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*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+   W.P.(C) 10720/2018, CM Nos. 41765-41766/2018

PADAM SINGHEE & ORS

..... Petitioners

Through: Mr.Akhil Sibal, Sr. Advocate with Mr.Ashish Virmani, Mr.E.Sreenivas Rao, Mr.Akshay Abrol, Mr.Pradeep Chhindra, Mr.Nikhil Pratap, Advocates

versus

SVOGL OIL, GAS & ENERGY LTD & ANR

..... Respondents

Through: Mr.Amit Singh Chadha, Sr. Advocate with Mr.R.P.Agrawal, Mr. Sunny Verma, Ms.Shristi, Advocates for the Respondent No.2-ICICI Bank

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

%   **08.10.2018**

CM No. 41765/2018

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10720/2018

1. The present writ petition has been filed by the petitioners with the

following prayers:-

(a) Pass a writ, order or direction in the nature of certiorari, or any other appropriate writ, order or direction, quashing and setting aside the Final Order and Recovery Certificate, both dated 04.09.2017 passed by the Debts Recovery Tribunal-I in OA No. 626/2016; and

(b) Pass a writ, order or direction in the nature of certiorari, or any other appropriate writ, order or direction, quashing and setting aside the Final Order dated 28.08.2018 passed by the Debts Recovery Tribunal-I in MA No. 157/2017 filed in OA No. 626/2016; and

(c) Pass a writ, order or direction in the nature of certiorari, or any other appropriate writ, order or direction, quashing and setting aside the order dated 25.07.2017 passed by the Debts Recovery Tribunal-I in OA No. 626/2016; and

(d) Pass any other order which this Hon'ble Court may deem fit."

2. In substance, the challenge of the petitioners is to the order passed by the Debt Recovery Tribunal-I, Delhi, whereby the DRT-I, in terms of the order dated August 28, 2018, has dismissed the M.A. 157/2017 (in OA No. 626/2016), refusing to allow the said M.A./Review Application on the ground that there is no error apparent in the order dated September 4, 2017.

3. Mr.Amit Singh Chadha, learned Senior Counsel appearing for the

respondent No. 2 has taken a preliminary objection on the maintainability of the present writ petition in view of the alternative remedy of appeal available to the petitioners. He relies upon the judgments of the Supreme Court in the case of ***United Bank of India Vs. Satyawati Tondon and Others, 2010 VIII AD (SC) 590*** and ***2010 (8) SCC 110.***

4. On this submission of Mr.Amit Chadha, Mr.Akhil Sibal, learned Senior Counsel appearing for the petitioners submits that the jurisdiction of this Court under Article 226 of the Constitution of India, is not barred as it is the case of the petitioners that the impugned order dated September 4, 2017 has been passed by the DRT-I in violation of the principles of natural justice, as no hearing was given to the petitioners. He would rely upon the judgments in the cases of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1, Cochin International Airport Limited Vs. Presiding officer, DRT and Others, 173 (2010) DLT 247 (DB)*** and ***Allied Chemical Laboratories Vs. Presiding Officer, Debt Recovery and Anr. MANU/OR/0135/2004.***

5. We agree with the objection taken by Mr.Amit Chadha in view of the latest pronouncement of the Supreme Court in the case of ***Authorized Officer, State Bank of Travancore and Ors. Vs. Mathew K.C., AIR 2018***

SC 676, wherein the Supreme Court, while dealing with the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and also referring to its own judgment in ***United Bank of India Vs. Satywati Tondon and Ors. (supra),*** has held that the High Court could not have entertained a writ petition in view of alternative remedy of appeal available to the respondent therein. The relevant paragraphs of the judgment in the case of ***Authorized Officer, State Bank of Travancore and Ors. (supra)*** are reproduced as under:

> *"12. 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 :*
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> > *"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."*
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> *13. The same view was reiterated in Kanaiyalal Lalchand Sachdev and others vs. State of Maharashtra and others, 2011 (2) SCC 782 observing:*
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> > *"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.)"

14. 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.*
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> *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."*

15. A similar view was taken in Punjab National Bank and another vs. Imperial Gift House and others, (2013) 14 SCC 622, observing:-

> *"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.*
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> *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."*

16. 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:-

> *"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."

17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference".

6. Even though, Mr.Chadha and Mr.Sibal have made submissions which

are on the merit of the issue, we refrain from going into the same and dismiss the writ petition on the ground that the petitioners have alternative remedy. Ordered accordingly.

<u>CM No. 41766/2018 (u/S 151 CPC for stay)</u>

In view of the order passed in the writ petition, the stay application is dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 08, 2018/*akb*