IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:069441-DB

(246) **CWP-37797-2018 (O&M)**
Decided on : 10.05.2023

IDBI Bank Limited

……Petitioner(s)

Versus

M/s Maini Spinners and others

……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH

Present: Mr. Tajender K. Joshi Advocate for the petitioner.

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G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India has been made to the orders passed by the Debts Recovery Tribunal dated 24.02.2016 and 26.12.2017 (Annexures P4 & P-5), wherein the original application was dismissed in default and, thereafter the restoration application was also dismissed on the ground that there was no power to condone the delay.

2. We are of the considered opinion that the said orders are appealable under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 and present writ petition is not maintainable. The Apex Court has time and again held that where there is an alternate and efficacious remedy available, the writ Court would not exercise its jurisdiction.

3. Keeping in view the above, we are of the considered opinion that remedy of appeal is provided against the order of the Debts Recovery Tribunal under Section 18 of the SARFAESI Act, 2002 which reads as under:-

> "**18. Appeal to Appellate Tribunal.—**
>
> **(**1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

> Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:
>
> Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.
>
> (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

4. The Apex Court in **Varimadugu Obi Reddy Vs. B. Sreenivasulu and others, 2023 (1) RCR (Civil) 34** while discussing an similar issue held that the orders passed by the Debts Recovery Tribunal are appealable and it is not for the Writ Court to exercise its extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

5. Resultantly, the present writ petition is disposed of with the aforesaid liberty. It is open to the petitioner to file an appropriate application before the Debts Recovery Appellate Tribunal within 4 weeks from today.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
JUDGE

10.05.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No