BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)Nos.1601 & 1632 of 2023
and
W.M.P.(MD)Nos.1456 & 1479 of 2023

1.M/s.Nayagi Fireworks Pvt.Ltd.,
Rep. by its Director, V.Alagarsamy
2.V.Alagarsamy
3.V.Kesavan ... Petitioner in W.P.(MD)No.1601 of 2023

1.M/s.Nayagi Fireworks Factory,
Rep. by its Partner, V.Alagarsamy
2.V.Kesavan ... Petitioner in W.P.(MD)No.1632 of 2023

-Vs-

1.The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch (SARB),

No.8, Dr.Ambedkar Road,
First Floor of Vinayaga Nagar Branch,
Madurai-625 020.

2.State Bank of India,
Rep. by its Branch Manager,
Sivakasi SME Branch,
Sudar Complex, Velayutham Road,
Sivakasi-626123.

3.Debts Recovery Tribunal- Madurai,
Rep. by the Registrar,
III & IV Floor, Kalyani Towers,
4/162, Madurai-Melur Road,
(Near Meenakshi Mission Hospital),
Uthangudi Post, Madurai-625 107. ... Respondents in both W.Ps.

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the sale notice dated 19.12.2022 issued by the 1st respondent and quash the same.

For Petitioners : Mr.V.Veerapandian,
For M/s.Vastlaw Associates

For R1 & R2 : Mr.N.Dilip Kumar,
Standing Counsel

COMMON ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

The sale notice dated 19.12.2022 issued by the 1st respondent, fixing the date of sale on 31.01.2023, is under challenge in these Writ Petitions.

2.Mr.N.Dilip Kumar, learned Standing Counsel takes notice for the respondents in both Writ Petitions.

3.By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4.According to the petitioners, they availed loan facility from the respondent Bank in the year 2015. Since they could not able to pay the instalment, their accounts have been classified as Non Performing Assets in the year 2018. The respondent Bank filed suits for recovery of the claim amount in

O.A.Nos.355 & 357 of 2018 before the 3rd respondent and the same are pending for adjudication. While so, the respondent Bank issued demand notice dated 10.06.2020, followed by possession notice dated 21.08.2020. Challenging the said possession notice, the petitioners filed appeals in S.A.Nos.268 & 269 of 2020 before the 3rd respondent and the same are also pending for adjudication.

5.In the interregnum period, the petitioners submitted proposals for One Time Settlement to the respondent Bank and the Bank also accepted the same. Accordingly, the petitioners settled six loan accounts and only, these two loan accounts are yet to be settled. Therefore, the respondent Bank issued sale notice dated 09.05.2022, fixing the date of sale on 27.06.2022. Challenging the same, the petitioners filed appeals before the 3rd respondent in S.A.Nos.288 & 289 of 2022 and filed Writ Petitions before this Court in W.P.(MD)Nos.13209 & 13171 of 2022, wherein this Court, by an order dated 24.06.2022, granted an interim stay on condition that the petitioners should deposit a sum of Rs.10,00,000/- on or before 27.06.2022 and a further sum of Rs.10,00,000/- on or before 05.07.2022 to the respondent Bank. The petitioners also complied with the said conditional interim order and during the pendency of the said Writ Petitions, submitted a proposal for One Time Settlement to the respondent Bank. However, the respondent Bank rejected the request of the petitioners on 31.10.2022. Thereafter, on 30.11.2022, the aforesaid Writ Petitions were disposed of, directing the petitioners to submit fresh proposals to the respondent Bank. Therefore, the petitioners submitted fresh proposals to the respondent Bank on 13.12.2022. However, the respondent Bank rejected the said request of the petitioners on 15.12.2022 and issued sale notice dated 19.12.2022, which is impugned herein.

6.The learned counsel for the petitioners undertakes before this Court that within a period of five months, the entire outstanding amount as on date will be paid by the petitioners.

