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

\+ LPA 840/2023 & CM APPL. 66998-66999/2023

BHARAT VEERANGANA AVANTIBAI EDUCATIONAL SANSTHAN & ORS. ..... Appellant

Through: Mr. Arunava Mukherjee and Mr. Nisarg P. Khatri, Advocates.

versus

KOTAK MAHINDRA BANK LTD & ANR. ..... Respondents

Through: Mr. S.K. Garg, Advocate.

% ***Date of Decision: 22nd December, 2023***

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present appeal has been filed challenging the order dated 18th December, 2023 passed by the learned Single Judge in *W.P.(C) 15480/2023,* by which the writ petition filed by the appellants was dismissed.

2. Appellant no. 1 is an educational institution which is running an institute by the name of "Prince Institute of Innovative Technology" at Greater Noida offering various educational programs, including MBA, BBA, BCA, Polytechnic, B.Ed etc. Appellant no. 1 availed credit facilities from respondent no. 1-bank against mortgaged title deeds of the land where the institute of the appellant is situated.

3. Since the appellant no. 1 failed to repay the loan, the respondent no. 1 sent a recovery notice dated 20th July, 2020 to the appellant no. 1 to recover

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the balance amount. The loan account of the appellant no. 1 was also declared as Non Performing Asset ("NPA") by the respondent no. 1-bank. Subsequently, the respondent no. 1-bank sent statutory notice dated 30th July, 2020 under Section 13(2) of The Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 ("SARFAESI Act, 2002") for recovery of a sum of Rs. 11,54,40,246/-.

4. The appellants filed petition being *SA No. 43/2023* before Debt Recovery Tribunal ("DRT") *inter alia* challenging notices under Sections 13(2) and 13(4) of the SARFAESI Act, 2002. The appellants failed to secure any interim relief from the DRT. Thus, the appellants filed writ petition before this Court being *W.P.(C) No. 15480/2023* praying *inter alia* for direction to respondent no. 1 to declassify its two accounts which stand classified as NPA by the respondent no. 1. However, the said writ petition was dismissed by the learned Single Judge on the ground that alternative remedy was available with the appellants. Hence, the present appeal has been filed.

5. On behalf of the appellants, it is contended that appellant no. 1 is a charitable organization which runs an educational institution. It has been illegally classified as NPA and has received illegal recovery notice from respondent no. 1 in utter violation of RBI notifications, thereby contravening the fundamental rights of the appellants guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution of India. A writ petition that aims to secure a public interest and enforcement of fundamental rights is maintainable even when alternate remedy may be available, especially when such alternate remedy is not efficacious. It is further contended that on account of its dire financial conditions, the appellants are unable to meet the

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pre-deposit conditions.

6. Per contra, learned counsel for the respondent prays for dismissal of the present appeal on account of the same being meritless.

7. Having heard learned counsel for the parties and having perused the record, this Court finds no merit in the contentions raised by the appellants. The appellants filed petition in the learned DRT under the SARFAESI Act, 2002 challenging the recovery notices issued by the respondent no. 1 bank. If the appellants are aggrieved by the order passed by the learned DRT, it has the statutory remedy of filing an appeal under Section 18(1) of the SARFAESI Act, 2002 before Debt Recovery Appellate Tribunal ("DRAT"). The fact that the appellants find it onerous to make pre-deposit in terms of the said Section, is in the facts of the present case, no ground for filing a writ petition in this Court.

8. Accordingly, this Court finds no infirmity in the impugned order passed by the learned Single Judge. In view thereof, the present appeal is dismissed along with the pending applications.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

DECEMBER 22, 2023
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