30.09.2021
Ct. No.8
S/L No.3
KS

(Via Video Conference)

W.P.A. 15637 of 2021

Rishita Sarkar (Chowdhury)
-Vs.-
UCO Bank, represented by its Chairman & Ors.

Mr. Saptangshu Basu
Mr. S. Banerjee
Mr. Chandrachur Chatterjee
Mr. P. Gorai
…..For the Petitioner
Mr. Amitesh Banerjee
Ms. Ipsita Banerjee
…..For the State
Mr. Anindya Bose
Mr. Diptendu Mondal
…..For the Respondent No.8

The petitioner claims to be a business woman being the owner of a single shop room in the ground floor of the premises No.4B, S. R. Das Road, Kolkata – 700 026 used for commercial purpose which was purchased from one, Palash Majumder by virtue of a registered Deed of Conveyance dated 10th August, 2015. On 4th September, 2021 at about 6:30 p.m. in the evening an Authorized Officer of the respondent/bank approached the petitioner's shop for the purpose of inspection of the said premises and landed area as per the notice dated 5th February, 2021 stating the details of the notice under Section 13(4) of the SARFAESI Act, 2002 and then the petitioner came to learn that the respondent/bank has taken symbolic possession of her property, and at any point of time the bank would take physical possession of the said room. Such notice has been placed in this application as "Annexure – P/9". Then the petitioner wrote to the Officer-in-Charge, Tollygunge Police Station referring the notice under Section 13(4) of the SARFAESI Act, 2002 regarding symbolic possession in respect of the shop room issued by the Authorized Officer stating that she had purchased a shop by virtue of a registered Deed aforesaid vide Deed No.160505458 for the year 2015 of the said Sri Palash Majumder for a consideration and expressed her grievance that her shop is being attached without any rhyme or reason that a portion of the mortgaged property which she had purchased and that he is playing foul game in connivance with the bank official whereby the borrower/landlord has totally suppressed the entire fact of transferring and executing the Deed of Conveyance in respect of particulars to the vendor of the petitioner and by suppressing execution of any loan agreement attaching the said shop room as a part of a collateral security in respect of the loan. Accordingly, a request was made for necessary investigation in respect of the entire loan process and issuance of the statutory notice under Section 13(4) of the SARFAESI Act, 2002. Such notice addressed to the Officer-in-Charge makes no sense. Rather the petitioner could move the D.R.T. under the provisions of Section 17 of the SARFAESI Act to get the relief.

Mr. Basu, learned counsel for the petitioner invites my attention to the 'Annexure – P/11' at page 112 which is a public notice for e-auction for sale of immovable property to be conducted between 05.10.2021 and 16.10.2021. The petitioner's case has been noted in the serial no.2 and it reflects that the date is fixed on 16.10.2021 for e-auction from 1 p.m. to 5 p.m.

This Court is aware of a decision of the Hon'ble Supreme Court in case of ***United Bank of India Vs. Satyawati Tandon and Ors.*** reported in ***(2012) 8 SCC 110***, wherein it has been held that the remedy of the petitioner against the proceedings under Section 13(4) of the SARFAESI Act, 2002 lies before Debts Recovery Tribunal under Section 17 of the SARFAESI Act, 2002. In case of ***Mardia Chemical Ltd. Vs. Union of India*** reported in ***(2004) 4 SCC 311***, also the Hon'ble Court held that the borrower can challenge the action of the secured creditor taken under Section 13(4) of the SARFAESI Act, 2002 by filing an application under Section 17(1) of the Act itself.

Reference to a decision in ***Civil Appeal No.1281 of 2018 (Arising out of SLP (C) No.24610 of 2015)*** dated 30th January, 2018 ***Authorized Officer, State of Bank of Travancore and Another Vs. Mathew K. C.*** reported in ***(2018) 3 SCC 85*** may be made wherein the Apex Court observed thus:-

> *"9. The statement of objects and reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. The Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of new legislation for securitization and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as 'the DRT Act') with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order.*
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> *10. Even prior to the SARFAESI Act, considering the alternate remedy available under the DRT Act it was held*

in Punjab National Bank vs. O.C. Krishnan and others, (2001) 6 SCC 569, that:-

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceeding sunder Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

11. In Satyawati Tandon (supra), the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding :-

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 a 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, the 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."*

In the context above, although the Writ Court has got enormous power, but, even if it has the power and it is lawful for the Court to entertain such power, the petitioner must exhaust the efficacious remedy available under the provisions of Section 17 of the SARFAESI Act, 2002 to challenge the action taken under Section 13(4) of the said Act.

Therefore, the writ application cannot be entertained, however, the petitioner is at liberty to move the D.R.T. by invoking the provision of Section 17 of the SARFAESI Act, 2002.

For the reasons stated above, the application being W.P.A. 15637 of 2021 is dismissed.

All parties are to act on the server copy downloaded from the Official Website.

(Shivakant Prasad, J.)