IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16031 of 2019

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M/S. Akash Steels Private Limited, through its director Sri. Deepak Kumar Agarwal, Gender- Male, Aged about 56 years, Son of - Puranmal Agarwal.

... ... Petitioner

Versus

1. The Authorized Officer, Axis Bank of India, The Authorised Officer, Axis Bank Limited, Loan Centre, 2nd Floor, Kamini Centre, Patliputra, Boring Road, Patna- 800013.
2. The Centre Head, Axis Bank Ltd., SME Centre, UPA Complex, Mahendra Narayan Path, Rajendra Nagar, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr.Santosh Kumar Singh, Advocate
For the Respondent/s : Mr.Akshansh Ankit, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

2 04-11-2019 Heard learned counsel for the petitioner and learned counsel representing the Bank.

This case has been notified on the urgent motion made by learned counsel for the petitioner.

It appears that initially the writ application was preferred for quashing of the show cause notice/demand notice dated 03.06.2019 issued by the Authorised Officer of the Bank under Section 13(2) of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002'), during pendency of the writ application the bank seems to have proceeded with the action under Section 13(4) of the

SARFAESI Act, 2002, therefore, an Interlocutory Application bearing No. 1 of 2019 has been filed for amendment of the writ application.

Learned counsel for the petitioner submits that in the present case the Bank had allowed one time settlement to the petitioner and while the petitioner was abiding by the said settlement, the impugned action has been taken. Learned counsel submits that in fact the petitioner has deposited the entire amount in terms of the settlement.

Learned counsel for the Bank has opposed the writ application. It is submitted that at first instance the writ application is wholly misconceived writ application inasmuch as the petitioner had no cause of action to file writ application for quashing of the show cause notice/demand notice under Section 13(2) of the SARFAESI Act, 2002. Learned counsel submits that it is well settled by judicial pronouncements particularly in the recent judgment of the Hon’ble Apex Court in the case of **Hindon Forge Pvt. Ltd & Anr. Vs. State of Uttar Pradesh through District Magistrate, Ghaziabad & Another** reported in (2019) 2 SCC 198 that the cause of action would arise to a borrower only with the initiation of action under Section 13(4) of the SARFAESI Act, 2002. It is further submitted that during pendency of the writ application since the Bank has initiated action under Section 13(4) of the SARFAESI Act, 2002, now the petitioner has a statutory remedy available to approach the Debts Recovery Tribunal, Patna (in short 'the Tribunal') in terms of Section 17 of the SARFAESI Act, 2002. It is submitted that under Section 17 jurisdiction of the Tribunal is in the nature of an original jurisdiction and that being an adequate alternative remedy available to the petitioner, there is no reason as to why this Court would entertain this writ application under Article 226 of the Constitution of India. Learned counsel has also relied upon a judgment of the Hon'ble Apex Court in the case of **United Bank of India Vs. Satyawati Tondon & Ors.** reported in **(2010) 8 SCC 110,** paragraph '43' of which has been relied upon.

Having heard learned counsel for the petitioner and learned counsel representing the Bank, in the given facts and circumstances, let I.A. No. 1 of 2019 be allowed.

On hearing learned counsel for the petitioner and upon a careful perusal of the records, this Court finds that this petitioner had moved this Court initially even when a show cause notice was served upon the petitioner. During pendency of the writ application since the Bank has proceeded with the action under Section 13(4) of the SARFAESI Act, 2002, now the petitioner has an alternative remedy which is equally efficacious in terms of Section 17 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal. In Paragraph '43' of the judgment in the case of **Satyawati Tondon** (supra), the Hon'ble Apex Court has observed 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."

In the given facts and circumstances of the case, this Court is not willing to entertain the present writ application. The application is, thus, disposed off granting liberty to the petitioner to seek his remedy before the Tribunal in accordance with law. In case such an application is preferred within a period of 30 days from today, the same will be considered by the Tribunal keeping in view that the petitioner was pursuing its remedy before this Court on some legal advise which was ultimately not found acceptable to this Court.

This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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