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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 04.05.2018

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LPA 206/2016, C.M. No. 15436/2016, C.M. No. 28366/2016, C.M. No. 35446/2016, C.M. No. 6231/2018 & C.M. No. 6232/2018

AMISH JAIN & ORS

..... Appellants

Through: Mr. Amish Jain, Appellant No.1 in person.

versus

ICICI BANK LTD

..... Respondent

Through: Mr. Punit K. Bhalla, Advocate along with Ms. Chetna Bhalla, Advocate.

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LPA 207/2016, C.M. No. 15432/2016, C.M. No. 34595/2016, C.M. No. 44517/2016, C.M. No. 20178/2017, C.M. No. 20232/2017 & C.M. No. 34066/2017

AMISH JAIN & ORS

..... Appellants

Through: Mr. Amish Jain, Appellant No.1 in person.

versus

ICICI BANK LTD

..... Respondent

Through: Mr. Punit K. Bhalla, Advocate along with Ms. Chetna Bhalla, Advocate.

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LPA 208/2016, C.M. No. 15431/2016, C.M. No. 28370/2016, C.M. No. 35448/2016, C.M. No. 20177/2017, C.M. No. 39860/2017, C.M. No. 42403/2017, C.M. No. 6233/2017 & C.M. No. 6234/2017

AMISH JAIN & ORS

..... Appellants

Through: Mr. Amish Jain, Appellant No.1 in person.

versus

ICICI BANK LTD

..... Respondent

Through: Mr. Punit K. Bhalla, Advocate along
with Ms. Chetna Bhalla, Advocate.

+ LPA 211/2016, C.M. No. 4466/2017 & C.M. No. 6230/2018

AMISH JAIN & ORS

..... Appellants

Through: Mr. Amish Jain, Appellant No.1 in
person.

versus

ICICI BANK LTD

..... Respondent

Through: Mr. Punit K. Bhalla, Advocate along
with Ms. Chetna Bhalla, Advocate.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

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1. The present LPAs have arisen out of the impugned common order dated 04.02.2016 passed in W.P.(C) Nos.9383/2015, 9317/2015, 8516/2015 and 858/2016. In all these writ petitions, common issue was; whether the Delhi High Court has the territorial jurisdiction and whether the writ petitions were not maintainable because an equally efficacious remedy was available to the petitioners. In these writ petitions, the appellant has challenged the demand notices dated 09.07.2012, 30.08.2011 and

31.05.2011 under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the SARFAESI Act”), notices dated 20.08.2013 and 30.04.2012 under Section 13(4) of SARFAESI Act and notice dated 25.08.2012 under the SARFAESI Act and also claimed the handing over the original copy of the mortgaged title deed of the property situated at Meerut and also claimed compensation.

2. The undisputed facts are that the appellants took home loan against the mortgage of the property, situated at Meerut from the Meerut Branch of the respondent/Bank. The appellants are also resident of Meerut. They had failed to repay the loan amount and proceedings under the SARFAESI Act started against them by the respondent/Bank at Meerut pursuant to demand notices dated 09.07.2012, 30.08.2012 and 31.05.2011 under Section 13(2) of the SARFAESI Act and possession notices dated 20.08.2013 and 30.04.2014 under Section 13(4) of SARFAESI Act. The appellants had duly participated in those proceedings. The appellants, however, invoked the jurisdiction of DRT-III, Delhi by filing S.A. No.330/2012 u/s 17(1) of the SARFAESI Act. DRT-III rejected the above S.A. on the ground of lack of territorial jurisdiction holding that it had no

jurisdiction to entertain the proceedings since no part of cause of action has arisen in Delhi as the petitioners were residents of outside Delhi and obtained loan from a branch of the respondent/Bank at Meerut which was repayable at Meerut and the property was mortgaged at Meerut. The DRT further held that the mere issuance of notice under Section 13(2) of SARFAESI Act by the Jhandewalan Branch of the respondent/Bank would not vest the DRT, Delhi with jurisdiction. This order of DRT was challenged by the appellants invoking writ jurisdiction of this Court. The said order of DRT was upheld by the Full Bench of this Court in W.P.(C) No.3957/2012 vide order dated 13.09.2012. The SLP(C) No.33516/2012 against the order dated 13.09.2012 was withdrawn by the appellants and it was dismissed as withdrawn by the Apex Court vide order dated 20.07.2015. Therefore, the issue which has been raised before us in these LPAs that is whether the Courts/Tribunals at Delhi have the territorial jurisdiction in respect of the disputes arising out of the home loan taken by the appellants at Meerut against the mortgaged property situated at Meerut and when the appellants themselves are residents of Meerut, has attained finality. The contentions of the appellants in the earlier challenges that the issuance of notice by the Bank from its Delhi branch confers jurisdiction upon the Courts/Tribunals of

Delhi was also rejected and has attained finality on the withdrawal of the SLP by the appellants. Admittedly, the appellants also approached the Supreme Court under Article 32 of the Constitution of India by way of writ petition bearing W.P.(C) Nos.1056/2015, 3205/2015 and 535/2015, but the said petitions were withdrawn with liberty to take appropriate actions. The appellants have not disclosed either in the writ petition or in the present appeal as to their contentions before the Apex Court in these writ petitions which they have subsequently withdrawn.

