respondents 2 to 4 borrowed money from the 1st respondent-Bank by executing a Mortgage Deed in favour of the 1st respondent-Bank. Since the respondents 2 to 4 defaulted in re-paying the loan amount, the 1st respondent initiated proceedings under the SARFAESI Act. Subsequently, the 1st respondent also filed a petition under Section 14 of the SARFAESI Act before the 6th respondent for taking physical possession of the property. The 6th respondent, by order dated 14.03.2018, allowed the petition in Crl.M.P.No.507 of 2018 and appointed an Advocate Commissioner for the purpose of taking possession of the property and hand over the same to the 1st respondent-Bank. As against this order, the alleged lessee has filed the above Writ Petition.

4.It is pertinent to note that under Section 17 of the SARFAESI Act, if the petitioner had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then he could have availed the 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 the guarantor or any other person, who may be affected by the action taken under Section 13(4) or Section 14. Both, the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within the fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

5. In the case on hand, the petitioner has not approached the Debts Recovery Tribunal, instead, he has directly filed the above Writ Petition challenging the action taken under Section 14 of the Act.

6.1. In the judgment reported in (2018) 3 Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], the Hon'ble Supreme Court has held as follows:

"....

10. In *Satyawati Tandon [United Bank of India Vs. Satyawati Tandon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260]*, the High Court had restrained [*Satyawati Tandon Vs. State of U.P., 2009 SCC Online All 2608*] 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:-

"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, 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.

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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 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."

11. In *Union Bank of India and another Vs. Panchanan Subudhi*, (2010) 15 SCC 552: (2013) 2 SCC (Civ) 221, further proceedings under Section 13(4) were stayed in the writ jurisdiction subject to deposit of Rs.10,00,000/- leading this Court to observe as follows :

"7. In our view, the approach adopted by the High Court was clearly erroneous. When the respondent failed to abide by the terms of one-time settlement, there was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the respondent under Section 17 of the Act."

12. The same view was reiterated in *Kanaiyalal Lalchand Sachdev vs. State of Maharashtra*, (2011) 2 SCC 782 : (2011) 1 SCC (Civ) 570, observing:

"23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*, (2003) 3 SCC 524 : 2003 SCC (Cri) 762; *Surya Dev*

Rai v. Ram Chander Rai, (2003) 6 SCC 675 and SBI v. Allied Chemical Laboratories, (2006) 9 SCC 252)"

13. In Ikbali, Sri Siddeshwara Coop. Bank Ltd., Vs. Ikbali, (2013) 10 SCC 83 : (2013 4 SCC (Civ) 638, it was observed that the action of the Bank under Section 13(4) of the 'SARFAESI Act' available to challenge by the aggrieved under Section 17 was an efficacious remedy and the institution directly under Article 226 was not sustainable, relying upon Satyawati Tandon (United Bank of India Vs. Satyawati Tandon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260), observing: (Ikbali, Sri Siddeshwara Coop. Bank Ltd., Vs. Ikbali, (2013) 10 SCC 83 : (2013 4 SCC (Civ) 638, pp.94-95, paras 27-28)

"27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.

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 disintitiled 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."

14. A similar view was taken in Punjab National Bank vs. Imperial Gift House, (2013) 14 SCC 622, observing:-

"3. Upon receipt of notice, the respondents filed representation under Section 13(3-A) of the Act, which was rejected. Thereafter, before any further action could be taken under Section 13(4)

of the Act by the Bank, the writ petition was filed before the High Court.

4. In our view, the High Court was not justified in entertaining the writ petition against the notice issued under Section 13(2) of the Act and quashing the proceedings initiated by the Bank."

15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in United Bank of India Vs. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260, has also not been kept in mind before passing the impugned interim order:-

"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 (sic will) 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 Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1 and Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (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."

6.2. In the judgment reported in (2018) 1 Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] wherein the Apex Court held as follows:

"...

27. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2), (3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?

28. We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction purchaser in case the auction purchaser commits any default in paying installment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any

of the action taken in clauses (a) to (d) and end with measures specified in Rule 9.

29. In our view, therefore, the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).

...

32. In *United Bank of India vs. Satyawati Tondon & Ors.*, (2010) 8 SCC 110, this Court had the occasion to examine in detail the provisions of the SARFAESI Act and the question regarding invocation of the extraordinary power under Article 226/227 in challenging the actions taken under the SARFAESI Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge the actions taken under the SARFAESI Act and made following pertinent observations which, in our view, squarely apply to the case on hand:

"42. There is another reason why the impugned order should be set aside. If Respondent 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 the 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.

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, 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.

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."

7.As per the ratio laid down in the above referred judgments, it is clear that the petitioner should approach the Debts Recovery Tribunal challenging the action initiated under the SARFAESI Act. When the petitioner has got remedy before the Debts Recovery Tribunal, the Writ Petition filed under Article 226 of the Constitution cannot be entertained.

8.The learned counsel appearing for the petitioner submitted that a week's time may be granted to the petitioner to approach the Debt Recovery Tribunal to file an application under Section 17(1) of the SARFAESI Act and till such time, the petitioner's possession may be protected.

9.For the reasons stated above, we do not find any merits in the Writ Petition. However, it is open to the petitioner to approach the Debts Recovery Tribunal for appropriate relief in accordance with law within a period of one week from the date of receipt of a copy of this order and the order passed by the 6th respondent is kept in abeyance for a period of one week.

10.With these observations, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Chief Metropolitan Magistrate,
Allikulam, Chennai - 3.

+1cc to Mr.T.N.Karthikeyan, Advocate sr.no.56709

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W.M.P.Nos.25013 & 25014 of 2018

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