

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 36 of 2020

1. Saurabh Jaiswal S/o. Shivnarayan Jaiswal Aged About 38 Years Shop No. 8, Patel Complex Padmanabhpur- Durg- 491001, District : Durg, Chhattisgarh
2. Shoebulla Khan S/o. Shri Gulabh Khan Aged About 44 Years R/o MIG -II- 64 Bhilai-490009 Tahsil And District- Durg Owner Shop No. 16 Patel Complex Padmanabhpur Durg 491001 Tahsil and District- Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Petitioners

Versus

1. Bank Of Baroda Through- Shri Pradeep Kumar Yadav, D.R.M. Bank Of Baroda, Sector 10, Bhilai Nagar, Tahsil and District- Durg Chhattisgarh, District : Durg, Chhattisgarh
2. Bank Of Baroda (Nationalized Bank) Through Chief Manager Bank Of Baroda Padmanabhpur Durg- 491001 Tahsil And District Durg Chhattisgarh, District : Durg, Chhattisgarh
3. Hon'bl District Magistrate Durg District Collectorate- Office, Durg 491001 Tahsil And District - Durg Chhattisgarh, District : Durg, Chhattisgarh
4. Tahsildar Durg Tahsil Court Durg- 491001 Tahsil And District - Durg Chhattisgarh, District : Durg, Chhattisgarh
5. Senior Sudt. Of Police Collectorate Durg 491001 Tahsil and District Durg Chhattisgarh,
6. Smt. Kiran Chauhan W/o Shri Pradeep Chauhan Aged About 38 Years M.I.G. (C)-460 Padmanabhpur, Durg 491001 Tahsil And District Durg Chhattisgarh, District : Durg, Chhattisgarh
7. Smt. Shobha Jain W/o. Shri Prakash Chand Jain Aged About 52 Years R/o. Kamthilane Rajnandgaon- 491441 Tahsil And District- Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh
8. Smt. Shanta Kothari W/o. Late Shri Alok Kumar Khathari, R/o Kamthilane Rajnandgaon- 491441 Tahsil and District- Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. V. G. Tamaskar, Advocate
For State	:	Mr. Ishan Verma, PL
For Bank of Baroda	:	Mr. Ankit Singhal, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

14/01/2020

1. The present writ petition has been filed primarily questioning the authority of the respondent No.1 Bank whereby they are initiating steps for taking possession of the property in which the petitioners own a shop.
2. The brief facts relevant for disposal of the writ petition is that the two petitioners have purchased shop No.8, Shop No.16 in the Patel Complex at Ward No.44 Padmanabhpur, Patel Complex, Durg, Tahsil & District – Durg, Chhattisgarh. According to the petitioners they had purchased the aforementioned two shops from respondent No.6 to 8 and that the sale deed executed between the petitioners with the respective owners i.e. respondent No.6 to 8 was duly registered on 13.05.2016 and 18.10.1999 respectively. Contention of the petitioner is that now the respondents 1 & 2 without any authority of law in a totally illegal, arbitrary manner are threatening the petitioner of getting them evicted from their respective shops on account of default on the part of the original builder who had constructed the said commercial complex and who had mortgaged the said property with the respondent No.1 Bank and there has been a default on the part of the builder in the repayment of loan. According to the petitioner the persons from whom the petitioners had purchased the shops were in fact not the borrowers of the Bank and they had also not taken any loan from the respondent No.1 Bank and that there is also no default on their part. As such according to the petitioner they had purchased a clear

property and that they are not liable for discharging the liability of builder of the said shopping complex.

3. Opposing the petition, counsel for the respondent No.1 raised a preliminary objection as regards, the maintainability of the writ petition as there is a remedy provided under the Statute i.e. the Sarfaesi Act and writ petition therefore is prayed to be rejected on this ground.
4. According to the learned counsel for the petitioner even if there is a remedy available before the Tribunal but that by itself would not oust the jurisdiction of the High Court which is conferred upon this Court under Article 226. According to the petitioner this Court has ample powers to look into the aspect of arbitrariness, illegality. Counsel for the petitioner relied upon the judgment of the Supreme Court reported in the case of **State of Haryana & Ors. Vs. Navir Singh & Ors., AIR 2014 SC 339** and in the case of **Vishal N. Kalsaria Vs. Bank of India & Ors., AIR 2016 SC 530** and also the judgment of this Court in WPC No. 1801/2015 in the case of **M/s G.P. Ispat Private Limited & Anr. Vs. Authorized Officer, State Bank of India & others** and in the case of **Preeti Meshram Vs. Himanshu Wasnik in FAM 53/2019 decided on 30.09.2019.**
5. From the submissions which has been advanced by the counsel appearing for the parties, it clearly reflects that respondent No. 1 Bank had issued loans to one Laxman Bhai D. Patel wayback in the year 1992-1993. The said loans were availed by the said Laxman Bhai D. Patel by creation of equitable mortgage by depositing title deeds of the land and commercial building constructed in the name of Patel Complex bearing Khasra No. 958/1, 959/9 measuring 46 Thousand Square feet at Ward No.44 Padmnabhpur, Patel Complex, Durg Tahsil and District Durg (C.G.).

