IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-28994-2018

Date of Decision: 16.11.2018

Anurag Sharma

...Petitioner

Versus

The State Bank of India

...Respondent

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Jai Bhagwan, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the notices dated 15.10.2018 (Annexure P-10), dated 9.4.2018 (Annexure P-4) and dated 12.6.2018 (Annexure P-5) issued by the respondent.

2. Briefly stated, the facts necessary for adjudication of the present petition as narrated therein may be noticed. The petitioner availed the term loan of ₹ 74,90,000/- from the respondent vide loan account No.3160961028 against execution of various documents including the letter of arrangement dated 1.2.2011. The said amount was to be repaid in 72 monthly installments as is clear from the Amortization Schedule (Annexure P-1). The petitioner repaid the entire installments commencing from February, 2012 till February, 2018, thus, he had paid ₹ 1,07,50,588/-

out of the total amount of ₹ 1,11,34,765/-. When the petitioner requested the respondent for issuance of 'No Objection Certificate', he received a letter dated 20.3.2018 (Annexure P-2) that an amount of ₹ 34,18,987/- plus future interest was outstanding against him. The petitioner submitted a reply dated 25.3.2018 (Annexure P-3) against the said letter. Thereafter, the respondent declared the account of the petitioner as Non-Performing Account (NPA) and issued a notice dated 9.4.2018 (Annexure P-4) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the SARFAESI Act") for outstanding liability amounting to ₹ 33,48,096/-. Further, the respondent had issued a notice dated 12.6.2018 (Annexure P-5) directing the petitioner to handover the vacant possession of the mortgaged property. As per account statement (Annexure P-6), the petitioner had already paid the loan amount to the respondent. The petitioner challenged the notices (Annexures P-4 and P-5, respectively) before the Debts Recovery Tribunal-I (hereinafter referred to as "the Tribunal") by filing SA-93-2018. The Tribunal vide order dated 4.7.2018 directed the petitioner to submit a proposal along with calculation along with substantial amount to prove his bonafide to the authorized officer. In response thereto, the petitioner submitted the proposal dated 9.7.2018 (Annexure P-7) along with the calculation and a cheque amounting to ₹ 6 lakhs. The said proposal was rejected by the respondent. The Tribunal vide order dated 20.9.2018 (Annexure P-8) dismissed the said SA. On insistence of the respondent, the petitioner deposited another amount of ₹ 18,50,000/- through online transaction as is clear from the screen shot of the transaction dated 18.9.2018 (Annexure P-9). However, the respondent vide impugned notice dated 15.10.2018

(Annexure P-10), the respondent had directed the petitioner to hand over the possession of the secured assets. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner and perusing the averments made in the petition, we find that the petitioner has an alternative remedy against the impugned notice (Annexure P-10). The narration of facts noticed hereinbefore clearly shows that certain factual matrix is required to be established for which the first appellate authority would be proper forum instead of invoking writ jurisdiction of this Court under Article 226 of the Constitution of India at the first instance.

4. Admittedly, the petitioner has not challenged the order dated 20.9.2018 (Annexure P-8) passed by the Tribunal. The petitioner cannot challenge the impugned notice dated 15.10.2018 (Annexure P-10) without challenging the order, Annexure P-8. It was under such circumstances that no order favourable to the petitioner can be passed. Further, against the order of the Tribunal there is a remedy of appeal under Section 18 of the SARFAESI Act.

5. The Apex Court in **Commissioner of Income Tax and others vs. Chhabil Dass Agarwal, (2013) 357 ITR 357**, 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 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 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 Corpn. 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."

6. This Court in **Larsen and Toubro Limited v. The State of Haryana and others, 2012(2) 166 PLR 345**, considering the question of entertaining writ petition where alternate statutory remedy was available,

had in paras 6 and 7 observed thus :-

> "6. The following are the broad principles when a writ petition can be entertained without insisting for adopting statutory remedies:- i) where the writ petition seeks enforcement of any of the fundamental rights; ii) where there is failure of principles of natural justice; or iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.
>
> 7. We are not inclined to entertain this petition against the assessment order as it does not fulfil any of the broad outlines noticed herein above.....".

7. In view of the above, the writ petition is dismissed being not maintainable. We make it clear that the dismissal of the writ petition is without prejudice to the liberty available to the petitioner to take appropriate steps under SARFAESI Act.

(AJAY KUMAR MITTAL)
JUDGE

November 16, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**