

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1226 of 2024

With

IA No.: CAN 1 of 2024

The Authorized Officer, Bank of India and Anr.

Vs.

Sri Rudra Bhattacharya and Anr.

For the appellants

: Mr. Sanjib Das, Advocate

Ms. Sunita Kabi, Advocate

Ms. Mohuya Ghosh, Advocate

For the respondent no.1(in-Person): Mr. Rudra Bhattacharya

Heard & Judgment on

: September 5, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated May 21, 2024 passed in WPA 12003 of 2024.
2. Learned Advocate appearing for the appellants submits that, private respondents herein approached the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, 2002. Such proceeding was registered as S.A. No. 142 of 2015. In S.A. No.142 of 2015 from time to time diverse

orders were passed. Some orders were appealed against before the Debts Recovery Appellate Tribunal. One order of the Debts Recovery Tribunal was assailed before the High Court under Article 227 of the Constitution of India.

3. Learned Advocate appearing for the appellants submits that, the private respondents filed an application under Section 340 of the Code of Criminal Procedure before the Presiding Officer, Debts Recovery Tribunal in S.A. No.142 of 2015 which was registered as I.A. No.1360 of 2019. I.A. No.1360 of 2019 was disposed of by an order dated February 1, 2023 by the Presiding Officer, Debts Recovery Tribunal after holding that *prima facie* evidence of any offence being committed was not available.
4. Learned Advocate appearing for the appellants relies upon **2024 INSC 297 (PHR Invent Educational Society vs. UCO Bank and Others)** and **(2014) 1 Supreme Court Cases 603 (Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal)** and submits that, a writ petition challenging an order of the Presiding Officer, Debts Recovery Tribunal passed under the SARFAESI Act, 2002 is not maintainable. Private respondents did not avail of the statutory alternative remedy prescribed. Learned Single Judge erred in entertaining the writ petition. He refers to the prayers made in the writ petition. He contends that, since there exists statutory alternative remedy which is effective and efficacious, the private respondents should avail of such remedy if they so advised.

5. Private respondent no.1 appears in person. He draws the attention of the Court to the proceedings before the Debts Recovery Tribunal as also the Debts Recovery Appellate Tribunal. He submits that, the claim of false evidence made in the application was in respect of the proceedings pending before the Debts Recovery Tribunal and Debts Recovery Appellate Tribunal and, therefore, he is unlikely to receive justice for such fora given the facts and circumstances of the present case. He also contends that, the appeal provisions are onerous and, therefore, there should be a direction upon the Debts Recovery Appellate Tribunal to waive the pre-deposit in the event he files the appeal. Moreover, he submits that, there is an issue of limitation.
6. We considered the rival contentions of the parties.
7. A notice under Section 13(2) of the SARFAESI Act, 2002 was issued as against the private respondents. Apparently, private respondents responded thereto. Appellants took measures under Section 13(4) of the Act of 2002 in respect of the secured assets. Private respondents filed an appeal under Section 17 of the Act of 2002 which was registered as S.A. No.142 of 2015. In such S.A. No.142 of 2015, appellants filed an application under Section 340 of the Code of Criminal Procedure being I.A. No.1360 of 2019 which was disposed of by the Presiding Officer, Debts Recovery Tribunal by the order dated February 1, 2023.
8. Order dated February 1, 2023 passed in I.A. No.1360 of 2019 is appealable under Section 18 of the Act of 2002. Private respondents did

not file any appeal directed against such order. Appellants approached the High Court by way of WPA No.12003 of 2024 praying for the following reliefs:

“Under the circumstances, your petitioner most namely prays that Your Lordships would graciously be pleased to pass the following Orders.

- a) A writ of and/or in the nature of mandamus thereby add as necessary party respondents who are involve in tampering of court records i.e. the then DRT-III the then Registrar DRT-III, DRT-I and DRAT Kolkata, various person including the Chairman of Bank of India Zonal Manager of BOI, Finance Ministry of India who have deliberately lingered the proceedings to cover up the seam like tampering of Court records and also draw criminal proceedings against those added party respondents and impose upon them exemplary costs.***
- b) A writ of and/or in the nature of Certiorari thereby directing the respondents to certify and transmit to this Hon’ble Court all relevant records of the Present Case.;***
- c) A writ of and/or in the nature of prohibition thereby Prohibiting the respondents and/or their men and agents from doing any act, deed or thing which may cause prejudice and/or harm to the writ petitioners;***

d) Rule NISI in terms of prayers (a), (b) and (c) above.

e) Costs of and/or incidental to this applications;;

f) To pass such other or further order or orders and /or direction or directions as to this Hon'ble Court may deem fit and proper.”

9. Learned Single Judge by the impugned order dated May 21, 2024 overruled the objection of maintainability of the writ petition. Learned Single Judge found that, the impugned order was unreasoned and, therefore, violated the principles of natural justice. Learned Single Judge, therefore, set aside the order of the Tribunal dated February 1, 2023 and remanded the application under Section 340 of the Code of Criminal Procedure being I.A. No.1360 of 2019 to the Tribunal for fresh adjudication.
10. **PHR Invent Educational Society** (*supra*) noted earlier decisions of the Supreme Court including that of **(2010) 8 SCC 110 (United Bank of India v. Satyawati Tondon and Others)** and reminded the High Courts of the observations made in **Satyawati Tondon and Others** (*supra*) in paragraph 55 thereof.
11. Supreme Court in **M/S. South Indian Bank Ltd. & Ors.** (*supra*) also noted the earlier judgments on the issue and held as follows:

“18. While doing so, we are conscious of the fact that the powers conferred under Article

226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

12. The authorities cited above are of the view that where there exists a statutory alternative remedy which is effective and efficacious, particularly with regard to commercial matters such as those governed by the provisions of the Recovery of Debts & Bankruptcy Act, 1993 and the SARFAESI Act, 2002, the Writ Court should require the parties to avail of their remedies before the appropriate forum.
13. We dealt with the issue of delay in filing an appeal under Section 21 of the National Investigation Agency Act, 2008 in ***Sheikh Rahamtulla @ Sajid @ Burhan Sheikh @ Surot Ali & Ors.*** (*supra*).
14. The writ petitioners/private respondents are not remediless against the order of the Presiding Officer, Debts Recovery Tribunal dated February 1, 2023 passed in I.A. No.1360 of 2019. Remedy prescribed under Section 18 of the Act of 2002 cannot be said to be ineffective or inefficient in the facts and circumstances of the present case. The plea that the conditions precedent to be complied with for approaching the Debts Recovery

Tribunal under Section 18 of the Act of 2002 is onerous is of no avail. Requirement to comply with the conditions prescribed to approach the Appellate Court cannot be construed to mean that the appeal provisions are non-existent or ineffective or inadequate.

15. In such circumstances, we are of the view that the learned Single Judge erred in holding the writ petition as maintainable.
16. Both the plea of limitation as also waiver should be considered by Debts Recovery Appellate Tribunal, if the private respondents before us approach the Debts Recovery Appellate Tribunal in this regard.
17. In such circumstances, the impugned order dated May 21, 2024 passed in WPA No. 12003 of 2024 is set aside. **MAT 1226 of 2024** along with **IA No.: CAN 1 of 2024** are allowed without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(Md. Shabbar Rashidi, J.)

(AD)