IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.06.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.12573 of 2018
and WMP No.14729 of 2018

Mr.R.Aravindhan ... Petitioner

vs.

1. The Authorized Officer,
IDBI Bank Limited,
NPA Management Group,
No.115, Annasalai, Saidapet,
Chennai - 600 015.

2. The District Magistrate and
District Collector,
Thirupur District.

3. The Sub Collector, Thirupur,
Thirupur District.

4. M/s.PV Chemitec Adhesives India (P) Limited,
Rep. by its Directors,
Viz., Mr.V.Prabakaran and
Mrs.P.Vijayalakshmi ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records in order passed by the 2nd respondent vide Reference No.10343/2017/C3 dated 9.4.2018 and quash the same and directing the 1st respondent to consider the petitioner settlement proposal which the matter referred to Lok Adalat by Hon'ble Debts Recovery Tribunal at Coimbatore in O.A.No.7 of 2012.

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For Petitioner : Mr.D.Jaganathan

ORDER

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

Petitioner/guarantor, has offered his property situated at Thirupur District, Thirupur Taluk, Thirupur Town, Thottipalayam

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Village, in Ward No.14, KNP Puram, Door No.37 to 41, New No.53, Muthusamy Street, as security for the loan availed by M/s.PV Chemitec Adhesives India (P) Limited, Coimbatore, the 4th respondent herein. As there was default IDBI Bank Limited, NPA Management Group, Saidpet, Chennai, the 1st respondent, has filed OA.No.7 of 2012 on the file of Debts Recovery Tribunal, Coimbatore, for recovery of a sum of Rs.2,65,93,227/-. Petitioner has been arrayed as Defendant No.6, in O.A.No.7 of 2012. Reply by Defendant No.6/writ petitioner has been filed.

2. Petitioner/Defendant No.6, in O.A.No.7 of 2012, has offered a one time proposal dated 14.12.2016, offering Rs.20 Lakhs. Proposal has been rejected by 1st respondent Bank, vide letter dated 04.01.2017. Later petitioner has increased the proposal to Rs.30 Lakhs, vide letter dated 28.03.2017. But, the bank rejected the same, vide letter dated 11.05.2017. Subsequently on 17.03.2018, petitioner has submitted another revised proposal increasing the amount to Rs.35,00,000/-. IDBI Bank vide letter dated 28.03.2018, rejected the said proposal also, as hereunder.

> "Dear Sir
>
> PV Chemitec Adhesives India Pvt. Ltd. -
> Release of Guarantee/Mortgage - Settlement Offer
>
> Please refer to your letter dated March 17, 2018 requesting us to consider your proposal envisaging payment of Rs.35 Lakh to IDBI Bank towards release of the guarantees executed / property mortgaged to secure the loans of the captioned company. In this connection, we advise that you proposal has been examined and the same has not been found acceptable by IDBI Bank."

3. On 18.04.2018, when OA No.7 of 2012, came up for hearing, petitioner/Defendant No.6, has filed a petition to refer the matter before Lok Adalat for settlement, for which the learned counsel for the bank has conceded. Therefore, the tribunal directed the Registry to refer the matter before Lok Adalat on 11.05.2018. According to Mr.D.Jaganathan, learned counsel for the petitioner, though on 11.05.2018, the petitioner was present, there was no appearance on behalf of the bank. Hence, reference made before the Lok Adalat had been adjourned to 20.06.2018.

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4. Bank has filed an application dated 27.06.2015, under Section 14 of the SARFAESI Act, seeking assistance from the District Collector cum District Magistrate, Tirupur, for taking physical possession. On 09.04.2018, District Collector cum District Magistrate, Tirupur District, has passed an order authorising the Sub Collector, Tirupur to take physical possession of the property mentioned in the application and to

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handover the same to the authorised officer, IDBI Bank Limited, NPA Management Group, Chennai, under proper acknowledgment.

5. Being aggrieved by the said order of the District Collector cum District Magistrate, Tirupur District, petitioner/Defendant No.6, has filed the instant writ petition for a writ of certiorarified mandamus to quash the order dated 09.04.2018 and consequently prayed for a direction to the authorised Officer, IDBI Bank, NPA Management Group, Chennai, 1st respondent, to consider the petitioner's settlement proposal, referred to lok adalat.

6. We have heard the learned counsel for the petitioner and perused the materials available on record.

7. Institution of OA No.7 of 2012, on the file of Debts Recovery Tribunal, Coimbatore for recovery of a sum of Rs.2,65,93,227/-, is permissible under the SARFAESI Act. Bank is also empowered to simultaneously take recourse / steps towards realisation of the debt by invoking the provisions of SARFAESI Act, 2002. Thus, seeking assistance for taking physical possession of the property mortgaged / secured assets, by invoking Section 14 of the SARFAESI Act, 2002 cannot be said to be illegal.

8. Be that as it may, if the petitioner is aggrieved over the order passed by the District Collector cum District Magistrate, Tiruppur District, it is always open to the petitioner to challenge the said order under Section 17(1) of the SARFAESI Act, 2002 which is an effective and alternative remedy and in this regard, reference can be made to the following decisions.

(i) In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 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

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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

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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

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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

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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.
........ "

9. In the light of the above decisions and discussion, prayer for issuance of writ of certiorari, to quash the order dated 09.04.2018 of District Collector cum District Magistrate, Tirupur District, cannot be granted.

10. From the record of proceedings of the tribunal, in O.A.No.7 of 2012, dated 18.04.2018, it could be deduced that on the petition filed by the writ petitioner / Defendant No.6, Registry of the tribunal, has been directed to refer the matter to Lok Adalat and as there was no representation, for the bank on 11.05.2018, matter has been adjourned to 20.06.2018, by Lok Adalat.

11. Lok Adalat is a forum where parties come to an agreement and accordingly, an award/decree is passed. It is on consensus and no Court / Adalat can issue any direction to the parties to settle the contentious issues, as proposed by one or the other, as the case may be.

12. When parties are before the Lok Adalat, mandamus in the nature of writ, cannot be issued against any one of the parties. Prayer sought for to consider the petitioner's settlement

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proposal, in the manner as suggested by him, cannot be granted. Prayer is misconceived and untenable. Hence, Writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The Authorized Officer,
IDBI Bank Limited,
NPA Management Group,
No.115, Annasalai, Saidapet,
Chennai - 600 015.

2. The District Magistrate and
District Collector,
Thirupur District.

3. The Sub Collector, Thirupur,
Thirupur District.

+1cc to Mr.D.Jaganathan, Advocate SR.No.35139

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GN(18/06/2018)

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