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gd/ssd

MAT/2038/2022
IA NO: CAN/1/2022
KASHMIRI BEGUM
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Tilak Mitra,
Md. Safiur Rahaman,
Mr. Sourav Paul
..for the Appellant.

Mr. Nilotpal Chatterjee,
Mr. Amrit Lal Chatterjee
..for the State.

Ms. Deblina Lahiri,
Mr. Mrinmoy Chatterjee
..for the Bank.

By this intra court appeal the appellant (writ petitioner) has challenged the order of the learned Single Judge dated 19th December, 2022 passed in WPA 27227 of 2022 whereby the petition has been disposed of with liberty to the petitioner to approach the DRT.

The appellant had approached the writ court claiming herself to be the wife of the borrower and challenging the memo of the bank dated 05.11.2022 relating to the deposit of police cost for the purpose of taking possession in pursuance to the orders which were passed under the SARFAESI Act as against the borrower.

Learned Single Judge has considered the legal position and has also taken note of the fact that the

cause of action arose much earlier on 18th March, 2019 when the bank had issued notice under Section 13(4) of the SARFAESI Act. Learned Single Judge has also noted the order of the District Magistrate dated 24th August, 2022 under Section 14 of the SARFAESI Act. Considering the said position, learned Single Judge has disposed of the petition with liberty to the petitioner to approach the DRT within a specified time and has also extended the limitation for filing the application under Section 17(1) of the Act till that time.

Submission of learned counsel for the appellant is that the appellant was demanding the documents specially notice under Section 13(2) of the SARFAESI Act so that the appropriate action could be taken by the appellant and that the learned Single Judge ought not to have dismissed the petition without examining the same.

The prayer has been opposed by the learned counsel for the bank by submitting that the counsel for the bank had supplied a copy of the notice under Section 13(2) to counsel for the appellant during the course of argument before the learned Single Judge and today also the counsel for the bank is ready to supply the same to counsel for the appellant.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that

undisputedly proceedings under Section the SARFAESI Act have been initiated against the borrower and the District Magistrate had also passed the order under Section 14 of the Act. Learned counsel for the bank has informed that thereafter the possession has also been taken. During the course of hearing before this Court learned counsel for the bank has also supplied another copy of the notice under Section 13(2) of the SARFAESI Act and the notice under Section 13(4) of the SARFAESI Act and order passed by the District Magistrate under Section 14 of the Act to the counsel for the appellant.

In the aforesaid circumstances of the case, we are of the view that the learned Single Judge has acted in consonance with the settled legal position that the party aggrieved with the proceedings under the SARFAESI Act should avail the statutory remedy before the DRT.

Hon'ble Supreme Court in the matter of *Authorized Officer, State Bank of Travancore & Another v. Mathew K.C.* reported in (2018) 3 SCC 85 after taking note of the earlier judgments on the point has held that:

“10. In *Satyawati Tondon* the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp. 123 & 128, paras 43 & 55)

“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.

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 the 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.”

11. In *Union Bank of India v. Panchanan Subudhi*, further proceedings under Section 13(4) were stayed in the writ jurisdiction subject to deposit of Rs 10,00,000 leading this Court to observe as follows: (SCC pp. 553-54, para 7)

“7. In our view, the approach adopted by the High Court was clearly erroneous. When the respondent failed to abide by the terms of one-time settlement, there was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the respondent under Section 17 of the Act.”

12. The same view was reiterated in *Kanaiyalal Lalchand Sachdev v. State of Maharashtra*, observing:

(SCC p. 789, para 23)

“23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled 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. (See *Sadhana Lodh v. National Insurance Co. Ltd.*, *Surya Dev Rai v. Ram Chander Rai* and *SBI v. Allied Chemical Laboratories.*)”

13. In *Ikbal* it was observed that the action of the bank under Section 13(4) of the SARFAESI Act available to challenge by the aggrieved under Section 17 was an efficacious remedy and the institution directly under Article 226 was not sustainable, relying upon *Satyawati Tondon* observing: (*Ikbal case*, SCC pp. 94-95, paras 27-28)

“27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.

28. ... In our view, there was no justification whatsoever for the learned Single Judge to allow the borrower to bypass the efficacious remedy provided to him under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts indicated above. The Division Bench also erred in affirming the erroneous order of the Single Judge.”

14. A similar view was taken in *Punjab National Bank v. Imperial Gift House*, observing: (SCC p. 622, paras 3-4)

“3. Upon receipt of notice, the respondents filed representation under Section 13(3-A) of the Act, which was rejected. Thereafter, before any further action could be taken under Section 13(4) of the Act by the Bank, the writ petition was filed before the High Court.

4. In our view, the High Court was not justified in entertaining the writ petition against the notice issued under Section 13(2) of the Act and quashing the

proceedings initiated by the Bank.”

15. It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Satyawati Tondon*, has also not been kept in mind before passing the impugned interim order: (SCC pp. 123-24, para 46)

“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.”

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.”

Hence, we find that the order of the learned Single Judge does not suffer from any factual or legal error, therefore, no case for interference in the present appeal is made out.

So far as the issue of further extension of limitation is concerned, it will be open to the appellant to file an appropriate application and make out a case before the DRT in this regard.

The appeal is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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