Ct. 05
Item No.25
20.06.2022
(Suvendu)

WPA 23 of 2022
With
CAN 1 of 2022

Mrs. Mouhua Ghosh
Vs.
Union of India & Ors.

Mr. Siddhartha Banerjee
Mr. Subhankar Das
Mr. Bikram Sarkar
Mr. Soumyajit Majumder
………..for the petitioner

Ms. Soni Ojha
Ms. Sambrita B. Chatterjee
……for the respondent nos. 3 & 4

Since the point of maintainability has been taken by the respondent nos. 3 and 4/ Bank, this Court wishes to decide this point first.

It appears from the submissions of the Bank that the petitioner has filed an application before the DRT on 6th June, 2022 under Section 17 of the SARFAESI Act, 2002. Counsel submits that the relief prayed for by the petitioner before the DRT relates to the same subject matter as is before this Court in the present writ petition. Counsel cites decisions on the alternative remedy aspect.

After hearing learned counsel appearing for the parties, it is clear that the Supreme Court in

Commissioner of Income Tax & Ors. Vs. Chhabil Dass Agarwal, *(2014) 1 SCC 603*, laid down the principles which could govern the exceptions for availing the alternative remedy. These exceptions, as particularized in paragraphs 15 an 16 of the Report, are the following – (i) where the remedy available under the statute is not an effective remedy and would not offer substantial relief, (ii) where the statutory authority has not acted in accordance with the provisions of the governing statute, (iii) where the statutory authority has acted in defiance of the fundamental principles of judicial procedure, (iv) where the statutory authority has invoked provisions which are repealed and (v) where the statutory authority has passed an order in breach of the principles of natural justice.

In *Authorized Officer, State Bank of Travancore & Anr. Vs. Mathew K.C.*, *(2018) 3 SCC 85*, the Supreme Court deprecated the practice of Courts giving decision contrary to the settled position in law without stating reasons for the same.

The present matter involves the following admitted facts – First, the petitioner was served with the Notice under Section 13(2) of the SARFAESI Act, 2002 dated 16.09.2021. The petitioner waited for three months before making a representation to the Bank on 21.12.2021. The petitioner approached this

Court on 03.01.2022 with a prayer for a direction on the Bank to consider the representation made by the petitioner 21.12.2021. The petitioner in the meantime filed an application before the designated forum, being the DRT on 06.06.2022.

It is the stated position that all the three Tribunals of the DRT are presently functioning. Hence, there is no embargo on the petitioner for proceeding with her application before the Tribunal. The direction on the Bank to consider the representation made by the petitioner in December, 2021 would really be of no benefit to any of the parties before the Court since the petitioner has already taken steps in the DRT pursuant to the 13(2) Notice dated 16.09.2021. It is also not disputed that none of the exceptions as laid down by the Supreme Court in *Chhabil Dass Agarwal* are present in the facts of the present case. This Court hence finds no reason to deviate from the legal position as exists today with regard to the bar on the ground of an alternative remedy being available to the litigant who approaches the writ court.

WPA 23 of 2022 along with CAN 1 of 2022 are accordingly dismissed in view of the above reasons.

(**Moushumi Bhattacharya, J.**)