



\$~161

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

+ **W.P.(C) 7369/2024, CM APPL. 30748/2024 & CM APPL.
30749/2024**

MR. RAVINDER KUMAR GARG

..... Petitioner

Through: Mr. J. Sai Deepak, Mr. R. Abhishek
and Mr. Kunal Godhwani, Advs.
M: 9582996403
Email: kunal.godhwani@gmail.com

versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr. Manish Kumar, Sr.P.C. with Mr.
Sandip, Adv. for R-1.
M: 9873950114
Email: attorney.manish@gmail.com
Mr. Kailash Sharma and Mr. Avneet
Singh Sikka.
M: 9810788255
Email: sksadvocate@yahoo.co.in

%

Date of Decision: 22nd May, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 30749/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

W.P.(C) 7369/2024 & CM APPL. 30748/2024

3. The present petition has been filed seeking quashing of the Auction Notice dated 25th April, 2024. There is a further prayer for accepting the



payment of ₹ 4,40,00,000/- from the petitioner, and for issuing No Dues Certificate, thereby releasing the mortgaged property which is the residential property of the petitioner, i.e., *F-1, U-46, Pitampura, New Delhi-110034*, in favour of the petitioner.

4. Facts as enumerated in the petition, evince that M/s Pellet Energy System Private Limited, which is the Principal Borrower, and Oriental Bank of Commerce (now Punjab National Bank), entered into a Loan Agreement whereby the Oriental Bank of Commerce provided financial assistance to the tune of ₹ 28,50,00,000/- to the Principal Borrower. The petitioner, in order to secure the loan for the Principal Borrower, executed an Agreement of Guarantee and mortgaged his residential property. The guarantee provided by the petitioner was limited to the extent of ₹ 4,40,00,000/-, i.e., the value of the property mortgaged by the petitioner with the respondent-bank, at that point of time.

5. Attention of this Court has been drawn to the Agreement of Guarantee dated 07th December, 2013, where, in Schedule-I to the Agreement of Guarantee, it is categorically recorded as follows:

*“Guarantee is limited to the value of the property mortgaged,
i.e., ₹ 4,40,00,000/-”*

6. Subsequently, due to the lack of financial discipline by the Principal Borrower, on 31st August, 2016, the loan account of the Principal Borrower was declared as Non Performing Asset (“NPA”). The Bank issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (“SARFAESI”) Act, 2002 and a Possession Notice dated 31st July, 2018 for the mortgaged property of the petitioner. Aggrieved by the same, the petitioner approached the learned



Debt Recovery Tribunal (“DRT”) in *S.A. No. 164/2018*. Before the learned DRT, the petitioner in order to release its guarantee and mortgaged property, submitted its first proposal to the bank amounting to ₹4,40,00,000/-. In the meanwhile, the respondent had published another Auction Notice dated 29th September, 2023, with a reserve price of ₹4,08,00,000/-, being lower than the price offered by the petitioner. Thus, the petitioner approached the learned DRT seeking stay of the aforesaid auction. However, the respondent-bank withdrew the aforesaid Auction Notice dated 29th September, 2023. Consequently, learned DRT passed an order stating that the application had become infructuous in view of the withdrawal.

7. The respondent-bank published another Auction Notice dated 12th December, 2023 for the mortgaged property at a reserve price of ₹ 4,08,00,000/-. The petitioner, thereafter, again approached the learned DRT seeking stay of the auction. However, on 30th January, 2024, the respondent-bank submitted before the learned DRT that the Auction Notice had been withdrawn.

8. The petitioner submitted another proposal on 13th February, 2024 amounting to ₹ 4,81,00,000/- along with 10% advance of ₹ 48,10,000/-. However, the revised proposal was also rejected by the respondent-bank vide letter dated 26th March, 2024.

9. Learned counsel appearing for the petitioner submits that the respondent-bank has now published an Auction Notice dated 25th April, 2024, whereby, it has increased the reserve price of the mortgaged property to ₹ 4,90,00,000/-. Thus, it is submitted that the respondent has been arbitrarily refusing to release the residential house of the petitioner, which is mortgaged with the respondent-bank, wherein, the guarantee was limited



only to the value of ₹ 4,40,00,000/-, i.e., the value of the property mortgaged.

10. It is submitted that the conduct of the respondent in arbitrarily rejecting the proposals made by the petitioner, without providing any justification, is against the Principles of Legitimate Expectation.

