

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAIWAMY

W.P. No.28103 of 2018

The Commissioner of GST & Central Excise,
No.1, Goubert Avenue,
Beach Road,
Puducherry - 605 001. ... Petitioner

-vs-

1.Gandhimathi

2.Authorised Officer,
Indian Bank,
Lawspet Branch,
Puducherry.

3.Geraldine Anitha

4.The District Registrar,
Puducherry.

5.The Government of Puducherry,
rep. by its Chief Secretary,
Puducherry. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the entire records of the 4th respondent in Sale Certificate dated 16.10.2017 registered as Document No.14052/2017 and quash the same.

For Petitioner : Mr.A.P.Srinivas

For Respondent : Mr.J.Kumaran
Addl. Government Pleader
(Puducherry) for R4 & R5

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Puducherry) for the respondents 4 and 5.

2. The prayer of the petitioner is that the Sale Certificate dated 16.10.2017, in which the Survey Number of the petitioner is mentioned, be quashed.

3. According to the petitioner, the Survey Number mentioned in the Sale Certificate is wrongly shown as the Survey Number of the petitioner.

4. In reply to the query that there is an alternative remedy of approaching the Debts Recovery Tribunal and the writ petition should not be entertained, the learned counsel for the petitioner placed reliance on two decisions of this Court to contend that even if there is an alternative remedy of approaching the Debts Recovery Tribunal, the writ petition can be entertained. To support his contention, the learned counsel placed reliance on paragraph 35 of the decision of this Court in the case of Sheeba Philominal Merlin and another v. The Repatriates Co-op Finance & Development Bank Ltd. (Government of India Enterprise) No.33, North Usman Road, T.Nagar, Chennai-17 and others), reported in 2010 (5) CTC 449. The learned counsel has also placed reliance on paragraph 21 of the decision of this Court in N.R.Sadasivam v. Indian Bank, Adyar Branch, 91, 1st Main Road, Gandhi Nagar, Chennai and others, reported in 2013 (1) CTC 53.

5. However, the Supreme Court in the decision in Agarwal Tracom Private Limited v. Punjab National Bank and others, reported in (2018) 1 SCC 626 held as follows:

"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.

33. In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of SARFAESI Act before the concerned Tribunal to challenge the action of the PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court.

34. The appellant is, accordingly, granted liberty to file an application before the concerned Tribunal (DRT) under Section 17(1) of the SARFAESI Act, which has jurisdiction to entertain such application within 45 days from the date of this order. In case, if the appellant files any such application, the Tribunal shall decide the same on its merits in accordance with law uninfluenced by any of the observations made by this Court and the High Court in the impugned judgment."

6. Further, the Apex Court in *Authorized Officer, State Bank of Travancore and another v. Mathew K.C.*, reported in (2018) 3 SCC 85, held as follows:

"5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loathe to interfere with an interim order passed

in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. 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, except in cases falling within the well defined exceptions as observed in Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal, 2014 (1) SCC 603, as follows:

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

.....

10. In Satyawati Tandon (supra), the High Court had restrained 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.

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.

12. The same view was reiterated in Kanaiyalal Lalchand Sachdev and others vs. State of Maharashtra and others, 2011 (2) SCC 782 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.; Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

13. In *Ikbāl* (supra), 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* (Supra), observing :

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 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.

14. A similar view was taken in *Punjab National Bank and another vs. Imperial Gift House and others*, (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."

7. In a recent decision of the Supreme Court dated 05.10.2018 in *ICICI Bank Limited v. Umakanta Mohapatra*, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to

the decision in Mathew K.C., supra, and has observed that despite several judgments, including the decision of Mathew K.C., supra, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets.

8. In Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and another, reported in (1997) 6 SCC 450, the Supreme Court observed that when the position of law is well settled as a result of judicial pronouncement of the Supreme Court, it would amount to judicial impropriety to say the least, for the subordinate Courts, including the High Courts, to ignore the settled decisions and pass a judicial order which is clearly contrary to the settled legal position.

9. In the above mentioned recent decisions viz., Agarwal Tracom Private Limited, Mathew K.C., and Umakanta Mohapatra, supra, the Supreme Court held that when there is an alternative remedy available, writ petition is not maintainable and should not be entertained.

10. In this view of the matter, we are not inclined to entertain the present writ petition. The writ petition is dismissed. No costs. It is open to the petitioner to approach the Debts Recovery Tribunal and if the petitioner approaches the Debts Recovery Tribunal, the Debts Recovery Tribunal shall decide the matter in accordance with law. Consequently, W.M.P.No.32759 of 2018 is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. Authorised Officer,
Indian Bank,
Lawspet Branch,
Puducherry.

2. The District Registrar,
Puducherry.

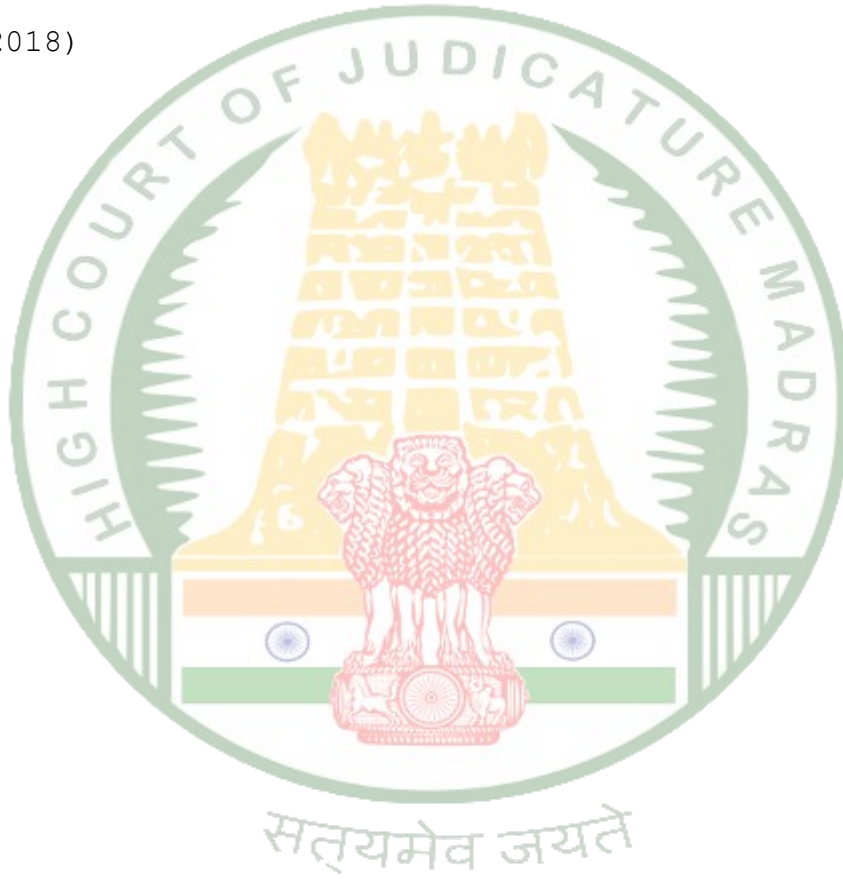
3.The Chief Secretary,
Government of Puducherry,
Puducherry.

+1 CC to Mr.A.P. Srinivas, Advocate sr 73742.

+1 CC to Govt. Pleader(Pondy) sr 73345.

W.P.No.28103 of 2018

SP(02/11/2018)



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