THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No. 19264 of 2018

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

The prayer of the petitioner-company in this case reads as under:

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ or order more particularly a writ of mandamus declaring the issuance of notice dated 04.01.2018 u/s. 13(2) and subsequent proceedings u/s. 13(4) and notice of sale dated 01.06.2018 by the 1st respondent and consequential action of the Bank in resorting to auction of the properties furnished as collateral and set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case or otherwise the petitioner is subjected to irreparable loss and hardship."

Sri C. Hanumantha Rao, learned counsel for the petitioner, would allege that the respondent Bank committed violation of the statutory procedure in issuing the demand notice and quantifying the amount allegedly due from his client.

It is not in dispute that in response to the impugned demand notice dated 04.01.2018, the petitioner-company submitted its objections and the Bank duly replied thereto under its letter dated 17.03.2018.

Sri C. Hanumantha Rao, learned counsel, would assert that the Bank failed to abide by the due procedure in not enclosing a copy of the loan account statement along with the demand notice dated 04.01.2018.

In its reply dated 17.03.2018, the Bank categorically stated that there was no legal requirement that it should do so. We find merit in the stand of the Bank in this regard.

Section 13(3) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), clearly mentions that the notice under Section 13(2) of the SARFAESI Act shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of the secured debts by the borrower. There is no mandate to the effect that the loan account statement should accompany the demand notice.

Sri C. Hanumantha Rao, learned counsel, would place reliance upon the decision of a Division Bench of this Court in Sravan Dall Mill P. Limited v. Central Bank of India[1] in relation to the maintainability of a writ petition against a demand notice issued under Section 13(2) of the SARFAESI Act. In para 17 of the judgment, the Division Bench observed to the effect that unless measures are taken by a creditor under Section 13(4) of the SARFAESI Act, a borrower would be disabled from invoking the jurisdiction of the Debts Recovery Tribunal under Section 17 thereof. The Bench observed that any grievance of a borrower regarding the

[1] 2010 (1) ALT 321 (D.B.)

asset classification and consequential invocation of the SARFAESI Act by issuing a notice under Section 13(2) of the SARFAESI Act cannot be redressed under Section 17 of the SARFAESI Act in the absence of invocation of Section 13(4) of the SARFAESI Act and that judicial review under Article 226 is the only remedy.

However, this decision of the Division Bench was earlier in point of time to the decisions of the Supreme Court in Punjab National Bank v. M/s. Imperial Gift House[2] and Devi Ispat Ltd. v. State Bank of India[3].

In terms of the aforestated decisions of the Supreme Court, a writ petition would not lie at the stage of issuance of a demand notice under Section 13(2) of the SARFAESI Act.

Further, in the case on hand, though the petitioner/guarantor has also challenged the demand notice dated 04.01.2018 issued by the Allahabad Bank under Section 13(2) of the SARFAESI Act, it is not in dispute that further measures were initiated by the Bank under Section 13(4) of the SARFAESI Act by issuing the notice of sale dated 01.06.2018. Therefore, maintainability of this writ petition in the context of Section 13(2) of the SARFAESI Act does not arise.

The main issue is in relation to the failure on the part of the Bank in furnishing a statement of account along with the demand notice issued under Section 13(2) of the SARFAESI Act. We have already held that such a requirement is not prescribed by the statute.

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[2] (2013) 14 SCC 622
[3] (2014) 5 SCC 762

Further, the other issue sought to be raised by the petitioner-company is as to the quantification of alleged dues. No allegation worth its name finds mention in the affidavit filed in support of the writ petition as to violation of any mandatory procedure by the Bank in terms of the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002, framed thereunder.

In the light of the law laid down by the Supreme Court in Authorized Officer, State Bank of Travancore vs. Mathew KC[4] and Agarwal Tracom Private Limited Vs. Punjab National Bank[5], a writ petition would not be entertained by a High Court for the mere asking and as a matter of course when the remedy provided under Section 17 of the SARFAESI Act is equally or more efficacious.

In the light of the dispute sought to be raised by the petitioner-company presently before us, we are of the opinion that the factual dispute as to quantification of the dues payable would be amenable to effective resolution by the jurisdictional Debts Recovery Tribunal in exercise of power under Section 17 of the SARFAESI Act. No special grounds are made out for entertainment of this writ petition despite availability of the said alternative efficacious remedy.

The writ petition is accordingly dismissed leaving it open to the petitioner to invoke the alternative remedy available to it under the statute in accordance with law. All issues are left open to be

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[4] 2018(3) SCC 85
[5] (2018) 1 SCC 626

addressed by the Tribunal, if the petitioner-company chooses to approach it.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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JUSTICE SANJAY KUMAR

Date: 12.06.2018

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JUSTICE T. AMARNATH GOUD

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