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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 559 of 2019

(Arising out of the order dated 24.9.2019 passed by learned Single Judge in WPC No.1941/2018)

- Smt. Rashmi Verma W/o Dr. Anup Verma, aged about 49 years Katora Talab, Raipur Chhattisgarh.

---- Appellant

Versus

1. District Magistrate Raipur, District Raipur (CG).
2. United Commercial Bank Main Branch, Jai Stambh Chowk, Raipur, District Raipur (CG)
3. M/s R. K. Constructions, Proprietor - Vikas Jain, S/o Late R. K. Jain, Shop No. 311, 312, 3rd Floor Lalganga Shopping Mall, G.E. Road, Raipur District Raipur (CG).
4. J.M. Asset Reconstruction Financial Company Private Limited, 3rd Floor, B Wing, Shubhashish IT Park, Plot No.68 E Dattapada Road, Opp. Tata Steel Mumbai 66, through Authorized Officer, Vivek Mehra, aged about 40 years, S/o Vijay Mehra.
5. M/s City Engineers and Builders, a Partnership Firm, through its Partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, Dist. Raipur (CG)

---- Respondents

For Appellant	:	Shri Ashish Shrivastava, Advocate
For Respondent No.1	:	Shri Sudeep Agrawal, Dy. Advocate General
For Respondent No.2	:	Shri Ravindra Sharma, Advocate

Hon'ble Shri P. R. Ramchandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board

PR Ramchandra Menon, CJ

03/12/2019

1. The challenge is against the correctness and sustainability of the verdict passed by the learned Single Judge whereby the petitioner/ appellant has been relegated to move the statutory authority i.e. 'Debt Recovery Tribunal', if at all she is aggrieved in

any manner with regard to course and proceedings in connection with the steps taken for realization of the amount due to the respondent No.2-Bank.

2. Heard Shri Ashish Shrivastava, learned counsel for the appellant as well as Shri Sudeep Agrawal, Deputy Advocate General for the State and Shri Ravindra Sharma, Advocate for the respondent No.2-Bank.

3. The sequence of events revealed from the proceedings shows that as per sale deed registered on 7.4.2012, the appellant herein had purchased the rights and interest over the flat concerned, constructed by the 3rd respondent-Builder, in the property with undivided rights to the requisite extent as therein. According to the appellant, the purchase was effected after satisfying the sale consideration and the appellant was enjoying the property, though construction is to be completed to some extent. It is stated that the 3rd respondent Builder had availed a loan from the 2nd respondent Bank on the strength of the landed property where the construction has been effected. Repayment to the 2nd respondent Bank was not effected on time and the 3rd respondent Builder turned to be 'defaulter', under which circumstance, the 2nd respondent Bank proceeded with the steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth 'the Act of 2002') for realization of the amount due. Later, in the course of proceedings, the rights and interest of the 2nd respondent Bank came to be conveyed to the 4th respondent, which is an 'Asset

Reconstruction Company' as defined under Section 2 (ba) of the Act of 2002, who took over the 'symbolic possession' of the flat concerned and filed a petition before the 1st respondent, in terms of Section 14 of the Act of 2002, so as to enable them to proceed with further steps including by way of auction, after getting the 'physical possession' of the flat concerned. Objection was filed from the part of the appellant herein, which however was not considered and the 1st respondent passed the order in favour of the 4th respondent herein. This was sought to be challenged by filing writ petition before this Court, mainly contending that the 4th respondent herein would not come within the purview of the term 'Bank' as defined under Section 2 (c) of the Act of 2002 or 'Secured Creditor' as defined under Section 2 (zd) of the Act of 2002.

4. The contention raised, challenging the course and proceedings, were repelled and the writ petition came to be dismissed along with such other similar/connected matters, as per impugned order dated 24.9.2019. Present writ appeal is in respect of the order passed in WPC No.1941/2018.

5. Shri Ashish Shrivastava, learned counsel appearing for the appellant submits that, insofar as the Asset Reconstruction Company i.e. 4th respondent, is not a 'Bank' or 'Secured Creditor', no application could have been preferred under Section 14 of the Act of 2002. It is also pointed out that by virtue of Section 3 to 14 of the Act of 2002, the right to approach a Court of law against the order passed under Section 14 of the Act of 2002 stands

forbidden and this made the appellant to approach this Court by filing writ petition. It is also pointed out that Section 17 of the Act of 2002 is not an 'efficacious remedy' as far as the appellant is concerned, who is proceeded against because of the fault on the part of the 3rd respondent - Builder, who procured loan from the 2nd respondent and who has actually obtained the sale consideration from the appellant herein, and hence the challenge.

