BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2021
CORAM:
THE HONOURABLE MR.JUSTICE M.DURAISWAMY
AND
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.5019 of 2019
and
W.M.P(MD)Nos.3994 to 3996 of 2019

S.Jeyapal ... Petitioner

Vs.

1.The Authorised Officer,
Bank of Baroda,
Kamagoundapatti,
Theni District.

2.S.Joseph Patric ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Declaration by declaring that the action initiated by the first respondent under the SARFAESI Act starting with Demand Notice dated 10.07.2015 ending with sale notice dated 11.01.2019 in respect of the property, more particularly stated in the Demand Notice dated 10.07.2015 as null and void and in consequence thereof to pass an order by quashing the sale notice dated 12.10.2018 and sale held on 31.10.2018, sale certificate issued and registered on 12.12.2018 in respect of item No.1 of the property and sale held on 31.01.2019 in respect of item No.2.

For Petitioner : Mr.S.Rengasamy
For Respondents : Mr.Pala Ramasamy for R.1
: Mr.S.Sivathilakar for R.2

ORDER

(Order of this Court was made by **M.DURAISWAMY,J.**)

The petitioner has filed the above writ petition to declare the action initiated by the first respondent under the SARFAESI Act starting with the demand notice, dated 10.07.2015 ending with the sale notice, dated 11.01.2019 in respect of the property, more particularly stated in the demand notice, dated 10.07.2015 and consequently to quash the sale notice, dated 12.10.2018 and the sale held on 31.10.2018, sale certificate issued and registered on

12.12.2018 in respect of item No.1 of the property and the sale held on 31.01.2019 in respect of item No.2.

2.The petitioner has virtually challenged all the proceedings initiated under the SARFAESI Act in this Writ Petition. It is settled law that the aggrieved party in respect of the proceedings initiated under the SARFAESI Act has to file an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal. In the case on hand, the petitioner has filed the writ petition challenging the demand notice, sale notice, the sale and also the sale certificate.

3. The Honourable Supreme Court in the following judgments held that the aggrieved party, in respect of the proceedings initiated under the SARFAESI Act, must file an appeal before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act and the writ petition filed challenging the proceedings initiated under the SARFAESI Act, is not maintainable.

(i) In ***United Bank of India Vs. Satyawati Tondon*** reported in **(2010) 8 SCC 110**, the Honourable Supreme Court has held as follows:-

> *"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.*
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> *.............*
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> *55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will*

exercise their discretion in such matters with greater caution, care and circumspection."

(ii) In ***Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C*** reported in ***(2018) 3 SCC 85***, the Honourable Supreme Court has held as follows:-

"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."

(iii) In ***C.Bright Vs. District Collector and others*** reported in ***(2021) 2 SCC 392***, the Honourable Supreme Court has held as follows:-

"22.Even though, this Court in United Bank of India v. Satyawati Tondon & Ors. held that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which will ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Hindon Forge Private Limited has held that the remedy of an aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court under Articles 226 or 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction when affective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditor as interim orders defeat the very purpose of expeditious recovery of public money."

(iv) In ***ICICI Bank Limited and others Vs. Umakanta Mohaptra and others*** reported in ***(2019) 13 SCC 497***, the Honourable Supreme Court has held as follows:-

"3.*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:-*

"17. 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 adventurism 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.'"

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

5.The appeals are allowed in the aforesaid terms. Pending applications, if any, shall stand disposed of."

(v) In ***Agarwal Tracom Private Limited Vs. Punjab National Bank and others*** reported in ***(2018) 1 SCC 626***, the Honourable Supreme Court has held as follows:-

"33. In the light of the foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of the SARFAESI Act before the Tribunal concerned to challenge the action of PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court.

The appellant is, accordingly, granted liberty to file an application before the concerned Tribunal (DRT) under Section 17(1) of the SARFAESI Act, which has jurisdiction to entertain such application within 45 days from the date of this order. In case, if the appellant files any such application, the Tribunal shall decide the same on its merits in accordance with law uninfluenced by any of the observations made by this Court and the High Court in the impugned judgment."

4. Since the petitioner has challenged the SARFAESI proceedings in the present Writ Petition, following the ratio laid down by the Honourable Supreme Court in the above referred judgments, we are not inclined to entertain the writ petition. Accordingly, the Writ Petition is dismissed. It is open to the petitioner to prosecute the SARFAESI appeal pending before the Debts Recovery Tribunal in accordance with law. The Debts Recovery Tribunal, Madurai is directed to dispose of the SARFAESI appeal in S.A.No.518 of 2017, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Debts Recovery Tribunal,Madurai.

+1 CC to M/s.B.BRIJESH KISHORE, Advocate (SR-33815[F] dated 09/11/2021)

W.P(MD)No.5019 of 2019
02.11.2021

RM(CO)
KB(19.11.2021) 5P 3C