19.06.2024
Item No.1
RP/AN
Ct. No.1

M.A.T. 947 of 2024
With
IA No.CAN 1 of 2024
CAN 1 of 2024
M/s. Chittaranjan Multipurpose Heemghar Pvt. Ltd. & Ors.
Vs.
Mukti Firms Private Limited & Ors.

Mr. Arijit Bardhan
Mr. Debasish Chakraborty
.....for the Appellant

Mr. Subir Sanyal
Mr. Pijus Chaturbedi
Mr. Sujit Sankar Koley
.....for the respondent/writ petitioner
Mr. Pankaj Kumar Mukherjee
Mr. Subir Bera
.....for respondent nos.2 and 3

1. This intra-Court appeal filed by a third party is directed against an order dated 3rd April, 2024 passed in WPA 8223 of 2024 filed by the first respondent/writ petitioner. The said writ petition was filed by the first respondent contending that they are the successful auction purchasers in a bank sale. They have complied with all formalities but the bank has not yet issued sale certificate with regard to auction purchase in favour of the writ petitioner and, therefore, sought for appropriate direction. Learned Single Bench noted that the appellant, who is the borrower, was not impleaded as a party in the said writ petition. The learned Single Bench has allowed the writ petition by directing the respondent bank to issue the sale certificate pursuant to the auction sale held in favour of the writ petitioner at the earliest, preferably within three weeks from date of the order (April 3, 2024). The bank was also directed to handover physical possession of the property within the said period of three weeks in favour of the petitioner. The appellant/borrower had filed an

application seeking leave to file an appeal since they were not made a party respondent in the writ petition. Since the appellant/borrower has challenged the various measures initiated under the provisions of SARFAESI Act, 2002 before the Debt Recovery tribunal he is definitely an aggrieved person. Therefore, leave to file an appeal was granted.

2. We have elaborately heard the learned advocates for the parties and carefully perused the materials on record. The first and foremost aspect of the matter, which is to be looked into, is that whether a writ petition is maintainable. It is beneficial to refer to a recent decision of the Hon'ble Supreme Court passed in **CELIR LLP vs. Bafna Motors (Mumbai) Private Limited & Ors**. reported in **(2024) 2 SCC 1**. In paragraph 97 of the said judgment the Hon'ble Supreme Court has pointed out that this Court has time and again reminded the High Courts that they should not entertain petition under Article 226 of the Constitution of India if an effective remedy is available to the aggrieved person under the provisions of SARFAESI Act. In this regard several decisions of the Hon'ble Supreme Court have been referred to and ultimately in paragraph 101 Supreme Court observed that more than a decade back this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. In the light of the said embargo the question would be as to whether the prayer sought for in the writ petition could have been entertained and whether the writ petition can be allowed and that too in the absence of the appellant/borrower.

3. In **Agarwal Tracom Private Limited vs. Punjab National Bank & Ors.** reported in **(2018) 1 SCC 626** the appellant was an auction purchaser who failed to pay the amount payable to the secured creditor within the time permitted under the Act and consequently the secured creditor had exercised its right of forfeiture. This was the subject matter of challenge in the said case. The Hon'ble Supreme Court while considering the said challenge has elaborately dealt with the remedies provided under Section 17 of the Act and who would be the person entitled to seek such remedy. In this regard we refer paragraph nos.22, 24 and 27 of the aforesaid judgment.

"22. So far as Section 17 is concerned, it provides a remedy to a person who is aggrieved by the measures taken by the secured creditor or his authorized officer under Section 13(4) in relation to secured assets of the borrower. It says that "any person (including borrower)" may make an application to the DRT within 45 days from the date of measures taken under Section 13(4). Sub-Section (2) of Section 17 was added by way of amendment w.e.f. 11.11.2004. It provides that the Tribunal, on such application being made under Section 17(1), shall consider whether the measures referred to and taken under Section 13(4) by the secured creditor are in accordance with the "provisions of this Act and the Rules made thereunder". Similarly, sub-sections (3), (4) and (7) of Section 17 which deal with the power of the DRT also use the expression "in accordance with the provisions of the Act and the Rules made thereunder".

