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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3515 of 2018

- Aditya Wheel India Pvt. Ltd. Through Its C.E.O. Raghvendra Singh Thakur, S/o Late Banshi Singh Thakur, Aged About 37 Years, R/o H.No. 238, Near Hanuman Temple, Thakur Para, Sarona, P.O. Tatibandh, Ward No.70, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. Chief Manager, Central Bank Of India Civil Lines, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Branch Manager, Central Bank Of India, Branch - Civil Lines Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Authorized Officer, Central Bank Of India, Civil Lines, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Mrs. Laxmi Gupta W/o Mr. Vijay Gupta Aged About 50 Years R/o Choubey Colony, Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent

For Petitioner
For Respondent Bank

Shri Dharmesh Shrivastava, Advocate
Shri Anand Shukla, Advocate

Hon'ble Justice Mr. Prashant Kumar Mishra

Order On Board

14/01/2019

1. Petitioner would assail the legality and validity of the notice dated 15.12.2018 issued by the Authorized Officer, Central Bank of India, Raipur under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002.
2. In the matter of **ICICI Bank Ltd. Etc. Etc. Vs. Umakanta Mohapatra Etc. Etc.** in Civil Appeal No.10243-10250 of 2018,

decided on 5.10.2018, the Supreme Court has observed thus :

“Delay condoned.

Leave granted.

Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in *Authorized Officer, State Bank of Travancore and Anr. Vs. Mathew K.C.*, (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).

The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows :-

“18. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd. And Another*, (1997) 6 SCC 450, observing :-

“32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adverturism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.

The appeals are allowed in the aforesaid terms.

Pending applications, if any, shall stand disposed of.”

3. In a subsequent order passed by this Court in Writ Appeal No.321/2017 (Dharmendra Kumar vs District Magistrate, Raipur and others), the Division Bench of this Court was considering rights of a tenant in respect of the SARFAESI proceedings. In the said matter, the following has been held in para 20:-

“20. It is not that the Appellant has been left remediless. The Legislatures have decided in their wisdom, keeping in mind inputs that in a large number of cases, where assets have become stressed assets, borrowers are using tenants as a defence and putting at risk public money at stake. They have decided to provide a forum even to the tenants within the framework of the special statute. It can be nobody's case that they will not be governed by the existing legal provision and they can still be allowed to delay and derail the proceedings under the SARFAESI Act by using a tenant, against any action which are mandated, including attachment of properties as contemplated under Section 14 of the SARFAESI Act.”

4. In view of the existence of alternative remedy available to the petitioner under Section 17 (4-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, I am not inclined to entertain this writ petition. Accordingly, the writ petition is dismissed reserving liberty in favour of the petitioner to prefer a duly constituted appeal before the jurisdictional DRT.

Sd/-
Prashant Kumar Mishra
Judge