

25.01.2023

MAT 1325 of 2022
With
CAN 1 of 2022

M/s. Riya Trading & Anr.
Vs.
Bank of Baroda & Ors.

Mr. Ataur Rahman

... .. for the appellants

Mr. Rahul Sarkar

Mr. Siddhant Srivastava

Ms. Dipika Sarkar

... .. for the respondent bank

By this intra-court appeal the writ petitioners have challenged the order of the learned Single Judge dated 18th July, 2022 whereby WPA 15562 of 2022 has been dismissed by taking note of the fact that the statutory remedy is available.

The appellants had approached the writ court by taking the plea that the financial assistance was extended by the respondent bank to the appellants and, thereafter without following the due process proceedings under the SARFAESI Act were initiated. A plea was taken in the petition that the publication of notice under Section 13(2) of the SARFAESI Act in the newspaper “Business Standard” was not proper and that the notice of possession under Section 13(4) of the SARFAESI Act was affixed but the publication of notice under Section 13(4) in the newspaper was again improper.

In this background, the appellants had prayed for a writ of mandamus seeking a direction to the respondents to recall the notices under Sections 13(2) and 13(4)

published in the newspaper and also to set aside the possession notice under Section 13(4) under SARFAESI Act.

Learned Single Judge has taken note of the fact that the appellants have the remedy available before the statutory forum under the SARFAESI Act. Hence dismissed the petition.

Learned counsel for the appellants submits that newspaper in which notices have been published did not have the circulation in the locality concerned and that no notice under Section 13(2) has been served but it has been directly published and, therefore the relevant rules have been violated.

As against this, the plea of the learned counsel for the respondent bank is that the due procedure has been followed while initiated the proceedings under the SARFAESI Act and serving notices was in terms of Sections 13(2) and 13(4) of the SARFAESI Act.

Having heard the learned counsel for the parties and perusal of the record, it is noticed that in the writ petition the prayer of the appellants is as against the notices under Section 13(2) and 13(4) of the Act. The petitioners have the remedy of filing an application under Section 17 of the SARFAESI Act. Hon'ble Supreme Court in the matter of **Phoenix ARC (P) Ltd. vs. Vishwa Bharati Vidya Mandir and Others** reported in **(2022) 5 SCC 345** has held that:

“10. In *Satyawati Tondon*, it was observed and held by this Court that the remedies available to an aggrieved person against the action taken under Section 13(4) or Section 14 of the SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective. On maintainability of or entertainability of a writ petition under Article 226 of the Constitution of India, in a case where the effective remedy is available to the aggrieved person, it is observed and held in the said decision in paras 43 to 46 as under : (SCC pp. 123-24)

“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 a 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, the 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.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain

a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. 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 (sic 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. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

11. In *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla*, it was observed by this Court in SCC p. 175, para 30 that the Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether the petitioner has any alternative or effective remedy for the resolution of the dispute.

12. In *Kanaiyalal Lalchand Sachdev* after referring to the earlier decisions of this Court in *Sadhana Lodh v. National Insurance Co. Ltd.*, *Surya Dev Rai v. Ram Chander Rai* and *SBI v. Allied Chemical Laboratories* while upholding the order passed by the High Court dismissing the writ petition on the ground that an efficacious remedy is available under Section 17 of the SARFAESI Act, it was observed that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person.

13. Similar view has been expressed by this Court in subsequent decisions in *Sri Siddeshwara Coop. Bank Ltd.* as well as in *Agarwal Tracom (P) Ltd.*”

The issue which the appellants are raising that the notice was published in the newspaper which is not having circulation in the area concerned is a question of fact which is required to be decided on the basis of the evidence parties and such an issue cannot be decided in exercise of writ jurisdiction. Therefore, the remedy before the DRT under Section 17 is otherwise also more appropriate remedy available to the appellants.

In the circumstances of the case, we are of the opinion that learned Single Judge has not committed any error in dismissing the petition on the ground of availability of the statutory remedy under the SARFAESI Act. Hence, no case for interference in the order of the learned Single Judge is made out.

Appeal is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)