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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4082-2024 (O&M)
Date of Decision: 14.03.2024

RAVI AND ANOTHER *........Petitioners*

V/s.

IDFC FIRST BANK AND ANOTHER *........Respondents*

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pankaj Nanhera, Advocate for the petitioner.

Ms. Nirmal Kaur, Advocate for the respondents.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition has prayed for issuance of a Writ in the nature of certiorari seeking quashing of the proceedings initiated by the respondent-Bank vide notice dated 16.09.2023 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act" and notice dated 10.01.2024 issued under Section 13(4) of the Act as the same are in violation of provisions of the law and the Act.

2. Learned counsel for the Bank has pointed out that the remedy is available to the petitioner before the Debt Recovery Tribunal (DRT) and has also invited attention of this Court to the judgment passed by the Hon'ble Apex Court in ***M/s South Indian Bank Ltd. & Ors.*** Vs. ***Naveen Mathew Philip & Anr***; *[2023(6) Scale 224].*

3. We have considered the submissions made by the learned counsel for the parties.

4. While considering the law laid down in various judgments passed from time to time in relation to the question of alternate remedy, the Hon'ble Supreme Court laid down following principles in ***Whirlpool Corpn.*** v. ***Registrar of Trade Marks*** ; *[(1998) 8 SCC 1]* :-

> *"**27.** The principles of law which emerge are that:*
>
> ***27.1.** The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*
>
> ***27.2.** The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*
>
> ***27.3**. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*
>
> ***27.4**. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*
>
> ***27.5**. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*
>
> ***27.6.** In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

5. However, it further proceeded to hold, after considering the law laid down in the case of ***State Bank of Travancore*** v. ***Mathew K.C***. ; *[(2018) 3 SCC 85]* as under :-

> *"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."*

6. This Court also takes into consideration the fact that in ***State Bank of Travancore*** (Supra), the Hon'ble Supreme Court held as under :-

> *"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."*

7. Keeping in view the aforsesaid observations, if we examine the present case, we find that the petitioner is seeking a direction for quashing of the notices dated 16.09.2023 and 10.01.2024 issued under Section 13(2) and 13(4) of the Act respectively, which are appealable and remedies are available to challenge the same before the concerned DRT. Granting liberty to the petitioner to avail such remedies, we refrain from entertaining the present writ petition. The same is, accordingly, ***dismissed.***

8. All pending applications filed in this case shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

March 14, 2024
Ess Kay

[SUDEEPTI SHARMA]
JUDGE

Whether speaking / reasoned	:	*Yes*	/	*No*
Whether Reportable	:	*Yes*	/	*No*