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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No. 16401 of 2018
Date of Decision : 24.07.2018

M/s Milk Specialties Ltd. and another

Petitioners

Versus

United Bank of India and others

Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Rohit Suri, Advocate
for the petitioners.

AVNEESH JHINGAN, J.

The present writ petition has been filed with a prayer for quashing of order dated 13.06.2018 (Annexure P-19) passed by the Debt Recovery Tribunal-III, Chandigarh (for short 'D.R.T.'). Further, prayer is for setting aside the auction proceedings.

2. The respondent No.1 in the writ petition is United Bank of India, Sector 17-C, Chandigarh; respondent No.2 is Punjab & Sind Bank, Sector 17, Chandigarh; respondent No.3 is D.R.T. and respondent No.4 is Recovery Officer, D.R.T.

3. The petitioner No.1 is a limited company registered under Companies Act, 1956 whereas petitioner No.2 is the Managing Director of the petitioner no.1-company.

4. The petitioner company availed loan facilities from respondent Nos.1 and 2. To secure the loan, a joint deed of hypothecation was

executed on 18.02.2010 between the company and the banks. The petitioner company availed the loan but defaulted in its repayment. The loan accounts were classified as Non Performing Assets. On 27.02.2014, the respondent No.1-bank issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). As per notice, an amount of more than ₹40 crores was due towards the petitioner company. Thereafter, notice under Section 13(4) of the SARFAESI Act was issued by the banks for taking physical possession of the factory alongwith movable assets and stock. The physical possession was taken on 12.09.2014.

5. The petitioner filed civil writ petition bearing CWP No. 1629 of 2015. Vide order dated 30.01.2015, writ petition was disposed of. The order is quoted below:-

“Issue notice of motion.

Mr. Alok Jagga, Advocate, accepts notice on behalf of the respondents and waive service.

2. *With the consent of the parties the petition is disposed of with following order:-*

3. *The learned counsel appearing on behalf of the petitioner states that the movable properties except certain vehicles are hypothecated in favour of the respondents. The learned counsel appearing on behalf of the respondents does not have instructions as to whether the vehicles have been charged in their favour or not. The petitioner, however, is willing to have all the movable assets, which have been hypothecated in favour of the respondents as well as the vehicles, a list whereof shall be furnished by the petitioner to the respondents and their Advocate within one week from today sold. The assets may be sold by an officer of the D.R.T. to be appointed by the D.R.T. and that the sale proceeds may be appropriated on account towards the repayment of the*

respondents' dues. The respondents shall be entitled to receive the same on account and without prejudice to their rights and contentions.

4. *In the event of the respondents' dues being satisfied from the sale proceeds, they will naturally withdraw the proceedings and not proceed further with the auction already initiated. In the event of there being a deficit, the petitioner is at liberty to avail of the alternate remedy under the provisions of the SARFAESI Act and in respect of the action initiated by the respondents under the SARFAESI Act.*

5. *The writ petition is accordingly disposed of. The parties shall be entitled to remain present at the time of the auction and shall also be entitled to obtain bids even from third party for the sale.”*

6. The petitioner filed an application for clarification of order dated 30.01.2015. This Court on 27.03.2015 clarified that D.R.T. was only requested for appointing an officer for implementing the order. The cost/charges/expenses of said officer shall be borne by the petitioner.

7. The D.R.T. appointed Local Commissioner to prepare the inventory. Local Commissioner prepared inventory and submitted his report on 15.04.2015. There was a dispute as the petitioner alleged that the stock from the factory premises had been siphoned off and the *panchnama* had been forged. Petitioner company lodged an FIR No. 29, dated 17.02.2017 at Police Station Lalru, Derabassi, against the officials of the respondent-bank. The said matter is still pending.

8. For compliance of order of this Court, the matter was fixed before the D.R.T. on 27.02.2016. Bank stated that they have supplied the evaluation report of hypothecated movable assets to the recovery officer.

