NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 298 of 2020

Dhurendra Singh Raghav S/o Surendra Singh Raghav Aged About 58 Years Resident Of Mig-30, Sahyog Park, Mahaveer Nagar, Purena, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through- District Magistrate/collector, Raipur, District- Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Manager/authorized Officer Bank Of Baroda, Branch Office At Boriya Kala, Old Dhamtari Road Raipur, District- Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondent

For Petitioner	:	Mr. Shikhar Sharma, Advocate
For State	:	Mr. P. Acharya, PL

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

23/01/2020

1. The challenge in the present writ petition is to the action on the part of the respondents in initiating recovery proceedings against the possession of the property of the petitioner which stood mortgaged with the respondent No.2 Bank.

2. From the perusal of the records of writ petition it clearly reflects that respondent No.2 had invoked the provisions under Section 13 as well as under Section 14 of the SARFAESI Act, 2002.

3. In view of the fact that proceedings drawn are pursuant to the provisions of SARFAESI Act, this Court is of the opinion that writ petition at this juncture

would not be maintainable as the petitioner has an alternative remdy of challenging the action on the part of respondent before the concerned Debts Recovery Tribunal under Section 17.

4. Recently, this Court on the occasion for dealing with a similar issue in WPC 36/2020 in the case of **Saurabh Jaiswal & Anr. Vs. Bank Of Baroda & Others** wherein after referring to the various judgments of the Hon'ble Supreme Court as also this Court particularly, taking into consideration the judgment of the Supreme Court in the case of **United Bank of India Vs. Satyawati Tandon & Others** and also other judgments, this Court has held that writ petition would not be maintainable.

5. For ready reference, this Court would like to refer to Paragraph 9 to 13 in the case of Saurabh Jaiswal & Anr. (Supra) wherein it was held as under :-

> “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 :-
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> > “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.
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> > 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 High 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.

6. 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.

Sd/-
(P. Sam Koshy)
Judge

Rohit