Court No. 6
(265719)

25.04.2025
(AD 222)

(S. Banerjee)

CO 1333 of 2025

M/s. Shomuk Engineering and Consultancy Services & Anr.
Vs.
Aditya Birla Finance Ltd. & Anr.

Mr. Anruddha Chatterjee, Sr. Advocate
Ms. Urmila Chakraborty
Mr. Pankaj Agarwal
Ms. Champa Pal
...for the petitioners

Mr. Sagar Bandopadhyay, Sr. Advocate
Mr. Anirban Ray, Sr. Advocate
Ms. Shreya Saria
Mr. Amit Kumar Nag
Ms. Ranjabati Ray
Mr. Parikshit Lakhotia
...for the opposite parties

This application under Article 227 of the Constitution of India is directed against an order dated March 25, 2025 passed by the learned Presiding Officer, Debts Recovery Tribunal – I, Kolkata in SA 91 of 2025. By the order impugned the learned tribunal after hearing the advocates for the respective parties directed the parties to exchange affidavits and April 25, 2025 was fixed for hearing of the SARFAESI application and the interlocutory application.

Challenging an action taken under Section 13(4) of the SARFAESI Act, 2002 and an order dated March 5, 2025 passed under Section 14 of the SARFAESI Act, 2002 and the notice of intimation to take possession dated March 21, 2025, the petitioners approached the learned Debts Recovery Appellate Tribunal by filing SA 91 of 2025.

Challenging the order refusing to pass an interim order, the petitioner has approached this Court.

Mr. Chatterjee, learned Senior Advocate appearing for the petitioners submits that pursuant to a settlement agreement entered into between the parties, the petitioner was inducted as a licensee in respect of two flats at Keyatala Road and the secured creditor is trying to take possession of the said residential flats by obtaining an order under Section 14 of the SARFAESI Act. He further submits that the opposite parties herein have filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Delhi High Court and obtained orders directing freezing of the bank accounts of the petitioners. Mr. Chatterjee further submits that since the opposite parties herein have taken recourses available under the Arbitration and Conciliation Act, 1996 for recovery of the amounts due, the said authorities ought not to have taken steps for taking possession of the property of the petitioners by invoking Section 14 of the SARFAESI Act.

Mr. Chatterjee further submits that an amount of Rs. 12.50 crores out of the agreed amount of Rs. 18 crores has already been paid by the petitioners and he has been instructed to submit before this Court that the petitioners are willing to deposit a further sum of Rs. 1.50 crores in course of this day as a condition for stay of operation of the order passed under Section 14 of the SARFAESI Act.

Mr. Bandopadhyay and Mr. Ray, learned Senior Advocates appear for the opposite party/Finance company. Mr. Bandyopadhyay raises a preliminary objection as to the entertainability of this application under Article 227 of the Constitution of India in view of availability of statutory appellate remedy provided under the 2002 Act. In support of such contention he places reliance upon a recent decision of the Hon'ble Supreme Court in the case of *PHR Invent Educational Society –Vs.- UCO Bank & Ors.* reported at (2024) 6 SCC 579. He further refers to the decision of the Hon'ble Supreme Court in *Indiabulls Housing Finance Limited –Vs.- Deccan Chronicle Holdings Limited*, reported in (2018) 14 SCC 783 in support of his contention that merely because the remedy available under the Arbitration and Conciliation Act, 1996 has been invoked, the same cannot be a ground to debar the opposite parties herein from taking recourses available under the SARFAESI Act. On instruction Mr.

Bandopahdyay submits that the opposite parties are not agreeable to accept such amount at this stage.

Though the learned senior advocates appearing for the respective parties have addressed the Court on the merits of the issues involved before the learned Tribunal, but before entering into such issues, this Court shall first consider whether this Court will entertain the instant application under Article 227 of the Constitution of India.

It is not in dispute that challenging the measures taken under Section 13(4) of the SARFAESI Act and the order passed under Section 14 of the said Act, the petitioners have approached the learned Debts Recovery Tribunal. The question that arises is whether this Court will entertain the instant application against an order refusing to pass an interim order by the Tribunal in a SARFAESI application.