11. Learned counsel appearing for the petitioner further submits that the respondent-bank has issued notice under Section 13(2) of the SARFAESI Act, without offering the Right to Redemption of property to the petitioner. Therefore, in this regard, the petitioner has already approached the learned DRT.

12. It is further submitted that the respondent-bank has already recovered the bulk amount from the Principal Borrower through liquidation of the company. Thus, it is submitted that the petitioner, who is the guarantor of the loan taken by the Principal Borrower, ought to be given the Right to Redeem the mortgaged property, which has not been done by the respondent-bank.

13. Learned counsel appearing for the petitioner draws the attention of this court to the conduct of the respondent-bank. He submits that every time the petitioner approaches the learned DRT seeking enforcement of its Right to Redemption of property, the respondent-bank maliciously withdraws the Auction Notice, solely with the purpose to harass the petitioner. Hence, the present petition has been filed.

14. Issue notice. Notice is accepted by learned counsel appearing for the respondent-bank.

15. Learned counsel appearing for the respondent-bank submits that the petitioner has an alternative remedy available and thus, the petition would



not be maintainable.

16. Learned counsel for the respondent submits that they only need a period of three days to come back with instructions.

17. Having heard learned counsels appearing for the parties, at the outset, this Court notes that the Supreme Court in multiple instances has iterated its stance, holding that when there is an alternate remedy available under a statute, High Courts shall refrain from entertaining a writ petition under Article 226 of the Constitution.

18. Thus, the Supreme Court in the case of *Celir LLP Versus Bafna Motors (Mumbai) Private Limited and Others*, (2024) 2 SCC 1, has held as follows:

“xxx xxx xxx

97. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act. This Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] made the following observations : (SCC pp. 123 & 128, paras 43-45 & 55)

“43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] 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.

xxx xxx xxx”

(Emphasis Supplied)

19. Further, in the case of ***Authorised Officer, State Bank of Travancore and Another Versus Matthew K.C., (2018) 3 SCC 85***, the Supreme Court, has held as under:

“xxx xxx xxx

13. In Ikbali [Sri Siddeshwara Coop. Bank Ltd. v. Ikbali, (2013) 10 SCC 83 : (2013) 4 SCC (Civ) 638] it was observed that the action of the bank under Section 13(4) of the SARFAESI Act available to challenge by the aggrieved under Section 17 was an efficacious remedy and the institution directly under Article 226 was not sustainable, relying upon Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] observing: (Ikbali case [Sri Siddeshwara Coop. Bank Ltd. v. Ikbali, (2013) 10 SCC 83 : (2013) 4 SCC (Civ) 638] , SCC pp. 94-95, paras 27-28)

“27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.

xxx xxx xxx”

(Emphasis Supplied)



20. Considering the fact that the petitioner has already approached the learned DRT and has filed a Securitization Application (“SA”) therein, being *SA No. 164/2018*, this Court deems it expedient to direct the petitioner to approach the learned DRT.

21. In view of the aforesaid, it is directed that the petitioner shall approach the learned DRT raising all the submissions with regard to issuance of the Auction Notice dated 25th April, 2024 by the respondent-bank, and the withdrawal of the earlier Auction Notices by the respondent-bank, when the petitioner had approached the learned DRT in that regard.

22. Considering the submissions made before this Court, it is directed that the Auction Notice dated 25th April, 2024 shall remain stayed for a period of ten days from today, with a view to allow the petitioner to approach the learned DRT.

23. Liberty is also granted to the petitioner to make prayer before the learned DRT with respect to the grant of stay, as regards the Auction Notice dated 25th April, 2024 issued by the respondent-bank, for auction of the mortgaged property.

24. At this stage, learned counsel appearing for the petitioner submits that, though, *S.A. No. 164/2018* filed by the petitioner is pending before the learned DRT, however, in view of the conduct of the respondent-bank, the same has not been taken up for hearing by the learned DRT, which statement is disputed by learned counsel appearing for the respondent.

25. Considering the submissions made before this Court, it is directed that the learned DRT shall take up the *S.A. No. 164/2018* filed by the petitioner expeditiously, and dispose of the same at the earliest.



2024 : DHC : 4225



26. In view of the fact that it is the case of respondent-bank that they need only a short period of time for instructions, it is directed that, as and when the petitioner approaches the learned DRT with an appropriate application, the respondent-bank shall appear before the learned DRT with relevant instructions, so that the matter can move forward.

27. With the aforesaid directions, the present petition is disposed of along with the pending applications.

MINI PUSHKARNA, J

MAY 22, 2024/kr