D/L.15.
May 21, 2026.
KAUSHIK

WPA No. 23652 of 2022

Bidhan Chandra Kundu
Vs.
UCO Bank & Ors.

Mr. D. K. Samanta
Mr. Biswapriya Samanta
… for the petitioner

Mr. Soudip Pal Chowdhury
… for the UCO Bank

1. The grievance of the petitioner is directed against steps initiated under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) in respect of a loan, which had been taken by the private respondent no. 3.
2. The petitioner alleges to be a bonafide tenant of the property which had been furnished as security in respect of the loan taken by the private respondent no. 3. The petitioner also alleges to have no knowledge of the loan and interference with the tenanted property would be in violation of the law.
3. The writ petition was filed in 2022. None appears on behalf of the respondent bank nor is any other private respondent represented. There is nothing to demonstrate that the petitioner has served all the respondents. Mr. Soudip Pal Chowdhury, Advocate, who usually appears on behalf of UCO Bank is directed to represent the Bank. The service of Mr. Pal Chowdhury be regularized by the Appropriate

Authority. A copy of the writ petition is served on him in Court.

4. Upon hearing the submissions of the petitioner, there is no enforceable legal right which the petitioner has been able to demonstrate warranting any order in this writ petition. The admitted facts of the case reveal that in respect of a loan which had been granted by the respondent bank to the private respondent, there has been admitted default. It also transpires that notices under section 13 of the SARFAESI Act, 2002 have been served on the borrower.

5. At this stage, the petitioner has approached this Court with the oblique and mala fide purpose to thwart any action insofar as the secured asset is concerned.

6. It is now well settled through a catena of decision that in such circumstances there is an alternative statutory efficacious remedy in section 17 of the SARFAESI Act, 2002, which the petitioner had failed to avail. In *State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85,* it has been held as follows:

> *3. The Sarfaesi Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debts Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the respondent. The interim order was passed on the very first date, without an opportunity to the appellant to file a reply. Reliance was placed on United Bank of India v. Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] and Sri Siddeshwara Coop. Bank Ltd. v. Ikbal [Sri Siddeshwara Coop. Bank Ltd. v. Ikbal, (2013) 10 SCC 83 : (2013) 4 SCC*

(Civ) 638] . The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same.

5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal [CIT v. Chhabil Dass Agarwal, (2014) 1 SCC 603] , as follows: (SCC p. 611, para 15)

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

7. There are no exceptional circumstances which justify the Court in interfering with this writ petition. There is

no illegality nor malafides nor contravention nor violation of any constitutional obligation which warrants this Court to exercise its discretion. This is a misconceived and mischievous attempt by the petitioner to thwart lawful recovery of dues by the respondent bank. In view of the above, WPA 23652 of 2022 stands dismissed.

8. Liberty is granted to the petitioner to approach the appropriate Debts Recovery Tribunal, if so advised, in accordance with law.
9. It is made clear that there has been no finding on the merits of the case and all observations are *prima facie* and tentative in nature.

(Ravi Krishan Kapur, J.)