Section 13(4) of the SARFAESI Act states that in case the borrower fails to deposit his liability in full within the period specified in sub-Section (2), the secured creditor may take recourse to one or more of the measures to recover his secured debt. Clause (a) of sub-Section (4) empowers the secured creditor to take possession of the secured asset of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset.

Section 14 of the said Act states that whether the possession of any secured asset is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of the 2002 Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him take possession of such asset and documents relating thereto and forward such asset and documents to the secured creditor.

The opposite parties herein approached the concerned authority for passing an order under Section 14 and challenging such order the petitioners have approached the learned Tribunal.

Section 18 of the SARFAESI Act states that any person aggrieved by <u>any order</u> made by the Debts Recovery Tribunal under Section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal. (emphasis supplied)

Upon a bare reading of Section 18 of the SARFAESI Act this Court is of the considered view that any order, i.e., final or interlocutory, passed by the learned Debts Recovery Tribunal under Section 17, is appealable and the appeal lies before the Debts Recovery Appellate Tribunal.

It is well settled that availability of an alternative remedy cannot be an absolute bar in invoking the jurisdiction of the High Courts under Article 226 or 227 of the Constitution of India. Some of the exceptional cases where the jurisdiction of the High Courts under Article 226 and 227 of the Constitution of India can be invoked are where the statutory authority has not acted in accordance with the provisions of the enactment in question or it has acted in defiance of fundamental principles of judicial procedure or it has resorted to invoke the provisions which are repealed and when an order has been passed in total violation of the principles of natural justice.

Mr. Chatterjee would strenuously contend that the case on hand squarely falls within the exceptional cases as mentioned hereinbefore.

The issue as to whether a petition under Article 226 of the Constitution of India in case of availability of alternative remedy in a proceeding under SARFAESI Act should be entertained, fell for consideration before the Hon'ble Supreme Court in *Satyawati Tandon –Vs.- State of U.P.*, reported in (2010) 8 SCC 110. In *Satyawati Tandon* (supra) the Hon'ble Supreme Court after noticing that despite repeated pronouncements of the Hon'ble Supreme Court, the High Courts are ignoring the availability of statutory remedies under the SARFAESI Act and exercising jurisdiction under Article 226 for passing orders which have serious adverse effect on the right of the bankers and other financial institution to recover their dues expressed their hope and trust that in future the High Courts will exercise their discretion in such matters with greater, care, caution and circumspection. The Hon'ble Supreme Court in *PHR Invent Educational Society (supra)* after taking note of its own decision in *Satyawati Tandon (supra)* also considered the decision in the case of *State Bank of Travancore –Vs.- Mathew K. C.*, reported in (2018) 3 SCC 85. In *Mathew K. C. (supra)* the Hon'ble Supreme Court was considering an appeal against an interim order passed by the High Court in a writ petition under Article 226 of the Constitution of India staying further proceedings at the stage of Section 13(4) of the SARFAESI Act and after considering various decisions observed that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons and that too without even granting liberty to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. In *PHR Invent Educational Society (supra)* the Hon'ble Supreme Court even after noticing the exceptions carved out where a petition under Article 226 of the Constitution of India can be entertained in spite of availability of an alternative remedy, in paragraph 38 of the said reports, clarified that the High Court will not entertain a petition under Article 226 of the Constitution of India if an effective alternative remedy is available to an aggrieved person or the statute under which an action complained of has been taken itself contains a mechanism for redressal of grievance. It is not in dispute that the SARFAESI Act contains a complete mechanism for redressal of grievance of the petitioner.

After hearing the learned advocates for the respective parties this Court is of the view that several factual issues are to be adjudicated which cannot be done in a writ petition.

For such reasons, this Court is not inclined to entertain the instant application under Article 227 of the Constitution of India. In view thereof, this Court refrains from making any observation on the arguments advanced by the parties touching upon the merits of the issues pending before the learned tribunal.

With the above observations, CO 1333 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)