

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 398 of 2019**

(Arising out of order dated 1.8.2019 passed by learned Single Judge
in WPC No.807/15)

Judgment Reserved on 23.9.2019**Judgment Delivered on 23-10-2019**

1. Mrs. Polly Chakraborty, W/o Late Shri Dr. Achinto Chakraborty, aged 40 years R/o F-6, B-2, 3rd Floor, Shriram Towers, Vyapar Vihar, Bilaspur P.S. Civil Line, Bilaspur District Bilaspur (CG)

---- Appellant**Versus**

1. Chairman & Managing Director, Punjab National Bank, 4th Floor, 5 Sansad Marg, New Delhi-7.
2. Regional Manager, Punjab National Bank, Circle Office, Pandri Raipur (CG).
3. Branch Manager / Authorized Officer, Punjab National Bank, Budhwari Bazar Branch, Behind Railway Post Office, Bilaspur (CG)

---- Respondents

For Appellant	:	Shri Salim Kazi, Advocate
For Respondents	:	Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri P. R. Ramchandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****C A V Order****Parth Prateem Sahu, J**

1. Refusal to entertain writ petition filed by appellant herein before learned Single Judge is sought to be challenged in this writ appeal.
2. Facts of the case in nutshell are that appellant availed overdraft facility of Rs.8,00,000/- from the respondent bank and in order

to avail said facility, appellant had executed an overdraft agreement dated 2.11.2010 (Annexure P-2 to writ petition) on 2.11.2010. Appellant also created equitable mortgage in respect of her immovable property. On failing to liquidate outstanding dues, respondent bank published possession notice under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act of 2002') in Hindi Daily newspaper namely 'Dainik Bhaskar', in its edition dated 5.12.2014. On coming to know about publication of such notice, appellant filed writ petition before the High Court on 1.5.2015 praying for the following reliefs;-

“i. The Hon'ble Court may kindly be pleased to call the records of the case.

ii. This Hon'ble Court may kindly be pleased to quash the proceeding initiated under the SERFAESI ACT by the respondent No. 1 to 3 also quash the notification issued for possession of the petitioner's property in Hindi daily “Dainik Bhaskar” dated 04/12/2014 also the subsequent proceeding the respondent authorities may have adopted under the provisions of SERFAESI ACT, 2002.

iii. Any other order/direction that this Hon'ble Court may deem fit in the matter.”

3. Upon notice of motion hearing, learned counsel for respondent bank put in appearance and filed an application for dismissal

of writ petition on the ground that petitioner/appellant has an alternative efficacious remedy of filing appeal before the Debt Recovery Tribunal, Jabalpur (for short 'DRT') under Section 17 of the Act of 2002. During the course of hearing on the aforesaid application, as is evident from the order sheet dated 30.6.2015 recorded by learned Single Judge, learned counsel for petitioner/appellant raised a ground that as the amount involved is less than Rs.10 Lakhs, therefore, petitioner/appellant cannot approach the DRT by filing appeal. Subsequently, learned counsel appearing on behalf of respondent bank submitted detailed reply along with the decision of the Debt Recovery Tribunal, Jabalpur dated 7.9.2017 passed in Original Application No.498/16, parties being Punjab National Bank v. Mrs. Polly Chakraborty & ors, by which application filed by respondent bank herein under Section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (for short 'the Act of 1993') was allowed and defendants therein have been held liable to make payment of Rs.18,31,958/- with future interest @12% p.a.

4. Learned Single Judge, after having heard learned counsel appearing for the parties and considering the pleadings and the order dated 7.9.2017 passed by the DRT, held that petitioner/appellant herein has an efficacious alternative remedy of filing appeal/application before the DRT under Section 17 of the Act of 2002 against the proceedings initiated under Section 13 (4) of the Act of 2002.

5. Learned counsel for appellant submits that finding recorded by learned Single Judge with respect to availability of alternative remedy of filing appeal is erroneous for the reason that if any claim is to be made before the DRT, the debt must be more than Rs.10 Lakhs and if the debt is less than Rs.10 Lakh, no application/appeal can be filed before the DRT. He submits that Annexure A-1 filed along with writ petition, which is possession notice published in the daily newspaper, mentions only an amount of Rs.9,14,886/-, which shows that amount involved is less than Rs.10 Lakh. He also referred to Annexure-B filed along with rejoinder to show that the amount due was less than Rs.10 Lakhs. However, the aforesaid aspect of the matter has not been taken into consideration by the learned Single Judge. He further submits that no notice was issued or received by appellant prior to publication of notice under Section 13 (4) of the Act of 2002. The action of respondent bank authorities in filing original application before the DRT during the pendency of writ petition challenging the very issuance of possession notice, is *per se* illegal. Lastly, he submits that appellant has not received any notice from the DRT also and therefore the claim of appellant before the writ Court was maintainable. He places his reliance on the judgment in the matter of **Mardia Chemicals v. Union of India & ors** reported in **(2004) 4 SCC 311**.
6. Per contra, learned counsel for respondent bank has opposed the submissions made on behalf of appellant and supported