6. The law is well settled by virtue of the ruling rendered by the Apex Court on many occasions including in the matter of **United Bank of India vs. Satyawati Tandon** reported in **(2010) 8 SCC 110** and various other subsequent judgements, pointing out that in such matters it is not for the High Court to interfere and the party shall be relegated to move the 'statutory authority'. In view of the law declared by the Apex Court in the matter of **Standard Chartered Bank v. V.Noble Kumar** reported in **(2013) 9 SCC 620**, the 'statutory remedy' is also available before the 'Debt Recovery Tribunal' in respect of proceedings under Section 14 of the Act of 2002. Relevant portion of the said judgment is reproduced below:-

> “20.In every case where the objections raised by the borrower are rejected by the secured creditor, the secured creditor is entitled to take possession of the secured assets. In our opinion, such action—having regard to the object and scheme of the Act—could be taken directly by the secured creditor. However, visualising the possibility of resistance for such action, Parliament under Section 14 also provided for seeking the assistance of the judicial power of the State for obtaining possession of the secured asset, in those cases where the secured creditors seeks it.
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> **27.** The “appeal” under Section 17[18] is available to the

borrower against any measure taken under Section 13 (4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (*sic* the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal"[19] under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(*a*) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available.

37.In this connection, it is material to refer to the judgment in *Mardia Chemicals*[12] wherein the Court was concerned with the legality and validity of the SARFAESI Act. The Court held the Act to be valid except Section 17(2) thereof as it then stood. In paras 59, 62 and 76 of the judgment the Court in terms held that in remedy under Section 17 of the Act was essentially like filing a suit in a civil court though it was called an appeal. It is also relevant to note that in the ultimate conclusions in para 80 of the judgment this Court held in sub-para (2) thereof as follows: (SCC p. 362)

> "*80.* (*2*) As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debts Recovery Tribunal."

The grievance of the respondent that it will be left with no remedy is, therefore, misplaced. As held by a Bench of three Judges in *Mardia Chemicals*[12], it would be open to the borrower to file an appeal under Section 17 any time after the measures are taken under Section 13(4) and before the date of sale/auction of the property. The same would apply if the secured creditor resorts to Section 14 and takes possession

> of the property with the help of the officer appointed by the Magistrate.

This being the position, we find it difficult to have the appeal entertained.

7. Yet another important aspect to be noted is that the matter was argued elaborately before the learned Single Judge, when the rival contentions were taken note of, and it was on the basis of submissions made by the learned counsel for the parties that, they might be permitted to proceed with further steps in accordance with the Statute by moving to the Tribunal under Section 17 of the Act of 2002, that sufficient time, as sought for, was granted, also granting an interim order of stay till such time which is reflected from Para-13, 14 & 15, which are reproduced below;-

> “13. At this stage, Mr. Bhaduri, learned counsel appearing for the petitioners, would submit that in all the writ petitions, except W.P.(C) No.1941/2018, interim order is operating in favour of the petitioners, therefore, for a period of six weeks, the said interim order be directed to be continued enabling the petitioners to approach the Debts Recovery Tribunal (DRT) and to file appropriate application for grant of interim relief and further, the DRT be directed to dispose of that application within sixty days from the date of filing application under Section 17 of the SARFAESI Act.
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> 14.In response to this submission, Mr. Sanghi, learned counsel appearing for respondent No.4, after seeking instructions, would submit that respondent

> No.4 will not disturb the petitioners for a period of four weeks as the interim order as directed by this Court is still operating.
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> 15.Taking into consideration the submission of learned counsel for the petitioners and as agreed and stated by Mr. Sanghi, learned counsel for respondent No.4, at the Bar, interim order dated 27-8-2018 granted by this Court in this batch of petitions and continued from time to time directing that the petitioners' possession over the flats in question situated at Khushi Tower, Amlidih, Raipur, be not disturbed, shall remain in operation for a period of four weeks from today. However, it is made clear that all the observations made in this order are only for the purpose of deciding the maintainability of the writ petitions and this Court has not expressed any opinion on the merits of the matter. All the submissions of learned counsel for the petitioners and that of the respondents including the question of possession over the flats in question, are left and kept open to be considered and decided by the Debts Recovery Tribunal, if any.”

8. From the above, it is clear that it was rather an 'agreed judgment' and as such, no appeal is maintainable against an 'agreed judgment'.

9. With regard to what transpired before the Court on the relevant date, it is not possible for this Court to entertain any submission contrary to what is reflected from the judgment. This is more so, since the observations made in the said judgment, if defective or incorrect in any manner or if there was an error apparent on the face of record, the remedy for the 'aggrieved party' was not to

challenge the same by way of an appeal, but by filing a petition for review. This is the law declared by the Apex Court as per judgment reported in (1982) 2 SCC 436. (Judgment rendered by His Lordship Chinnappa Reddy)

10. Accordingly, interference is declined and the appeal stands dismissed, without prejudice to the rights and liberties of the appellant to pursue other appropriate / alternate remedy in accordance with law.

Sd/-	Sd/-
(PR Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

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