The recovery officer was directed to submit the auction report on the next

date. The Auction Notice was published on 29.03.2018 in newspaper, for sale of movable assets. Petitioner moved applications before D.R.T. One of the application was for seeking stay of auction. D.R.T. refused to grant interim order. The petitioner again filed a writ petition bearing CWP No. 11663 of 2018 in the High Court. One of the grievance raised in the writ petition was that D.R.T. refused to grant *ad interim* protection against the auction. The writ petition was disposed of without adjudicating the challenge to the order of D.R.T. as the petitioner had efficacious alternative remedy available against the order of D.R.T. The relevant portion of the order is reproduced below :-

“[9] We have heard learned counsel for the parties at a considerable length and gone through the impugned orders as well as other material on record.

[10] The question as to whether or not the products lying in stock have been siphoned off or are still lying intact and what is their market value, is essentially a question of fact which can be, in our considered opinion, decided by a fact finding appropriate Forum, be it may DRT or a Court of competent jurisdiction. It is not expedient for this Court to express any views in this regard. Hence, we refrain from ourselves making any observations in that regard as two different Forums are yet to take a final view in this regard.

[11] It is vehemently contended that the material lying in stock be auctioned first as it would fetch sufficient price to settle the entire loan amount and would further save the plant and machinery, for the petitioners want to run the industrial unit. The Bank, however, has taken a categorical stand that outstanding loan is approximately ₹ 50.00 crore and value of the stock is hardly Rs.4.00 crore. In such a situation where, according to the Bank, the material lying in stock is wholly insufficient to discharge the loan liability, no fault can be found with the sale of plant and machinery. It goes without

saying that if the stock is finally evaluated in the auction at a rate expected by the petitioners and the loan stands satisfied, the Bank will possibly have no legal necessity to confirm the sale of plant and machinery or to sell the other immovable assets.

[12] So far as the order of DRT-III, Chandigarh refusing to grant ad interim protection against the auction is concerned, we are of the view that the said order is appealable before the Debts Recovery Appellate Tribunal. Since there is any efficacious alternative remedy available to the petitioners, this question need not be gone into by this Court.

[13] The petitioners, however, are justified in urging that the Tribunal should decide their SA within a reasonable time.

[14] Keeping in view the contentious issues raised by both the sides, we request the Tribunal to decide the main case as early as possible and preferably within three months.

[15] Similarly, if there is any breach of the orders of this Court, there lies a separate remedy in law which can be availed by the petitioners.

[16] Disposed of.”

9. An application was filed by the petitioners for clarification of order dated 09.05.2018. Vide order dated 30.05.2018, it was clarified that the observation made in para 11 of the order dated 09.05.2018, would have no bearing on the proceedings pending before the Tribunal.

10. The petitioners, on 29.05.2018, filed objections to the process of auction carried out on 10.05.2018. Pleadings were completed. The D.R.T., vide order dated 13.06.2018 (Annexure P-19), rejected the objections raised by the petitioner. D.R.T. held that auction had been done in compliance with order of High Court. The bank was given liberty to initiate proceedings, as per rules, for confirmation of the auction.

Auctioneer Assistant Registrar was directed to hand over the items of the auction to the bidder after confirmation of auction. Further direction was to release the amount to the concerned bank after giving ample time to the parties to file the appeal against the order dated 13.06.2018, in case they are not satisfied.

11. The petitioner instead of availing statutory remedy of appeal, filed the present writ petition. In the writ petition, various disputed questions of facts have been raised. There is a dispute regarding siphoning off the stock. The issue has been raised with regard to evaluation of the stock. The grievance was that the D.R.T., while complying with the order dated 30.01.2015, has not acted as an executing authority but has discharged judicial functions.

12. No case is made out for interference under Article 226 of the Constitution of India. Moreover, the disputed questions of facts are involved. The petitioners have an efficacious alternative remedy of appeal against the impugned order.

13. The Apex Court in **Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, (2013) 357 ITR 357**, elaborately considered the question of entertaining writ petition where alternative statutory remedy was available. After examining the relevant case law on the point, it was recorded in Paras 14 to 20 as under:-

“14. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.

