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C.O. 2676 of 2023
with
CAN 2 of 2025

Barun Sarkar & Anr.
Vs.
The Manager/Authorised Officer, UCO Bank & Anr.

Ms. Pampa Dey (Dhabal)
Mr. Biswarup Chatterjee
.....for the petitioners

Mr. Samrat Chowdhury
Ms. Anjana Sengupta
Mr. Babulal Mollah
Mr. Mehfuz Basar Mollah
..... for the respondent Bank

This application has been presented under Section 227 of the Constitution of India, challenging the legality of the order dated 30th June 2023 passed by the Recovery Officer.

At the outset, Mr. Chowdhury, learned Advocate representing the Bank, raises the issue of maintainability of the present writ petition. He submits that, challenging a similar order passed by the Recovery Officer, the present petitioner had earlier preferred a writ petition under Article 226 of the Constitution of India before this Hon'ble Court which was registered as WPA 18213 of 2024. He refers to an unreported decision of the Hon'ble Division Bench of this Court in FMA 1457 of 2024 (Barun Sarkar vs. Reserve Bank of India & Ors.) and submits that in that case as well, the petitioner challenged an order passed by the same Recovery Officer. That writ petition

being WPA 18213 of 2024 was dismissed on the ground that the petitioner had failed to exhaust the efficacious alternative remedy before approaching the Court. The said order dated 3rd October 2024 was challenged in an intra-court appeal (FMA 1457 of 2024), which was also dismissed by the Hon'ble Division Bench, relying on the decision reported in (2010) 8 SCC 110 (United Bank of India vs. Satyawati Tondon & Ors.).

He further submits that the present application, filed under Article 227 of the Constitution of India, challenges another order passed by the Recovery Officer. Referring to the provisions of Section 30 of the Recovery of Debts and Bankruptcy Act, 1993, he submits that such an order is appealable, and without preferring an appeal before the appropriate forum, the present writ application has been filed.

Ms. Dhabal, learned Advocate representing the petitioners, vehemently opposes the contention advanced by Mr. Chowdhury and submits that, at the interlocutory stage, a Co-ordinate Bench of this Court had invoked the extraordinary jurisdiction of this Court and applied its judicial mind to the issues raised in this writ petition. She submits that, despite the availability of an efficacious alternative remedy, this writ petition is maintainable.

Since the issue of maintainability has been raised, it is appropriate to address the same first before entering into the merits of the issues raised in the writ petition. Undoubtedly, as per Section 30 of the Recovery of Debts and Bankruptcy Act, 1993, the order passed by the Recovery Officer is an appealable order, and the appeal lies before the Tribunal. Ms. Dhabal

submits that the entire outstanding dues have been repaid. However, Mr. Chowdhury disputes such contention. Therefore, admittedly, certain disputed questions of fact are involved, and an efficacious remedy of appeal is available to the petitioner.

The Hon'ble Supreme Court had the occasion to deal with a similar issue in *Kanaiyalal Lalchand Sachdev & Ors. vs. State of Maharashtra & Ors.*, reported in (2011) 2 SCC 782, wherein, noting the involvement of disputed questions of fact and the availability of an efficacious alternative remedy, the Hon'ble Court held that the High Court was fully justified in declining to exercise its jurisdiction under Articles 226/227 of the Constitution of India.

In *Satyawati Tondon* (supra), the Hon'ble Supreme Court discouraged the practice of entertaining writ applications under Articles 226/227 of the Constitution of India that are filed to stall proceedings initiated by secured creditors and/or banks for recovery of dues. The Court held that if writ petitions are entertained despite the availability of efficacious alternative remedies, the very object of enacting statutes such as the SARFAESI Act and the Recovery of Debts would be defeated. Since the legislature has expressly provided for such alternative remedies, it is appropriate for the Court to exercise judicial self-restraint.

Following the precedents laid down in the aforementioned judgments, I am of the view that the present writ petition is not maintainable and, accordingly, it is dismissed. Consequently, the connected application being CAN 2 of 2025 is also dismissed.

However, it is clarified that this order shall not preclude the petitioners from approaching the appropriate forum in accordance with law to seek redressal of their grievances. The petitioners shall be at liberty to raise the issue of the pendency of the present writ petition to justify their belated approach before the said forum.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)