

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 190 OF 2023

TRUPTI AMIT LINGRAS ... PETITIONER
VS
STATE BANK OF INDIA THR.
ITS AUTHORISED OFFICER
AMIT LAL & 4 OTHERS ... RESPONDENTS

Mr S.M. Singbal, Advocate for the Petitioner.

Ms Susan Linhares, Additional Government Advocate for
Respondent Nos. 4 and 5.

**CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 24th APRIL 2023

ORAL ORDER:

1. Heard Mr Singbal for the petitioner and Ms Linhares, learned Additional Government Advocate appearing for respondent nos. 4 and 5.

2. This Petition challenges the proceeding under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the notice under which, the possession of the immovable property is already taken over.

3. The main grievance of the petitioner is that her alleged moiety rights in the mortgaged property are already taken over by resorting to the provisions of the SARFAESI Act.

4. The Petition involves disputed questions of fact as to the status of the petitioner and whether the provisions of the Portuguese Civil Code would apply to the couple. That apart, time and again, the Hon'ble Supreme Court has held that such petitioners must exhaust the alternate remedy of approaching the DRT under the provisions of the SARFAESI Act. Normally, the High Courts must not entertain such Petitions because the petitioners have an efficacious and alternate remedy available to them.

5. By referring to several decisions of the Hon'ble Supreme Court, the Division Bench of this Court in **Crosscraft Private Limited Vs. The Authorized Officer & Others** (Writ Petition No. 313 of 2018 and a connected matter decided on 08.02.2019), has held that ordinarily, such Petitions should not be entertained.

6. Even recently, the Hon'ble Supreme Court in **M/s South Indian Bank Limited & Others Vs. Naveen Mathew Philip & Another** (Civil Appeal arising out of SLP (Civil) Nos. 22021-22022 of 2022) has deprecated the practice of High Courts

entertaining such Petitions where alternate remedies were available to the petitioners under the provisions of the SARFAESI Act.

7. Mr Singbal, however, relies on the decision of the Division Bench of the Karnataka High Court in **U.M. Ramesh Rao & Others Vs. Union Bank of India**¹, in which, Petitions under Article 226 of the Constitution of India were held to be maintainable because the issue involved, touched upon the very applicability of the SARFAESI Act. The Division Bench of the Karnataka High Court relied upon the decision of the Hon'ble Supreme Court in **Sri Radhey Shyam (D) Through LRs. & Others Vs. State of Uttar Pradesh & Others**².

8. Though a Writ Petition is maintainable under the plenary jurisdiction of Article 226 of the Constitution, the question is whether such jurisdiction should be exercised in matters involving disputed questions of facts and when an alternate and efficacious remedy is available under the SARFAESI Act.

9. Relying upon the several decisions of the Hon'ble Supreme Court referred to in **Crosscraft Private Limited** (supra) and the latest decision of the Hon'ble Supreme Court in **M/s South**

1 (2022) 2 BC 27

2 (2011) 5 SCC 553

Indian Bank Limited (supra), we decline to entertain this Petition. Accordingly, the Writ Petition is dismissed.

10. The dismissal of this Petition, however, will not preclude the petitioner from taking out appropriate proceedings under the SARFAESI Act.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.

VAIGANKAR
ESHA SAINATH

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