7.The learned Standing Counsel for the respondent Bank submitted that though the respondent Bank has provided several opportunities to the petitioners, they did not choose to settle the loan amount to the respondent Bank. Therefore, the impugned sale notice has been issued.

8.In the light of the aforesaid submission, we are of the view that total outstanding amount comes around Rs.11 Crores and when the impugned sale notice has been issued on 19.12.2022, fixing the date of sale on 31.01.2023, the petitioner has approached this Court challenging the said sale notice only on 24.01.2023. Therefore, we are not inclined to entertain these Writ Petitions.

9.At this juncture, it would be relevant to refer the following decisions:-

"(i)In **United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110,** the Hon'ble Supreme Court has held as follows:-

> "42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal

and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

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 giievance 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."

(ii)In **Kanaiyalal Lalchand Sachdev v. State of**

Maharashtra(2011) 2 SCC 782, the Apex Court has held as follows:-

"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. [(2003) 3 SCC 524 : 2003 SCC (Cri) 762] , Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675] and SBI v. Allied Chemical Laboratories [(2006) 9 SCC 252].)"

(iii)In **ICICI Bank Ltd. v. Umakanta Mohapatra, (2019) 13 SCC 497 : (2018) 5 SCC (Civ) 812: 2018 SCC OnLine SC 2349,** the Hon'ble Supreme Court has held as follows:-

"2. Despite several judgments of this Court, including a judgment by Hon'ble Navin Sinha, J., as recently as on 30-1-2018, in State Bank of Travancore v. Mathew K.C. [State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] , the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are non-performing assets (NPAs)."

3. The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows: (SCC p. 94, para 17)

"17. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. [Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd., (1997) 6 SCC 450] , observing: (SCC p. 463, para 32)

32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

(iv)In **Agarwal Tracom (P) Ltd. v. Punjab National Bank (2018)**

1 SCC 626, the Apex Court has held as follows:-

> "33. In the light of the foregoing discussion, we are of the considered opinion that the writ court as also the appellate court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of the SARFAESI Act before the Tribunal concerned to challenge the action of PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment."

(v)In **C. Bright v. Distt. Collector (2021) 2 SCC 392,** the Hon'ble Supreme Court has held as follows:-

> "22. Even though, this Court in United Bank of India v. Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 (2010) 3 SCC (Civ) 260] held that 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 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. Hindon Forge (P) Ltd. [Hindon Forge (P) Ltd. v. State of U.P., (2019) 2 SCC 198 : (2019) 1 SCC (Civ) 551]

has held that the remedy of an aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court under Articles 226 or 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction when effective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditor as interim orders defeat the very purpose of expeditious recovery of public money."

(vi)In **S.Ganesamoorthi Vs. The Branch Manager & Ors., W.P.(MD).No.22536 of 2021, dated 20.12.2021,** the Hon'ble First Bench of this Court has held that though Presiding officer is not available in DRT, Madurai, incharge is given to Coimbatore and therefore, liberty is given to writ petitioner to move DRT, Coimbatore.

(vii)As regards the non-maintainability of the writ petition against Private financial institutions like asserts re-construction companies in respect of their action under SARFAESI Act, it is relevant to consider the decision of the

Hon'ble Supreme Court in **Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345 : 2022 SCC OnLine SC 44**, wherein, it has been held as follows:-

> "18. Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. [Praga

Tools Corpn. v. C.A. Manual, (1969) 1 SCC 585] and Ramesh Ahiuwalia [Ramesh Ahluwalia v. State of Punjab, (2012; 12 SCC 331 : (2013) 3 SCC (L&S) 456: 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

10.In view of the aforesaid decisions, these Writ Petitions are dismissed with liberty to the petitioners to approach the Debts Recovery Tribunal for appropriate remedy. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] & [R.V., J.]
30.01.2023
(2/2)

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MYR

D.KRISHNAKUMAR, J.

AND

R.VIJAYAKUMAR, J.

MYR

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