GAHC010144452022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4858/2022

1: M/S VETERAN SECURITY SERVICE AND 2 ORS
REP. BY ITS PARTNER MR. DEEPAK KUMAR CHAKRABORTY,
R/O HOUSE NO. 10, 5TH BYE LANE, NEAR USHA COURT, R.G. BARUAH ROAD, GUWAHATI, ASSAM.

2: DEEPAK KUMAR CHAKRABORTY
S/O DINANATH CHAKRABORTY
R/O HOUSE NO. 10 5TH BYE LANE NEAR USHA COURT
R.G. BARUAH ROAD GUWAHATI ASSAM.

3: SUBHRA CHAKRABORTY
W/O DEEPAK KUMAR CHAKRABORTY
R/O HOUSE NO. 10 5TH BYE LANE NEAR USHA COURT
R.G. BARUAH ROAD GUWAHATI ASSAM

VERSUS

1: UNION BANK OF INDIA AND 4 ORS REP. BY MANAGING DIRECTOR AND CEO, UNION BANK BHAWAN, 239, VIDHAN BHAVAN MARG, NARIMAN POINT, MUMBAI- 400021, MAHARASTRA, INDIA.

2:THE CHIEF MANAGER
CRLD REGIONAL OFFICE UNION BANK OF INDIA
GNB ROAD CHANDMARI GUWAHATI- 781003.

3:THE DY REGIONAL HEAD
UNION BANK OF INDIA REGIONAL OFFICE
GNB ROAD CHANDMARI GUWAHATI- 781003.

4:THE AUTHORISED OFFICER UNION BANK OF INDIA GNB ROAD CHANDMARI GUWAHATI- 781003.

5:THE BRANCH MANAGER UNION BANK OF INDIA
CHANDMARI BRANCH GUWAHATI- 781003

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : SC, UBI

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. R.M. CHHAYA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 03-08-2022
(R.M. Chhaya, CJ.)

Heard Mr. A. Sarma, learned counsel for the petitioner. Also heard Mr. S. Dutta, learned counsel appearing for all the respondents.

By way of this petition under Article 226 of the Constitution of India, the petitioner *inter* alia has prayed for the following reliefs:-

> "*It is, therefore, prayed that this Hon'ble Court may be pleased to admit this Writ Petition, call for the Records and issue Rule calling upon the Respondents to show cause as to why a writ of and/or in the nature of Certiorari and/or any other Writ, order or direction of like nature shall not be issued declaring the impugned Notice dated 12.07.2022 (Vide Annexure-v) as well as the impugned decision to conduct i.e. auction sale to be illegal, arbitrary, improper, unfair and unreasonable and/or as to why a writ of and/or in the nature of mandamus and/or any other writ order or direction of like nature should not be issued directing and commanding the respondents to withdraw, recall, cancel the public notice dated 12.07.2022 (vide Annexure-v) and/or afford the petitioner further opportunity extending 180 days time to repay their outstanding dues in respondent bank.*
>
> *-AND-*
>
> *Pending disposal of the rule, further be pleased to pass interim order staying the public notice dated 12.07.2022 (Annexure-v) and/or also be pleased to pass any other or further suitable interim order/orders as to this Hon'ble Court may deem fit and proper.*

The record indicates that the respondent Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and has followed the procedure as prescribed under the provisions of the SARFAESI Act. What is predominantly challenged in this petition is the possession notice issued under Rule 8(1) read with Section 13(4) of the SARFAESI Act.

The petitioners have an efficacious alternative remedy by way of filing an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal and, therefore, no interference is called for in this petition. We are fortified in our view by the binding decision of the Hon'ble Apex Court in the case of *Authorized Officer, State Bank of Travancore & Anr. –vs- Mathew K.C.*, reported in **AIR 2018 SC 676**, wherein it was observed as under:

> "***9.*** *The statement of objects and reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. The Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long-term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the DRT Act') with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order.*
>
> ***10.*** *Even prior to the SARFAESI Act, considering the alternate remedy available under the DRT Act it was held in Punjab National Bank v. O.C. Krishnan and others, (2001) 6 SCC 569 : (AIR 2001 SC 3208), that:--*
>
> > "*6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the*

financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

11. *In atyawati Tandon (AIR 2010 SC 3413)(supra), the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding:*

"*43. Unfortunately, the High Court 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.*

***

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right

of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

16. *It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in Satyawati Tandon (AIR 2010 SC 3413, Para 18)(supra), has also not been kept in mind before passing the impugned interim order:-*

> "*46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad (AIR 1969 SC 556), Whirlpool Corpn. v. Registrar of Trade Marks (AIR 1999 SC 22) and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. (AIR 2003 SC 2120) and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."*

17. *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 opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the*

> *subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference."*

Following the observations of the Hon'ble Apex Court in the case of *Authorized Officer, State Bank of Travancore* (supra), we are of the view that this writ petition is not maintainable on ground of availability of alternative remedy and hence, not entertained.

It goes without saying that as the petition is not entertained on the ground of maintainability, no opinion on merits is expressed by this Court.

As far as the affidavit, which is brought on record is concerned, it would be open for the petitioner to approach the Bank.

With the above observation, the writ petition stands disposed of.

JUDGE **CHIEF JUSTICE**

Comparing Assistant