IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.14931 of 2018
and
WMP Nos.17647 & 17648 of 2018

1. M/s. Renuga Timber & Woods
Rep. by its Partner cum Guarantor
P.Leelavathi

2. Karthick ... Petitioners

vs.

1. M/s.Indian Bank,
CMDA Branch, Thalamuthu Maligai,
Egmore, Chennai.

2. The Assistant Commissioner of Police,
Koyambedu, Chennai.

3. The Inspector of Police,
K10, Koyambedu Police Station,
Koyambedu, Chennai - 600 107.

4. M/s.Asset Reconstruction Company (India) Ltd.,
Rep. by its Authorized Officer,
No.1G, 1st Floor, Century Plaza,
No.560-562, Anna Salai,
Teynampet, Chennai - 600 002.

5. The Chief Metropolitan Magistrate,
Allikulam,
Chennai - 600 003. ... 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 of the impugned order of the 5th respondent in Crl.M.P.No.3079 of 2017 dated 20.02.2018 and to quash the same and for a direction directing the 4th respondent to restore the portion of possession to the petitioners at Plot No.42, Door No.2A, 1st Cross Street, Sai Nagar Annex, Chinmaya Nagar, Chennai - 92.

For Petitioners : Mr.CK.Chandrasekkar
for Mr.V.Selvasekaran

ORDER

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

Material on record discloses that on an application filed under Section 14 of the SARFAESI Act, 2002, by M/s.Asset Reconstruction Company (India) Ltd., Chennai, learned Chief Metropolitan Magistrate, Chennai, has passed orders in Crl.M.P.No.3079 of 2017 dated 20.02.2018, appointing Mr.E.Prem Kumar, as Advocate Commissioner to take possession of the schedule mentioned property therein, after inventory, and if necessary with the assistance of Station House Officer, Koyambedu Police Station, Chennai and to handover the same to the ARCIL. Accordingly warrant has been issued. Being aggrieved Renuga Timber & Woods, represented by its Partner cum Guarantor and others have filed instant writ petition, to quash the said order.

2. Though, Mr.CK.Chandrasekkar, learned counsel for the petitioner/guarantor, assailed the correctness of the order of the learned Chief Metropolitan Magistrate, Allikulam, Chennai made in Crl.M.P.No.3079 of 2017 dated 20.02.2018, on the grounds of fraud, suppression of fact, and the manner, in which an exparte order was obtained in SA No.98 of 2013, and on the above said grounds, submitted that instant writ petition is an exceptional case, where this Court can entertain a writ petition under Article 226 of the Constitution of India, going through the material on record, we are not inclined to accept the same.

3. Time and again, the Hon'ble Supreme Court as well as this Court has held that when there is an effective and alternative remedy, ordinarily writ jurisdiction should not be invoked and on the facts and circumstances of this case, we do not find that there is any extraordinary / exceptional circumstances, invoking the jurisdiction of this Court under Article 226 of the Constitution of India. On this aspect, we deem it fit to consider few judgments.

(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 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.
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> 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.
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> ... 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.
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> ....

4. In Satyawati Tondon's case, the Hon'ble Supreme Court has held that the tribunals constituted under the SARFAESI Act, 2002, is competent to decide all questions of law and fact. Grounds raised in this instant writ petition, can always be urged before the tribunal.

5. In the light of the above discussion and decisions, we are not inclined to entertain the writ petition. Order of the learned Chief Metropolitan Magistrate in Crl.M.P.No.3079 of 2017 has been passed on 20.02.2018.

6. Section 17 (1) of SARFAESI Act, 2002, is extracted hereunder.

> "Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the

matter within forty-five days from the date on which such measure had been taken: PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section."

7. Though time provided under the statute has expired, considering the averments and submissions, we grant liberty to the petitioners to approach the tribunal, to challenge the said order, if so advised.

8. With the above directions, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Branch Manager
M/s.Indian Bank,
CMDA Branch, Thalamuthu Maligai, Egmore, Chennai.

2. The Assistant Commissioner of Police,
Koyambedu, Chennai.

3. The Inspector of Police,
K10, Koyambedu Police Station, Koyambedu, Chennai - 600 107.

4. The Authorized Officer,
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5. The Chief Metropolitan Magistrate,
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EV(CO)
SP(02/07/2018)