BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.9362 of 2018
and
W.M.P(MD)No.8645 of 2018

G.Sangeetha ... Petitioner

Vs.

1.The Authorized Officer,
Bank of Baroda,
Avinashi Road Branch,
774, P.N.Road, Sri Kannan Hospital Compound,
Near New Bus Stand,
Tirupur District.

2.Anbu Textiles Private Limited,
rep. by Anbuvel,
D.No.59/11, South Avanimoola Street,
1st Floor, Madurai-625 001 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the sale notice of the first respondent in Ref.No.TIRUBS:ADV:17:11, dated 12.04.2018 and quash the same.

For Petitioner : Mr.A.R.M.Ramesh
For respondents : Mr.Pala Ramasamy for R-1

ORDER
(Order of the Court was made by M.DURAISWAMY,J.)

The petitioner has filed the above writ petition to issue a writ of certiorari to call for the records relating to the sale notice, dated 12.04.2018, issued by the first respondent and to quash the same.

2.By the impugned sale notice issued under Rule 6(2) and/or Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the respondent Bank is bringing the mortgaged property for sale on 18.05.2018. Challenging the sale notice, dated 12.04.2018, the petitioner has filed the above writ petition.

3.It cannot be disputed that the petitioner has got remedy before the Debt Recovery Tribunal, challenging the impugned sale notice. That apart, the Honourable Supreme Court in the following judgments,

(i) (2018) 1 SCC 626 (Agarwas Tracom Private Limited Vs. Punjab National Bank and Others)

(ii) (2018) 3 Supreme Court Cases 85, (Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C)

has categorically held that when the petitioner has got alternative remedy before the Tribunal, without exhausting the alternative remedy, a writ petition should not be entertained.

4.In the judgment reported in (2018) 1 SCC 626 (Agarwas Tracom Private Limited Vs. Punjab National Bank and Others), the Honourable 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 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 Sections 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?"

5.In the judgment reported in (2018) 3 Supreme Court Cases 85, (Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C), the Honourable Supreme Court held as follows:

> 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: (SCC pp.123 & 128, paras 43 & 55)

"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."

11. In Union Bank of India and another vs. Panchanan Subudhi, 2010 (15) SCC 552, 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 and others vs. State of Maharashtra and others, 2011 (2) SCC 782 observing: (SCC p.789, para 23)

"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 Ikbal (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, observing: (SCC p.622, paras 3-4)

"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 Satyawati Tandon (supra), has also not been kept in mind before passing the impugned interim order: (SCC pp.123-124, para 46)

"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, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

6.In view of the judgment reported in (2018) 3 Supreme Court Cases 85 (stated supra), we are not inclined to entertain the writ petition for the reason that the petitioner has got remedy before the Debt Recovery Tribunal, for challenging the impugned sale notice. Therefore, following the ratio laid down in the judgment cited above, the writ petition is liable to be rejected.

7.Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

+1cc to M/S.Pala Ramasamy, Advocate SR.No. 63453
+1cc to M/S.A.R.M.Ramesh, Advocate SR.No. 63308

W.P(MD)No.9362 of 2018
25.04.2018

vs
JM/SV MMS/SAR 1/27.04.2018/6P/3C