24.Rule 9(6) empowers the authorised officer to issue sale certificate in favour of the purchaser. Rule 9(9) then empowers the authorised officer to deliver the properties to the purchaser whereas Rule 9(10) empowers the *authorised officer to mention in the sale certificate that the property is free from encumbrances.*

27.The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections 2, 3, 4 and 7 of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13(4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Sections 17(2), 3 and 4 to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?"

4. In the result of the above decision, the auction purchaser, namely, the writ petitioner, who may be aggrieved by any of the action of the secured creditor, namely, in the instant case, in forfeiting their money or failure to issue sale certificate or failure to handover possession of the property purchased in the acution, falls within the expression "any person" as specified under Section 17(1) of the Act. The writ petitioner ought to have moved the Debt Recovery Tribunal seeking for appropriate relief as the remedy provided under the Act not only effective but efficacious. In Agarwal Tracom (supra) the Hon'ble Supreme Court

took note of the decision in the case of United Bank of India vs. Satyawati Tandon reported in (2010) 8 SCC 110 and ultimately granted liberty to the appellant therein to file an application before the DRT under Section 17(1) of the Act and if the appellant files an application, the Tribunal shall entertain the same and decide the same on merit and in accordance with law uninfluenced by any of the observations made by this Court as well as the High Court in the impugned judgment.

5. Thus, the line drawn by the Hon'ble Supreme Court is very bright and clear to indicate that when a person who falls within the expression "any person" as specified by Section 17(1) of the SARFAESI Act, 2002 he is bound to invoke the remedies available under the Act and not to bypass the same by filing a writ petition under Article 226 of the Constitution of India.

6. On the merits of the matter we find that initially the bank had initiated action under Section 13(2) followed by Section 13(4) which was challenged before the DRT. Subsequently, since Section 13(4) notice was withdrawn by the bank the application under SARFAESI Act, 2002 was withdrawn by the appellant/borrower. A fresh notice was issued under Section 13(4) which was challenged by way of a fresh application on 16th November, 2023. In the said application stay was also sought for. Since the application was not taken up the bank proceeded to issue sale auction notice on 20th November, 2023. On 29th December, 2023 the sale was conducted in which the writ petitioner was declared as successful bidder. On 11.12.2023 the borrower filed an interlocutory application in the pending SARFAESI application questioning the sale. On 3.1.2024 the DRT granted an

order of status quo which stood extended till 19.01.2024. Since there was no action the bank has issued a sale certificate on 4.4.2024. Subsequently interim order granted by the DRT was extended albeit in the absence of the respondent/bank. The sale deed was executed on 5.6.2024 and it appears that on the said date the interim order granted by the DRT could have been in force.

7. In the light of the above fact, the proceeding before the DRT cannot be rendered otiose or infructuous at the instance of the auction purchaser by obtaining an order in the writ petition in which the borrower was not impleaded. It is no doubt true when the appeal was listed on 21st May, 2024 none appeared on behalf of the appellant and there was no stay application filed with the appeal. We made an observation that pendency of this appeal will not be an impediment for implementing the directions issued by the learned Single Bench. Subsequently, stay application has been filed.

8. We have elaborately heard learned counsel for the parties. Therefore, the order dated 21.5.2024 is to be vacated. Thus, considering all the abovementioned facts and taking note of the law laid down by the Hon'ble Supreme Court we hold that the writ petition filed by the first respondent is not maintainable. Accordingly, the appeal is allowed and the order passed by the learned Single Bench is set aside. If any application is filed before the DRT within a period of two weeks from the date of receipt of the server copy of this order, the DRT shall entertain the same and decide the same along with other applications which are pending at the instance of borrower and take a decision on merit and in accordance with law uninfluenced by any observations made by us.

9. It is made clear that we have not gone into the merits of the matter and it will be open to the DRT to consider all facts as well as legal submission that may be made before the DRT.

10. It is made clear that whatever action done by the respondent bank will be subject to the outcome of the proceeding pending before the DRT.

11. In the result the appeal and the connected application are allowed.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)