3. Thereafter, these writ petitions in which the impugned order has been passed have been filed by the appellants wherein the appellants had challenged the actions of respondent/Bank under Section 13(2), 13(4) and 14 of SARFAESI Act, culminating in the passing of the impugned order. The learned Single Judge in the impugned order has, after considering the contentions of the appellants and the respondent has given his finding as under:-

“19. I may record that the Supreme Court, in relation to Income Tax Act, 1961, in CIT Vs. Chhabil Dass Aggarwal (2014) 1 SCC 603 has held a writ petition, on the grounds of non compliance of principles of natural justice and lack of jurisdiction also to be not maintainable when alternative remedy is provided in the special statute and when the said grounds can also be taken therein. Following the said judgment the Division Bench of this Court in Yashwant Singh Vs. Indian Bank 220 (2015) DLT 667 has

observed that Article 226 of the Constitution of India has virtually been done away with wherever the remedy against the order of a Tribunal or an authority constituted under a special statute is provided for.

20. As far as the reliance by the petitioner no.1 on Satyawati Tondon supra is concerned, the same was considered by the Division bench in M/s Sigma Generators Pvt. Ltd. supra and thereafter held the writ petition to be not maintainable in the context of the SARFAESI Act. It was observed that SARFAESI Act being a special Act brought in the larger public interest and finding the banks to be unable to expeditiously realise their dues by encashment of the securities, interference in a writ jurisdictions would be counterproductive.

21. I therefore hold the writ petitions to be not maintainable on the said ground alone.”

4. These findings have been challenged by the appellants before us. We have given thoughtful consideration to the rival contentions of the parties. We find no illegality and infirmity in the impugned order. It is a settled proposition of law that when an equally efficacious remedy is available, the Courts should refrain from invoking the writ jurisdiction.

5. In ***State of Bihar vs. Jain Plastics and Chemicals Ltd.*** (2002) 1 SCC 217, the Supreme Court has clearly held as under:-

“3.....It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in

refusing to exercise the discretion under Article 226.”

6. Again, the Supreme Court in a subsequent judgment in ***United Bank of India v. Satyawati Tondon*** (2010) 8 SCC 110 has reiterated the same proposition, which is reproduced as under:-

“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.”

7. The Supreme Court has categorically stated in ***Kanaiyalal Lalchand Sachdev v. State of Maharashtra*** (2011) 2 SCC 782 that “23.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.”

8. From the events of this case, it is apparent that before invoking the writ jurisdiction of this Court *qua* the notices issued under Section 13(2) and 13 (4) of the SARFAESI Act, the appellants had already availed the equally efficacious remedy by filing S.A. No.330/2012 before DRT, Delhi, which was dismissed by the learned DRT and its order attained finality up to the Apex Court.

9. The findings of DRT that no part of cause of action has arisen in Delhi and that mere issuance of notice under SARFAESI Act from Delhi Branch of respondent/bank does not give rise to the cause of action here, has attained finality and cannot be re-agitated.

10. The impugned order needs no interference and suffers with no illegality and the present LPAs have no merit in them and needs to be dismissed.

11. Before parting with these LPAs, we would like to comment on the conduct of the appellants. The recorded facts clearly show that the appellants have been raising the same contentions repeatedly before the various Courts in Delhi. First they had challenged the said notices by filing an SA before DRT-II and upon rejection of their pleas by DRT-II, they filed the writ petition No. 3957/2012 before this Court and on rejection of the writ

petition, they carried it inn SLP to the Supreme Court which they subsequently withdrawn. Despite the fact that the appellants were aware that their contention that the courts in Delhi have the jurisdiction to entertain their pleas arising out of the transaction of the home loan which happened at Meerut had attained finality they still first invoked the jurisdiction of Supreme Court by filing petitions under Article 32 bearing W.P.(C) No.1056/2015, 3205/2015, 535/2015 and after withdrawing them, they again invoked the writ jurisdiction of this court by filing writ petition bearing W.P.(C) Nos.9383/2015, 9317/2015, 8516/2015 and 858/2016. The conduct of the appellants show that they have been re-agitating the same issue again and again in various litigations. The appellants in this manner are indulging the various Courts in entertaining a plea which had already been finally determined by adopting ingenious ways of filing the petitions. This is nothing but an abuse of the process of Court.

12. The Supreme Court has clearly held in ***Dr. Buddhi Kota Subbarao vs. K.Parasaran and others (1996) 5 SCC 530*** that “No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions.”

13. The Supreme Court has come heavily on such litigants and advised the Courts to take stern action against such litigants. In ***Indian Council for Enviro-Legal Action vs. Union of India (UOI) and Ors. (2011) 8 SCC 161***, the Supreme Court has observed as under:-

“216. In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the Respondent or the Defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

14. Recently, in ***Dnyandeo Sabaji Naik And Anr V. Mrs. Pradnya Prakash Khadekar And Ors (2017) 5 SCC 496***, the Three-Judge Bench of

the Supreme Court came heavily on a litigant who abused the process of the Court and imposed an exemplary cost and has held as under:-

“13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception—are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative

strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.”

15. The conduct of the appellants as is clear from the narration of the facts above clearly shows that the appellants' conduct is nothing but an abuse of process of this Court. They have burdened the Court with unwarranted and unnecessary litigation and taken up the time of the Court in settling an issue which had already been settled and had attained finality. This act of the appellants has eaten into the time and energy of this Court which could have otherwise been used for settling other cases with the alive issues. We, thus, while disposing off these LPAs, impose a cost of Rs.1 lakh

in each LPA to be payable to Delhi High Court Staff Welfare Fund, within a period of four weeks from today.

16. With these directions, the LPAs stand disposed off.

**DEEPA SHARMA
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

**MAY 04, 2018
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