

**MAT 360 of 2022
With
CAN 1 of 2022**

**M/s. Halder Construction Proprietorship
Company & Anr.
Vs.
The State Bank of India & Ors.**

Mr. Kishor Dutta, Sr. Adv.
Mr. Debasish Ghosh
Mr. Souritra Ganguly
Mr. Debasish Kundu

... ... for the appellants

Mr. Om Narayan Rai
Mr. Saikat Roy Chowdhury

... ... for the respondents

By this appeal the writ petitioners have challenged the order of the learned Single Judge dated 09.03.2022 whereby WPA 1985 of 2022 has been dismissed, however, keeping it open to the petitioners to avail the remedy of appeal.

In a nutshell the case of the appellants is that the appellant no. 1 was sanctioned the credit limit and there was default in making the repayment, accordingly action was initiated against the appellants under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short SARFAESI Act) and demand notice dated 08.07.2019, possession notice dated 02.11.2019 and sale notice dated 02.12.2019 were issued against which the appellants had approached the DRT, Kolkata under Section 17(1) of the SARFAESI Act.

Pending the said application the respondent bank had come up with the One Time Settlement Scheme and

the OTS offer was made to the appellants on 22nd October, 2020 and finally vide communication dated 27.11.2020 sent by the respondent bank to the appellants the application under the OTS scheme was accepted.

According to the stand of the respondent bank the requisite amount in terms of the scheme was not paid, therefore, the OTS became infructuous whereas as per the stand of the appellants the acceptance letter dated 27.11.2020 was not communicated and the same was finally sent along with the communication dated 28.1.2021. Therefore, the eight months period as prescribed in the scheme will commence from the date of communication i.e. 28.01.2021.

The issue was raised before the DRT in the pending application and considering the submission of parties, the Tribunal by order dated 17th January, 2022 had dismissed the application which led the filing of the writ petition before the learned Single Judge who has taken note of the limited scope of interference in exercise of Writ Jurisdiction in such matter and hence dismissed the writ petition.

Submission of learned counsel for the appellants is that the Tribunal has committed an error in holding that the issue of OTS is not covered by the SARFAESI Act and the Tribunal cannot go into it and that it requires to be appreciated that the eight months period as prescribed in the scheme will commence from 28.01.2021, therefore,

the OTS had not become infructuous as communicated by the bank. He has also submitted that the bank in the contemporaneous letters had never taken the ground that the appellants had the knowledge of the OTS acceptance, therefore, the period can commence from that date.

Learned counsel for the respondent bank has referred to the various communications sent by the appellants and has submitted that the acceptance of the OTS was duly within the knowledge of the appellants and accordingly the subsequent instalments were also paid by the appellants. In support of his submission he has placed reliance upon the judgement of the Hon'ble Supreme Court in the matter of **The Bijnor Urban Cooperative Bank Limited, Bijnor & Others Vs. Meenal Agarwal & Others** dated 15th December, 2021 in Civil Appeal No.7411 of 2021.

Having heard the learned counsel for the parties and perusal of the record, we find that undisputedly against the order of the DRT the appellants have remedy of appeal under Section 18 of the SARFAESI Act.

Learned Single Judge has rightly noted that there is no material or allegation in respect of the violation of principle of Natural Justice and no ground for entertaining the petition by-passing the remedy of appeal has been disclosed. Once the remedy of appeal under Section 18 of the SARFAESI Act is available, then it is more appropriate that the appellants avail that remedy, specially in the facts of the present case, when the

disputed question of receipt of the communication dated 27.11.2020 has been raised in the matter, as such an issue can more appropriately be decided by the appellate authority after examining the original record of the case instead of by this Court in exercise of Writ Jurisdiction at this stage.

Learned counsel for the appellants has submitted that meanwhile the limitation for filing the appeal has expired.

We make it clear that the period which has been spent by the appellants in executing the writ petition or this appeal will be excluded while calculating the period of limitation in filing the appeal before the DRT, Kolkata.

The appeal is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)