the impugned order passed by learned Single Judge. Referring to Para-3 of writ petition, which relates to 'particular of the order against which writ petition made', he submits that petition was filed against the publication of possession notice in Hindi daily newspaper namely 'Dainik Bhaskar', in its edition dated 5.12.2014 i.e. under Section 13 (4) of the Act of 2002. There is an alternative remedy provided under the Act of 2002 itself to challenge any proceeding under Section 13 (4) of the Act of 2002 and therefore the writ petition was not maintainable. The objection with regard to maintainability of writ petition was raised by respondent bank at the first instance when respondent bank appeared before the learned Single Judge. He further submits that during pendency of writ petition, the DRT vide judgment dated 7.9.2017 allowed the application of the bank filed under Section 19 of the Act of 1993. The DRT in its judgment has specifically recorded that notice to the defendants was sufficiently served, but they failed to cause appearance. Hence, the submission made by learned counsel for appellant that no notice was served on the appellant from the DRT is not correct.

7. We have heard learned counsel for parties & perused record.
8. Perusal of Annexure P-1 to the writ petition would show that amount mentioned in the possession notice issued under Section 13 (4) of the Act of 2002 is Rs.9,14,886/-, plus interest thereon and other expenses. Even the document referred by

learned counsel for appellant, which is filed along with rejoinder, also mentions about the amount and interest. Specific mention of amount plus interest or amount & interest, shows that amount due on the date of publication of notice or sending of letter is not with respect to only the amount shown but the said amount is exclusive of interest to be added in order to calculate total outstanding against the appellant. Therefore, submission of learned counsel for appellant that the amount mentioned in Annexure P-1 i.e. possession notice, is inclusive of interest or less than Rs.10 Lakhs is not sustainable.

9. Admittedly, the possession notice (Annexure P-1) mentions about the provision under which proceeding has been initiated i.e. Section 13 (4) of the Act of 2002. Section 17 of the Act of 2002 specifically provides that any person aggrieved by any of the measures referred to in sub-section (4) of section 13 , may make an application to the DRT having jurisdiction in the matter within forty-five days from the date on which such measures had been taken. Appellant without taking recourse to Section 17 of the Act of 2002 had filed writ petition before the High Court. Appellant in Para-5 of writ petition has made a declaration that there is no other alternative efficacious remedy available to the petitioner but to file present writ petition as there is no Debt Recovery Tribunal available in the State or even no Bench is available at Jabalpur and the petitioner being a lady is unable to approach Allahabad Bench of DRT. Appellant is very well aware about the remedy available to her

against the proceeding initiated under Section 13 of the Act of 2002 and therefore submission made by learned counsel for appellant that there was no efficacious remedy available to the appellant is also of no force.

10. Other aspect of the case is that during pendency of writ petition, the recovery proceeding drawn by respondent bank before the DRT, Jabalpur itself was finalized on 7.9.2017 and the same amounts to a decree. In the said proceedings, the appellant despite service of notice did not appear and make her submission with respect to maintainability of proceeding or other grounds available to her. Perusal of the order passed by the DRT would clearly show that notices have been issued to appellant but she had chosen not to appear. Contents of the order of DRT passed on application filed under Section 19 of the Act of 1993 by respondent bank against appellant reveal that appellant has been held liable to pay an amount of Rs.18,31,958/- with interest @ 12% *pendent elite* and future.

11. There is no dispute with regard to the provisions of the Act of 2002 or the law laid down by Hon'ble Supreme Court in this regard.

12. The only question is whether the learned Single Judge committed any mistake in refusing to exercise extraordinary discretionary jurisdiction in the facts of the case. The fact that notice under Section 13 (4) of the Act of 2002 was published in daily newspaper on 4.12.2014, writ petition was filed on

1.5.2015 mentioning the remedy available to her before the DRT and order sheet of writ petition shows that after 14.3.2016, the matter was listed only on 13.5.2019. No effort has been made by appellant to get her case listed for hearing, except filing an application for urgent hearing on 10.4.2019.

13. Though there is no absolute bar in entertaining writ petition when there is an alternative remedy available, but it can be only in exceptional circumstances and depending upon the facts of case. Alternative remedy available to appellant was/is efficacious, statutory and also speedy as time frame is prescribed under the Act of 2002 itself for disposal of application.

14. Analysing overall facts and circumstances of the case and also the documents available on record, we do not find any infirmity in the order passed by the learned Single Judge declining to exercise his discretionary jurisdiction. The writ appeal being devoid of merit is liable to be and is hereby dismissed.

15. However, the appellant will be at liberty to pursue other remedy available to her under the law.

Sd/-
(P. Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-