

ML 224  
12.09.2024  
Court. No. 9  
GB

W.P.A. 23321 of 2023

Sri Nimai Chandra Adhikary  
Vs.  
Union of India & Ors.

*Mr. Saurav Chaudhuri,  
Ms. Kanina Mondal Tarafdar*

*...for the Petitioner.*

*Ms. Soni Ojha,  
Ms. Gunja Pachisia*

*...for the Respondent Nos.2 to 4.*

The writ petition is not maintainable. The petitioner has challenged a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'said Act'), issued by the bank on July 24, 2023. The writ petition was filed in September 2023, that is, beyond the period of limitation prescribed under Section 17 of the said Act. The remedy before the learned Debts Recovery Tribunal under the said Act by filing an appropriate application within the period of limitation, was not availed of. The petitioner was given an opportunity to redeem the mortgaged property. The petitioner has not acted in furtherance thereof. The petitioner does not appear to have replied to such notice under Section 13(2) of the said Act.

Under such circumstances, the writ petition is dismissed. The decisions of the Hon'ble Apex Court which are quoted below, make it clear that the writ court should not entertain petitions challenging actions of the bank, which were initiated under the SARFAESI proceedings.

The Hon'ble Apex Court in the matter of ***United Bank of India vs. Satyawati Tandon & Ors.*** reported in (2010) 8 SCC 110, had discussed the scope of interference by the writ court under Article 226 of the Constitution of India in a proceeding under the SARFAESI Act. The relevant paragraphs are quoted below for convenience:-

**“43.** Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

**44.** While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self- imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

**45.** It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy

by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

**46.** It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have a serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila b Parishad*, *Whirlpool Corpn. v. Registrar of Trade Marks* and *Harbanslal Salnia v. Indian Oil Corpn. Ltd.* and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

Similar view was taken by the Hon’ble Apex Court in the matter of ***PHR Invent Educational Society vs. UCO Bank & Ors.***, reported in 2024 SCC OnLine SC 528.

The relevant paragraphs are quoted below:

**“28.** Insofar as the contention of the Borrower and its reliance on the judgment of this Court in the case of *Mohammad Nooh* (supra) is concerned, no doubt that non-exercise of jurisdiction under Article 226 of the Constitution on the ground of availability of an alternative remedy is a rule of self-restraint. There cannot be any doubt with that proposition. In this respect, it will be relevant to refer to the following observations of this Court in the case of *Commissioner of Income Tax v. Chhabil Dass Agarwal* :

**‘15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed,

or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal* case [AIR 1964 SC 1419], *Titaghur Paper Mills* case [*Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.’

**29.** It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
- (ii) it has acted in defiance of the fundamental principles of judicial procedure;
- (iii) it has resorted to invoke the provisions which are repealed; and
- (iv) when an order has been passed in total violation of the principles of natural justice.

**30.** It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

**31.** Undisputedly, the present case would not come under any of the exceptions as carved out by this Court in the case of *Chhabil Dass Agarwal* (supra).

**32.** We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.

**33.** While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of *Satyawati Tondon* (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

**‘55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of**

statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

In the ***Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir & Ors.*** reported in (2022) 5 SCC 345, the Hon’ble Apex Court had taken a similar view. The relevant paragraph is quoted below:-

“18. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in *Praga Tools Corpn.* and *Ramesh Ahluwalia* relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.”

The remedy of the petitioner to redeem the property is still available, as no sale notice has yet been issued and possession has also not been taken.

The petitioner is at liberty to approach the bank with his proposal, which the bank shall consider in accordance with law. All the points urged in the writ petition with regard

to non-completion of the tenure and the alleged efforts of the petitioner to make the arrangement to pay up the money due, shall be considered by the bank as per the proposal to be made by the petitioner.

Accordingly, the writ petition is dismissed.

Parties are to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**