

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 04.01.2023

% **Judgment delivered on: 09.01.2023**

+ **LPA 3/2023**

MR.DHANESH GUPTA AND ORS Appellant

Through: Mr. Raman Gandhi, Advocate.

versus

RESERVE BANK OF INDIA AND ANR Respondent

Through: Ms. Reema Khurana, Mr. Vikash Kumar, Ms. Akriti Gautam, Advs. for Standard Chartered Bank with Mr. Thapar, Authorised Officer.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA has been filed under Clause X of the Letters Patent read with Section 10 of the Delhi High Court Act against the judgment and order dated 19.10.2022, passed in W.P.(C.) No.8028/2020, passed by the learned Single Judge.

2. The facts of the case reveal that the Appellants before this Court obtained a loan from the Respondent Bank by mortgaging their property i.e. House No. A-38, 3rd Floor, Hauz Khas, New Delhi to the tune of Rs.

2,68,00,000/- and a loan agreement was executed on 30.12.2017. The loan was sanctioned and disbursed to the Appellants in the month of February,2018 and the Appellants were required to pay Rs.2,68,644/- per month in equal 180 monthly installments.

3. It is an undisputed fact that the Appellants were not able to pay the EMI's for the month of October, 2019 to December, 2019, and as a consequence of default committed by the Appellants, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT) was served to the Appellants. The Appellants were also informed that their account has been declared as Non-Performing Asset (NPA) and the Appellants were directed to clear the dues within a period of 60 days. Undisputedly, the dues were not cleared by the Appellants and the Appellants came up before this Court by filing a writ petition.

4. Before the learned Single Judge, the following reliefs were sought by the Appellants.

“i. Issue a writ of Certiorari in favour of the Petitioners and quash the Order dated 15.09.2020 passed by the Ld. CMM, South, Saket Court, New Delhi in CT No. 5268/2020 under Section 14 of the SARFAESI Act, 2002 and notice dated 28.09.2020 issued by the Respondent No.2 Bank under Section 13 (4) of the SARFAESI Act,2002;

ii. Issue a writ of Mandamus directing the Respondent No.2 Bank to continue the Loan as sanctioned and scheduled in favour of the Petitioners, thereby quashing proceedings under the SARFAESI Act,2002 as initiated by the Bank;

iii. Issue a writ of Mandamus and /or Certiorari in favour of the Petitioners and grant stay of proceedings as per the notice dated 28.09.2020 issued by the Respondent No.2 Bank thereby staying taking over of physical possession of the mortgaged property being House No. A-38, Third Floor, Hauz Khas, New Delhi, by the bank as scheduled to take place on 16.10.2020 at 1:00 PM, till the pendency of the present proceedings and maintain status quo;”

5. It is also an undisputed fact that the action was also initiated under Section 13(4) of the SARFAESI Act and the bank took possession of the property by filing appropriate application under Section 14 of the SARFAESI Act.

6. The learned Single Judge has dismissed the writ petition and the operative paragraphs of the order passed by the learned Single Judge as contained in paragraphs 5 to 7 reads as under:

“5. The cause of action in the instant writ petition, arising from Respondent No.2-Bank’s action under Section 13(4) and Section 14 of SARFAESI Act, 2002, cannot be examined or entertained by this Court, in light of several decisions of Supreme Court,¹ as well as this Court,² to the effect that a writ petition in such banking matters is not maintainable. Moreover, as has been reiterated in recent decisions of

¹ See: *Phoenix ARC Pvt. Ltd. v. Vishwa Bharti Vidya Mandir and Ors.*, 2022 SCC Online SC 44, where the Supreme Court has held that where proceedings are initiated under the SARFAESI Act, 2002 and the borrower is aggrieved by any of the actions of the bank for which the borrower has remedy under the SARFAESI Act, 2002, no writ petition should be entertained. Also see: *Authorized Officer, State Bank of Travancore and Ors. v. Mathew K.C.*, 2018 SCC Online SC 55; *Agarwal Tracom Pvt. Ltd. v. Punjab National Bank and Ors.*, 2017 SCC Online SC 1368; *General Manager, Sri Siddeshwara Cooperative Bank Limited and Anr. v. Ikbali and Ors.*, 2013 SCC Online SC 755; and *United Bank of India v. Satyawati Tondon and Ors.*, 2010 SCC Online SC 776.

² See: *M/s Trinkeshwar Developers and Ors. v. Builders Pvt. Ltd. v. North Municipal Corporation & Ors.*, 2022 SCC Online Del 415. Also see judgment of this Court in *Sanjay Sarin v. Canara Bank & Ors.*, 2022 SCC OnLine Del 2402.

Supreme Court, an alternative efficacious statutory remedy already lies under Section 17 of SARFAESI Act, 2002, and thus, this Court is not the correct forum for adjudicating the instant petition.³ Thus, the present petition is not maintainable. Moreover, Petitioner has not disclosed or demonstrated any ground which cannot be raised before DRT under SARFAESI Act, 2002.

6. In light of the foregoing, the present writ petition is dismissed.

7. It is clarified that the Court has not examined the merits of the case. All rights and contentions of the parties are left open.”

7. The present LPA has been filed being aggrieved by the order passed by the learned Single Judge and the learned Counsel for the Appellants has argued before this Court that on account of lockdown owing to COVID-19 Pandemic, the Appellants were not able to pay the EMI's in time and the learned Single Judge should have interfered with the proceedings initiated under the SARFAESI Act.

8. Various other grounds have also been raised in the LPA, however, the fact remains that the Appellants do have a remedy under Section 17 of the SARFAESI Act. Section 17 of the SARFAESI Act reads as under:

“17. [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1 [may make an application

³ 3 See: *Kanaiyalal Lalchand Sachdev & Ors. v. State of Maharashtra and Ors.*, (2011) 2 SCC 782 – where the Apex Court, in Paragraph No. 22, held that –

“We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.”

along with such fee, as may be prescribed,]to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding

anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]”

9. In the considered opinion of this Court, the learned Single Judge was justified in dismissing the writ petition on account of availability of alternate remedy especially keeping in view the judgment delivered by the Hon’ble Supreme Court in ***United Bank of India v. Satyawati Tondon and Ors.***, 2010 SCC Online SC 776, ***M/s Trinkeshwar Developers and Ors. v.***

Builders Pvt. Ltd. v. North Municipal Corporation & Ors., 2022 SCC Online Del 415 and the judgment delivered in the case of ***Sanjay Sarin v. Canara Bank & Ors.***, 2022 SCC OnLine Del 2402.

10. This Court also does not find a reason to interfere with the action taken by the Bank under the SARFAESI Act especially in the light of the fact that the Appellants do have an alternative efficacious remedy under Section 17 of the SARFAESI Act. It is needless to mention that the observations made by the learned Single Judge and by this Court shall not come in the way of the parties and the Debt Recovery Tribunal shall decide the matter in accordance with law.

11. The appeal stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JANUARY 09, 2023

N.Khanna