BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2021
CORAM:
THE HONOURABLE MR.JUSTICE M.DURAISWAMY
AND
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.17108 of 2021

Sasikumar ... Petitioner

Vs.

1.The Chief Manager-Authorised Officer,
ROSARB, Bank of Baroda,
Plot No.14, First Floor, Door Nos.3, 4 & 5,
Sakthi Veliamal Street,
SS Colony,
Madurai - 625 016.

2.M/s.Krish Enterprises Inc.,
Prop. K.Venkatesan,
B-1, Kings Court Vaibow Apartment,
Balaji Street,
Ganghi Nagar,
Madurai - 625 020.

3.Sumathi

4.Nagalatha ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of declaration, to declare the measures taken by the respondent under sub-Section 4 of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in respect of the property in Door No.2/121A in Survey No.494/6 (Old Survey No.99) in patta No.721 extent of land 3325 sq.ft in Patcheri Village, Sivagangai Taluk, Sivagangai District as ultravires of the said Act and Security Interest (Enforcement) Rules, 2002 and illegal.

For Petitioner : Ms.G.Dhanalakshmi

For RR 1 and 2 : Mr.P.Pethu Rajesh

ORDER

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

The petitioner has filed the above Writ Petition to issue a Writ of declaration, to declare the measures taken by the first respondent Bank under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in respect of the property in Door No.2/121A in Survey No.494/6 (Old Survey No.99) in patta No.721, measuring to an extent of 3325 sq.ft in Patcheri Village, Sivagangai Taluk, Sivagangai District as ultravires of the said Act and Security Interest (Enforcement) Rules, 2002.

2.The petitioner has got remedy by way of an appeal under Section 17 of the SARFAESI Act, as against the proceedings initiated by the first respondent under the SARFAESI Act.

3.When the petitioner has got remedy before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, the writ petition filed by him is not maintainable.

4.The Honourable Supreme Court of India in the following Judgments have clearly held that a Writ Petition filed under Article 226 of the Constitution of India 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.

....

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.

1. 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."

From the above Judgments of the Honourable Supreme Court, it is clear that a Writ Petition filed by a party challenging the proceedings initiated under the SARFAESI Act is not maintainable.

5.In view of the Judgments of the Honourable Supreme Court, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// 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.

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-29936[F] dated 22/09/2021)

+1 CC to M/s.G.DHANALAKSHMI, Advocate (SR-30092[F] dated 23/09/2021)

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RD(29.09.2021) 5P 3C