15. Before discussing the fact proposition, we would

*notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: **State of U.P. vs. Mohammad Nooh**, AIR 1958 SC 86; **Titaghur Paper Mills Co. Ltd. vs. State of Orissa**, (1983) 2 SCC 433; **Harbanslal Sahnia vs. Indian Oil Corpn. Ltd.**, (2003) 2 SCC 107; **State of H.P. vs. Gujarat Ambuja Cement Ltd.**, (2005) 6 SCC 499).*

16. *The Constitution Benches of this Court in **K.S. Rashid and Sons vs. Income Tax Investigation Commission**, AIR 1954 SC 207; **Sangram Singh vs. Election Tribunal, Kotah**, AIR 1955 SC 425; **Union of India vs. T.R. Varma**, AIR 1957 SC 882; **State of U.P. vs. Mohd. Nooh**, AIR 1958 SC 86 and **K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras**, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted. (See: **N.T. Veluswami Thevar vs. G. Raja Nainar**,*

AIR 1959 SC 422; Municipal Council, Khurai vs. Kamal Kumar, (1965) 2 SCR 653; Siliguri Municipality vs. Amalendu Das, (1984) 2 SCC 436; S.T. Muthusami vs. K. Natarajan, (1988) 1 SCC 572; Rajasthan SRTC vs. Krishna Kant, (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; A. Venkatasubbiah Naidu vs. S. Chellappan, (2000) 7 SCC 695; L.L. Sudhakar Reddy vs. State of A.P., (2001) 6 SCC 634; Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra, (2001) 8 SCC 509; Pratap Singh vs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. vs. ITO, (2003) 1 SCC 72).

17. *In Nivedita Sharma vs. Cellular Operators Assn. of India, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:*

12. *In Thansingh Nathmal v. Supdt. of Taxes, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).*

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party

applying to it to seek resort to the machinery so set up.”

13. In **Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433** this Court observed: (SCC pp. 440-41, para 11)

*“11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in **Wolverhampton New Waterworks Co. v. Hawkesford, 141 ER 486** in the following passage: (ER p. 495) ‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.’ The rule laid down in this passage was approved by the House of Lords in **Neville v. London Express Newspapers Ltd., 1919 AC 368** and has been reaffirmed by the Privy Council in **Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd., 1935 AC 532 (PC)** and **Secy. of State v. Mask and Co., AIR 1940 PC 105**. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing*

the writ petitions in limine.”

14. In *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

“77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.””(See: **G. Veerappa Pillai v. Raman & Raman Ltd.**, AIR 1952 SC 192; **CCE v. Dunlop India Ltd.**, (1985) 1 SCC 260; **Ramendra Kishore Biswas v. State of Tripura**, (1999) 1 SCC 472; **Shivgonda Anna Patil v. State of Maharashtra**, (1999) 3 SCC 5; **C.A. Abraham v. ITO**, (1961) 2 SCR 765; **Titaghur Paper Mills Co. Ltd. v. State of Orissa**, (1983) 2 SCC 433; **H.B. Gandhi v. Gopi Nath and Sons**, 1992 Supp (2) SCC 312; **Whirlpool Corp. v. Registrar of Trade Marks**, (1998) 8 SCC 1; **Tin Plate Co. of India Ltd. v. State of Bihar**, (1998) 8 SCC 272; **Sheela Devi v. Jaspal Singh**, (1999) 1 SCC 209 and **Punjab National Bank v. O.C. Krishnan**, (2001) 6 SCC 569)

18. In *Union of India vs. Guwahati Carbon Ltd.*, (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed:

“8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

“23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.”

19. Thus, while it can be said that this Court has recognized 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, Titagarh 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.

20. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the

*jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In **Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267** this Court has noticed that if an appeal is from “Caesar to Caesar’s wife” the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case.”*

14. Keeping in view the availability of alternative remedy of appeal against the impugned order and the law laid down by the Supreme Court on the issue, we do not find any ground to interfere in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, the same is hereby dismissed.

[AJAY KUMAR MITTAL]
JUDGE

[AVNEESH JHINGAN]
JUDGE

24.07.2018
pankaj baweja

Whether speaking/reasoned ?

Yes / No

Whether reportable ?

Yes / No