25.09.2025
05
Ct.No.7
as

C.O.2908 of 2025

Varun Roshan Kohli
Vs.
The State Bank of India & Ors.

Mr. Nimish Mishra
Mr. Abir Mondal
..... for the petitioner

Mr. Shiv Mangal Singh
..... for the Respondents

1. This revisional application has been preferred under Article 227 of the Constitution of India, challenging the order dated 18th June, 2025, passed by the Debt Recovery Tribunal in S.A. 221 of 2022 under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act, 2002), against the secured creditor, namely, State Bank of India.

2. Mr. Mishra, learned Advocate appearing for the petitioner, submits that despite an efficacious remedy being available before the Debt Recovery Appellate Tribunal, the petitioner has preferred this writ petition. He submits that the bank initiated recovery proceedings under the SARFAESI Act, 2002, without the petitioner's loan account being properly classified as a Non-Performing Asset (NPA). He further submits

that the petitioner concern is a Micro, Small and Medium Enterprise within the meaning of the relevant provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, the Act, 2006).

3. He submits that during the moratorium period, the petitioner's loan account was classified as NPA in contravention of the RBI circulars and contrary to the terms and conditions of the loan. He further submits that no benefit has been extended to the petitioner under the MSME Act, 2006.

4. Faced with such situation, he submits that the petitioner had earlier preferred a writ petition being WPO 2366 of 2022, which was allowed.

5. However, challenging the order passed in the writ petition, the secured creditor preferred an intra-court appeal being APO No. 104 of 2022, and the Hon'ble Division Bench relegated the matter to the learned Tribunal with a direction to consider all the points raised by the petitioner in the said writ petition. Mr. Mishra submits that, however, without considering those points, the application filed by the petitioner under Section 17(1) of the SARFAESI Act, 2002, has been dismissed.

6. He submits that the disposal of the application without considering the petitioner's contentions amounts to a violation of the principles of natural

justice, and due to such violation, the petitioner is entitled to move this writ petition.

7. In rebuttal, Mr. Singh, learned Advocate appearing for the respondent-bank, vehemently opposes the contentions advanced by Mr. Mishra. He submits that on two occasions, the petitioner's loan account was restructured, and the learned Tribunal, while dealing with the application under Section 17 of the SARFAESI Act, 2002, took note of that fact. He submits that this issue was also dealt with by the Hon'ble Division Bench. Mr. Singh further argues that all these points were raised by the petitioner before the Hon'ble Division Bench, which had the occasion to consider them. Taking note of the facts that the petitioner is an MSME and of the benefits available under the MSME Act and RBI circulars, the Hon'ble Division Bench held that since the petitioner had accepted the letter of restructuring in November 2021, a fresh agreement had been entered into between the petitioner and the secured creditor. Therefore, the only remedy available to the petitioner was to approach the learned Tribunal. He also submits that the petitioner challenged the order of the Hon'ble Division Bench by filing a special leave petition before the Hon'ble Supreme Court. However, the same was dismissed.

8. In reply, Mr. Mishra submits that in its order, the Hon'ble Division Bench clarified that the

observations made therein were only to support the conclusion arrived at in that order, and the learned Tribunal was directed to proceed with the petitioner's application without being influenced by any such observations. He contends that, despite this direction, the learned Tribunal has not properly addressed the issues raised by the petitioner.

9. Heard the learned Advocates appearing for the respective parties and perused the materials on record.

10. This Court cannot be oblivious to the power conferred upon the High Court under Article 226 of the Constitution of India to issue directions, orders, or writs to any person or authority, including in appropriate cases to the Government, for the enforcement of any of the rights conferred by Part III of the Constitution or for any other purpose. There is no express limitation on such power. However, over time, various principles have evolved, introducing the concept of self-imposed restrictions on the exercise of such jurisdiction. If it is found that a matter involves disputed questions of fact or that an alternative remedy is available to the petitioner or to the person seeking relief under writ jurisdiction, the Writ Court may decline to exercise its extraordinary jurisdiction. It is well settled proposition of law that despite the existence of an alternative remedy, a writ petition may still be entertained where it involves the enforcement

of fundamental rights, violation of principles of natural justice, proceedings or orders passed without jurisdiction, or a challenge to the vires of a statute. In the case of United Bank of India vs. Satyawati Tondon & Ors., reported in (2010) 8 SCC 110, the Hon'ble Supreme Court considered all these aspects and held that, particularly when a writ petition is filed to stall recovery proceedings initiated by a secured creditor, the Court should proceed with caution and ordinarily exercise self-imposed restrictions on its jurisdiction.

11. In the present case, the statute provides for an alternative statutory remedy. In Satyawati Tondon (supra), it was also held that such remedy is efficacious. The Hon'ble Supreme Court strongly deprecated the practice of entertaining writ petitions aimed at stalling recovery proceedings, observing that the very object of enacting the SARFAESI Act, 2002 and establishing the Debt Recovery Tribunal would be defeated if such a writ petition filed either under Article 226 or Article 227 of the Constitution of India is entertain. A useful reference may also be made to the decision, reported at (2011) 2 SCC 782 (Kanaiyalal Lalchand Sachdev vs. The State of Maharastra & Ors.).

12. In the present case, as noted previously, all the issues raised by the petitioner, including the contention that the loan account was not properly classified as a Non-Performing Asset, that the bank acted without considering the petitioner's status as a

Micro, Small and Medium Enterprise, that the bank failed to extend the benefits required to be given under the MSME Act and the applicable RBI circulars, and that the bank initiated recovery proceedings without adhering to its own norms, were already raised by the petitioner in a separate writ petition being WPO 2366 of 2022. That writ petition was allowed. However, challenging the order passed therein, an intra-court appeal being APO 104 of 2022 was preferred by the secured creditor, and while disposing of the said appeal, the Hon'ble Division Bench of this Court considered all the relevant aspects and ultimately concluded that by accepting the arrangement made in November 2021, the petitioner had virtually entered into a new contract. The Hon'ble Division Bench disposed of the appeal by granting liberty to the petitioner to raise all the issues before the learned Tribunal. The petitioner thereafter challenged the order passed in that appeal by filing a Special Leave Petition, which was not entertained. The petitioner now contends that the learned Tribunal glossed over and failed to address the issues raised in the application. Even if this contention is accepted at face value, the appropriate remedy available to the petitioner is to prefer an appeal under Section 18 of the SARFAESI Act, 2002

13. Since the statute imposes a pre-condition of depositing fifty percent of the amount claimed by the

secured creditor for preferring such an appeal, it cannot be said that the petitioner is entitled to invoke the writ jurisdiction of this Court to challenge the order passed by the Debt Recovery Tribunal.

14. In view of the above, I do not find any merit in the contentions of the petitioner, and accordingly, the writ petition is dismissed, however, without any order as to costs.

15. However, this order shall not preclude the petitioner from challenging the order passed by the learned Tribunal on his application presented under Section 17(1) of the SARFAESI Act, 2002 before the appropriate forum in accordance with law.

16. If the petitioner prefers an appeal in terms of the provisions of Section 18 of the Act within a period of four weeks from date, the learned Debt Recovery Appellate Tribunal shall decide the appeal on merits without raising any objection as to its belated presentation.

17. It is further clarified that all the observations made in the foregoing paragraphs are only in support of the conclusion arrived at in this order, and the learned Appellate Tribunal shall proceed with the appeal, if preferred by the petitioner, without being influenced by any observation made in this order.

(Partha Sarathi Chatterjee, J.)