6. According to the respondent Bank, the said Laxman Bhai D. Patel has availed the facility of loan by extending the mortgage from time to time and said mortgage was created for availing creditor facilities granted by various firms of the said person. In due course of time there was a default on part of the said borrowers and finally in the year 2017 there accounts were classified as Non Performing Assets (NPA). Thereafter, the respondent Bank initiated proceedings under Sarfaesi Act by issuing notice under Section 13(2) as also under Section 13(4). Later on, the Bank also approached the District Magistrate by filing the application under Section 14 and the District Magistrate finally allowed the said application also on 26.10.2019 and directed the Tahsildar, Durg to extend of necessary assistance for obtaining the physical possession of the said Patel Complex. It is this action which is primarily under challenge in the present writ petition.
7. It has also been informed that the borrowers have already approached the Debts Recovery Tribunal under Section 17 and a few of the case No. filed at the behest of the borrower is S.A. No. 541/2019, S.A. No. 542/2019 and S.A. No.553/2019.
8. Question which needs consideration of this Court is whether the writ petition would be maintainable or not in the light of Section 17 of the Sarfaesi Act. Though, in support of his contentions the counsel for the petitioner referred to Section 18 of the Recovery of Debts and Bankruptcy Act, 1993 which deals with bar of jurisdiction. However, it excludes the power of Supreme Court and the High Courts exercising jurisdiction under Article 226 and 227 of Constitution of India.

9. It would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of United Bank of India Vs. Satyawati Tandon & Others, in paragraph 42 to 45 has held as under :-

“42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under [Section 13\(4\)](#) or action taken under [Section 14](#), then she could have availed remedy by filing an application under [Section 17\(1\)](#). The expression ‘any person’ used in [Section 17\(1\)](#) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under [Section 13\(4\)](#) or [Section 14](#). Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under [Sections 17](#) and [18](#) and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the [SARFAESI Act](#) are both expeditious and effective.

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 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, 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.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under [Article 226](#) of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court,

which every High Court is bound to keep in view while exercising power under [Article 226](#) of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under [Article 226](#) of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

10. In the case of *Kanhaiyalal Lalchand Sachdev & Others Vs. State of Maharashtra & Others*, (2011) 2 SCC 782, the Hon'ble Supreme Court reiterating the aforesaid view in paragraph 23 held as under :-

“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 Vs. National Insurance Co. Ltd. & Anr.* (2003) 3 SCC 524; *Surya Dev Rai Vs. Ram Chander Rai & Ors.*, (2003) 6 SCC 675; *State Bank of India Vs. Allied Chemical Laboratories & Anr.*, (2006) 9 SCC 252)”

11. This view was further reiterated in the case of *Authorized Officer, State Bank of Travancore & Anr. Vs. Mathew K.C.*, (2018) 3 SCC 85. In paragraph 13, 14 and 16 the Hon'ble Supreme Court held as under :-

“13. In *Sri Siddeshwara Coop. Bank Lts. V. Ikbal*, (2013) 10 SCC 83 (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.

*** 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.”

14. 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.

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. 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.”

12. Recently, also the Hon'ble Supreme Court in the case of Hindan Forge Private Limited & Anr. Vs. State of U.P. and Anr. (2019) 2 SCC 198 In paragraph 42 has held as under :-

“42.We are therefore of the view that the Full Bench judgment is erroneous and is set aside. The appeals are accordingly allowed, and it is hereby declared that the borrower/debtor can approach the Debts Recovery Tribunal under [section 17](#) of the Act at the stage of the possession notice referred to in rule 8(1) and 8(2) of the 2002 Rules. The appeals are to be sent back to the Court/Tribunal dealing with the facts

of each case to apply this judgment and thereafter decide each case in accordance with the law laid down by this judgment.”

13. The aforesaid views have also been followed by this Court in a bunch of writ petitions the leading of which being WPC 2366/2018 decided on 24.09.2019 and also in another batch of writ petitions WPC 1821/2016 and other connected petitions decided on 31.07.2017.
14. So far as contentions of the petitioner that since the petitioners are not the borrowers therefore they do not have an efficacious remedy under Section 17, this Court is of the opinion that the said ground is totally unsustainable for the simple reason that the provision of Section 17 itself starts with the words any person (including borrower). The fact that the law makers had used the word any person aggrieved it has to be considered in a wider perspective and it would include all those persons who are adversely affected from the proceedings drawn by the Secured Creditor under Section 13 and 14 of the SARFAESI Act.
15. The aforesaid view stands fortified from the judgment of the Supreme Court in the case of Satyawati Tandon (supra) wherein in paragraph 42 it has been clarified by the Hon'ble Supreme Court that the word any person includes the person who may be affected by the action taken under Section 13(4) or Section 14.
16. Given the aforesaid legal position as it stands, this Court is of the opinion that writ petition at this juncture is not maintainable and the same deserves to be and accordingly stands rejected.
17. So far as the judgment which have been referred to by the petitioners if we look into the factual matrix of each of the cases, it would clearly reveal that those have been decided in the given factual matrix as it then stood and

the said judgments are in fact distinguishable on facts also. The writ petition therefore fails and accordingly stands dismissed.

18. The dismissal of the writ petition would not preclude the petitioners from availing the remedy open for them under Section 17 before the appropriate Tribunal.

Sd/-
(P. Sam Koshy)
Judge

Rohit