

NAFRHIGH COURT OF CHHATTISGARH, BILASPURWPC No. 2016 of 2021

Mahesh Vasawani S/o Late Sugana Vasawani, Aged About 54
 Years R/o D-20 B D-21, Priyadarshini Nagar, Raipur
 Chhattisgarh. --- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department of Law and Legislative Department, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh
2. The Collector Cum District Magistrate, Raipur Chhattisgarh
3. Laxmi Vasawani W/o Mahesh Waswani Aged About 52 Years R/o D-20 B D-21, Priyadarshini Nagar, Raipur Chhattisgarh
4. Reliance Home Finance Limited Through Its Authorized Officer, Having Registered Office, Reliance Centre, South Wing, 6th Floor, Off Western Express Highway, Santacruz (East) Mumbai- 400055 Branch Office Simran Tower, Pandri Main Road, Raipur Chhattisgarh 492001.
 --- **Respondents**

For the Petitioner : Mr. Shivang Dubey, Advocate
 For the State/R-1 & R-2 : Mr. Alok Bakshi, Addl. Advocate General
 For respondent no.4 : Mr. Ishan Verma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****23.06.2021**

1. The challenge in this writ petition is to the order dated 15th February, 2021 passed by respondent No.2/The District Magistrate u/s 14 of *The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short "SARFAESI ACT, 2002). The main submission of counsel for the petitioner is that the rule of *audi alteram partem* was not followed. He would submit that the counsel who was appearing for the petitioner initially entered his appearance on 21.12.2020 and sought time to file reply.

However, unfortunately on 07.1.2021 the counsel was infected with COVID-19 virus and consequently he had to undergo quarantine and was virtually under the physical disability, therefore, he was unable to attend the Court in person. As such when the case was fixed on 25.01.2021, the petitioner could not be represented through his counsel and the case was eventually closed on 08.02.2021. Therefore, it is prayed that the petitioner may be given an opportunity of hearing before the District Magistrate by setting aside the order dated 15th February, 2021. He placed reliance on a decision of the Supreme Court in ***2021 SCC OnLine SC 334 Radha Krishan Industries Versus State of Himachal Pradesh***. Learned counsel for the petitioner submits that by following the rules of natural justice and giving an opportunity of hearing, no prejudice would be caused and though the petitioner is aware of the fact that the alternative remedy is available, but this issue is about the non-compliance of rules of natural justice.

2. Learned counsel for the respondent opposes the argument and would submit that the petitioner's counsel though might have suffered COVID-19 infection, but in such a case, he could have filed a written statement before the District Magistrate, for which, opportunity was open and eventually since no representation was made on 25.01.2021, as such, the petitioner can only blame for his own defaults.
3. Perused the order dated 15.02.2021 (Annexure P-1). Para 3 of the order purports that initially the case was fixed on 21.12.2020 wherein the petitioner was represented through his counsel and asked for time to file reply and the case was

fixed on 25.01.2021. The document Annexure P-3 would show that the counsel representing the petitioner suffered from COVID infection from 07.01.2021. Therefore, probably he could not appear on 25.01.2021 when the case was fixed. The court can take judicial notice of the scenario of social circumstances that because of the COVID lock-down, the normal functioning of the Public at large was paralyzed and panic was prevailed all over which was not an exception. As the counsel for the petitioner was suffering with COVID-19 infection, consequently, it appears that on 25.01.2021 and subsequently on 08.02.2021, there were valid reasons for non-appearance of the petitioner's counsel. It is not a case that the petitioner deliberately jumped the date of hearing to avoid the proceedings as the non-appearance on two different dates is not a huge mistake under the prevailing circumstances so as to infer that deliberate attempt was made not to appear.

4. The Supreme Court in case of *Radha Krishan Industries Versus State of Himachal Pradesh 2021 SCC OnLine SC 334*, has laid certain guidelines at Para 28 which reads thus:

28. The principles of law which emerge are that :

(i)	The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;
(ii)	The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of High Court is where an effective alternate remedy is available to the aggrieved person.
(iii)	Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b)

	there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;
(iv)	An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;
(v)	When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and
(vi)	In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

5. Taking note of the fact of this case that the counsel representing the petitioner suffered the infection of COVID-19 and could not appear, the non-appearance prima facie appears to be reasonable and in absence thereof any order passed behind the back would defeat the rules of natural justice. Consequently despite the fact that alternative remedy is available, the case would fall under the exception as carved out by the decision of the Supreme Court (Supra) .
6. Under the circumstances and taking note of the facts situation of the case, the order dated 15.02.2021 passed by respondent no.2 is set aside. The petitioner is directed to appear before the District Magistrate on 19th July, 2021 and the respondent's counsel shall also appear before the District Magistrate on the said date. Thereafter, the District

Magistrate shall hear the petitioner and pass the order as per the statute of the SARFAESI Act, after giving opportunity of hearing to the petitioner including filing of reply.

7. It is made clear that this order would not be considered as a precedent in any other case and is passed in peculiar facts and circumstances of the present case.
8. With the above observation, this writ petition stands disposed of.

Sd/-
GOUTAM BHADURI
JUDGE