IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12290 OF 2022

Gold Ispat & Steel, Navi Mumbai,
Through its Proprietor :
Gangaprasad Ramnarayan Tripathi .. Petitioner

Vs.

Union of India,
Through Ministry of Finance, New Delhi and Ors. .. Respondents

Mr. Gangaprasad R. Tripathi, the Proprietor of the Petitioner, is present in person.
Mr. Dashrath A. Dubey, with Mr. Rupesh Dubey, for Respondent No.1-UOI.
Mr. Nikhil Rajani, with Mr. Shreyansh Desai, i/by V. Deshpande & Co., for Respondent No.3-Bank.

CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ

DATE : 8TH SEPTEMBER, 2023.

P.C. :

1. Heard the petitioner, who appears in person, Mr. Dubey, learned counsel for respondent no.1-UOI and Mr. Rajani, learned counsel for respondent no.3-Saraswat Co-operative Bank. Nobody is present for respondent no.2-RBI.

2. The only objection taken in this petition is about wrongful declaration of the loan account of the petitioner as Non-Performing Asset ***("NPA" for short)*** by respondent no.3-Bank. According to the petitioner, such categorization of loan account of the petitioner was not permissible during moratorium period imposed by respondent no.2-Reserve Bank of India on account of prevalence of

Covid-19 pandemic. He submits that the loan account of the petitioner was categorized as NPA on 30th March 2020, the date which fell within the prevalence period of Covid-19 pandemic. He also submits that there are several judgments of the Apex Court, which consistently took a view that NPA categorization of loan accounts during moratorium period declared by RBI is not permissible.

3. The learned counsel for respondent no.3-Bank points out that with similar objection and for similar relief, the petitioner has filed Interlocutory Application No.1731 of 2023 in Securitisation Application No.104 of 2022, both filed by the petitioner before the Debts Recovery Tribunal No.2, Mumbai *(**"DRT"** for short)*. He submits that the DRT has already taken a prima facie view that NPA categorization of the loan account of the petitioner cannot be faulted with for the reasons stated in the order passed on 10th August 2023 by the DRT. He, therefore, submits that this petition is not maintainable before this court on the sole ground that the petitioner has already taken recourse to alternate remedy statutorily available to the petitioner. In support, he has tendered across the bar a copy of the order dated 10th August 2023, which is taken on record and marked as "Document-A" for identification.

4. There is no doubt about the fact that this petition takes an exception to the categorization of the loan account of the petitioner as NPA on the ground that such categorization could not have been done during the moratorium period. The petitioner, however, has also filed an application before the DRT

with same objection and for the same relief as in the present petition. The petitioner does not dispute it. If that is so, this would be a case wherein it would have to be said that the petitioner has already taken recourse to an alternate remedy statutorily available to the petitioner for redressal of his grievance and that being so, this court cannot entertain this petition.

5. Apart from what is stated above, we also find that, ultimately, this petition would require adjudication upon questions of fact, which appear to be disputed by the parties. These questions of fact arise from various dates pertaining to the loan account of the petitioner and also the dates of various defaults made in the loan account of the petitioner. Therefore, on this ground also, we find that this petition cannot be entertained by this court.

6. In the result, the petition is dismissed as not maintainable before this court, with liberty to the petitioner to pursue the alternate remedy that he has already taken recourse to in accordance with law. All contentions are kept open.

7. It is made clear that the observations made here-in-above shall not influence the Debt Recovery Tribunal No.2, Mumbai in deciding the applications pending before it on their own merits and in accordance with law.

[FIRDOSH P. POONIWALLA, J.] **[SUNIL B. SHUKRE, J.]**