



W.P.(MD) No.1847 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.1847 of 2023

and

W.M.P.(MD)Nos.1632 & 1633 of 2023

M.Balamurugan

... Petitioner

Vs.

The Chief Manager/Authorized Officer,
Indian Overseas Bank,
North Vadampokki Street,
Madurai.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records pertaining to the impugned E-Auction sale notice dated 03.01.2023 issued by the respondent E-Auction sale is scheduled to be held on 31.01.2023 and quash the same.



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For Petitioner : Mr.M.Pitchai Muthu

For Respondent : Mr.M.Senthil Kumar,
Standing Counsel

ORDER

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

Challenging the impugned E-Auction sale notice dated 03.01.2023 issued by the respondent, dated 03.01.2023, the petitioner has filed this Writ Petition.

2. Heard Mr.M.Pitchai Muthu, learned counsel for the petitioner and Mr.M.SenthilKumar, learned Standing Counsel, who takes notice for the respondent.

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

4. The learned counsel appearing for the petitioner submitted that the petitioner has been granted a loan by way of financial assistance by the



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respondent bank and agreed to repay the principal and interest through EMI and the petitioner has been paying the EMI regularly. However, the respondent bank has declared the petitioner's account as NPA. Thereafter, the respondent bank issued the demand notice on 27.09.2022 under Section 13(2) of the SARFAESI Act and issued the possession notice on 05.02.2022 under Section 13(4) of the SARFAESI Act. As against the possession notice, the petitioner has filed an appeal before the DRT, Madurai. Thereafter, since the respondent bank had taken steps for e-auction sale on 09.05.2022, the petitioner has filed a Writ Petition in W.P.(MD)No.10216 of 2022 and a conditional order has been passed in the said writ petition. The petitioner has not complied the said conditional order and thereafter, the petitioner has filed a Writ Petition in W.P.(MD)No. 19896 of 2022. In the said writ petition also, conditional order has been passed and the petitioner has not complied the said conditional order also. While that being so, the respondent bank issued E-Auction sale notice on 03.01.2023. Hence, the petitioner has filed this Writ Petition.



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5. The learned Government Pleader appearing for the respondents submitted that the petitioner has not complied with the conditions imposed by this Court in the earlier writ petitions and he has not shown any *bona fide* to repay the said amount. Therefore, this Writ Petition is liable to be dismissed.

6. Considering the facts and circumstances of the case, we are of the view the petitioner has already approached this Court and conditional orders have been passed. The petitioner has not shown any *bona fide* for re-payment of the said amount to the respondent bank and now the petitioner has approached this Court at the eleventh hour and therefore, we are not inclined to entertain this Writ Petition and the petitioner has to approach the Debts Recovery Tribunal by filing an appeal and work out his remedy in accordance with law.

7. 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:-



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"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 grievance of any aggrieved



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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



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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."



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WEB COPY (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.



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WEB COPY *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



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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,



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WEB COPY (1969) 1 SCC 585] and Ramesh Ahluwalia [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."

8. In view of the aforesaid decisions, we are not inclined to entertain this writ petition. Therefore, the Writ Petition is dismissed with liberty to the petitioner to approach the Debts Recovery Tribunal, for appropriate remedy. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] [R.V., J.]

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NCC : Yes / No

Index : Yes / No

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