MAJESTY LEGAL

Advocates & Solicitors

"DISMISSAL OF PETITION DUE TO ALTERNATIVE REMEDY UNDER SARFAESI ACT"

"KASTURI DEVI SHEETALAYA PVT LTD AND ANOTHER V. THE PRESIDING OFFICER DEBT RECOVERY TRIBUNAL AND ANOTHER"

Hon'ble High Court of Allahabad, in the case of ***Kasturi Devi Sheetalaya Pvt Ltd And Another v. The Presiding Officer Debt Recovery Tribunal And Another***[1], petitioners sought relief under Article 226 challenging an order from the DRT related to a miscellaneous application in the context of a securitization application. The respondent bank contended that the petitioners had an alternative remedy to appeal before the Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act, 2002[2]. They argued that Hon'ble High Court should not intervene via Article 226 due to the existence of this statutory remedy. Petitioners argued that the order in question did not fall under Section 17 of the SARFAESI Act, 2002, which mandates an appeal to the Appellate Tribunal, as it concerned a miscellaneous application regarding court fees and not a substantive order under Section 13. Hon'ble court upheld the respondent's preliminary objection, citing recent Hon'ble Supreme Court judgments emphasizing that where statutory remedies exist under special acts like the SARFAESI Act, Article 226 should only be invoked in exceptional circumstances (such as violation of natural justice or lack of jurisdiction). Since the case did not fall within these exceptions, the petition was dismissed on the grounds of alternative remedy. The petition was dismissed, but the court granted liberty to the petitioners to pursue the alternative remedy of appealing to the Appellate Tribunal under Section 18 of the SARFAESI Act, 2002. This update underscores the Hon'ble court's adherence to statutory remedies under special acts and the limited scope for invoking constitutional remedies like Article 226 in such matters.

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[1] 2024:AHC:96998

[2] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

[3] Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

Neutral Citation No. - 2024:AHC:96998

A.F.R.

Court No. - 4

Case :- WRIT - C No. - 18388 of 2024

Petitioner :- Kasturi Devi Sheetalaya Pvt Ltd And Another
Respondent :- The Presiding Officer Debt Recovery Tribunal And Another
Counsel for Petitioner :- Ashok Pandey,Srestha Pandey
Counsel for Respondent :- Eshita Sand

Hon'ble Ajit Kumar,J.

1. Heard Sri Ashok Pandey, learned counsel for the petitioners and Sri Alok Rai and Ms. Eshita Sand, learned counsel for the contesting respondent bank.

2. The petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution, seeking challenge to the order passed by the Debt Recovery Tribunal upon a miscellaneous application bearing No.- 40 of 2024 (Kasturi Devi Sheetalaya Pvt. Ltd. v. Bank of India) arising out of Securitization Application No.- 461 of 2022.

3. A preliminary objection has been raised by learned counsel for the contesting respondent- bank that the petitioner has an alternative efficacious remedy to prefer an appeal before the Debt Recovery Appellate Tribunal under Section 18 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act, 2002') and this Court, therefore, may not interfere invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution.

4. Learned counsel for the respondent has further relied upon a recent judgment of Supreme Court in the case of **PHR Invent Educational Society v. UCO Bank and others** (Civil Appeal No.- 4845 of 2024) decided on 10th April, 2024 in which Supreme Court has held that the High Court should not interfere in matters arising out of SARFAESI Act, 2002 when the Legislature has prescribed for special forum for the parties to exhaust remedy therein.

5. Meeting the preliminary objections, learned counsel for the petitioner submits that Section 18 of SARFAESI Act, 2002, as it stood originally came to be amended by amending Act No.- 30 of 2004 putting a rider that an appeal would lie against an order passed under Section 17 of the SARFAESI Act, 2002. He submits that an order passed on miscellaneous application regarding the court fee would not amount to an order passed under Section 17 of SARFAESI Act, 2002. He would submit that the provisions as contained under Section 17 of the SARFAESI Act, 2002, lays down a detailed procedure regarding recovery of the secured debts and it is after putting aggrieved person to notice and inviting objections under Sections 13(4) that recourse is taken to recover the secured assets by coercive measures. Section 17 of the SARFAESI Act, 2002 prescribed power of the Debt Recovery Tribunal to entertain an application filed at the instance of borrower or defaulter against the measures taken by the bank to secure debts under Section 13. Section 17 (1), (2), (3), (5) and (7) as are relevant for the purpose of the case are reproduced hereunder:

> *"17. Application against measures to recover secured debts.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorized officer under this Chapter,1[may make an application along with such fee, as may be prescribed, to the Debts*

Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section (1) of section 17.)

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4)...

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) ...

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

6. From a bare reading of the aforesaid provisions it is clear that an application by a aggrieved person including the borrower may be made to the Tribunal for appropriate relief against the measures taken by the bank to recover the secured debts. The very power to entertain an application, therefore, would entail power to entertain any miscellaneous application as well because under Section 1(a) as quoted above gives power to the Tribunal to look into the cause of action wholly or in part. So in order to maintain an application as a competent application the Tribunal vested with power to look into all sorts of objections that may be raised either by the applicant or by the bank. This substantive provision has been given under Section 47 which includes the right to hear the miscellaneous application as well and any order passed on such miscellaneous application would, therefore, amount to an order passed under Section 17, may be interlocutory in nature. Rule 13 (1) of the Security Interest (Enforcement) Rules Act, 2002 is also worth

mentioning here. Rule 13 of the Security Interest (Enforcement) Rules Act, 2002 is reproduced hereunder:

> *"**13. Fees for applications and appeals under sections 17 and 18 of the Act**.- (1) Every application under sub-section (1) of section 17 the Appellate Tribunal under sub-section or an appeal to (1) of section 18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated."*

7. Thus, for an application to be a competent application under Section 17 of SARFAESI Act, 2002 and an appeal to be competent under Section 18 of SARFAESI Act, 2002. It is provided to be accompanied by the requisite court fee as given under Sub-Rule 2 which is a chart provided therein.

8. If the borrower makes an application that earlier securitization application was moved but since the bank withdrew its proceedings to recover the secured debts at that stage and subsequently issued a fresh notice and hence the court fee already paid should be taken into consideration, would amount to a miscellaneous application. Putting an objection by the Registrar of Tribunal upon the maintainability of the securitization application and any order passed thereupon by the Debt Recovery Tribunal upon any miscellaneous application shall be taken to be an order within the meaning of Section 17 of SARFAESI Act, 2002 read with Rule 13 of the Rules quoted above. Section 18 of the SARFAESI Act, 2002 is also reproduced hereunder:

> *"**18. Appeal to Appellate Tribunal**.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.*

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

9. From bare reading of the aforesaid provisions it is true that it comes out very clearly that any order made by Debt Recovery Tribunal is appealable but of course passed under Section 17 of SARFAESI Act, 2002. The section does not prescribe or put a rider that order should be a final order.

10. Thus, every order would include even interlocutory order rejecting a miscellaneous application. Hence the order passed by the Debt Recovery Tribunal upon the miscellaneous application filed by the petitioner impugned herein this petition is amenable to the appellate forum prescribed under Section 18 of the SARFAESI Act, 2002.

11. Besides above, in a recent judgment cited before this Court, Supreme Court has very categorically held that High Court should refrain from entertaining petitions invoking powers under Article 226 of the Constitution when in the special Act like Recovery of Debts and Bankruptcy Act, 1993 Act and SARFAESI Act, 2002 prescribed for statutory remedies. These being the special act, therefore, the parties should be left to invoke remedy provided

therein first. Though the Supreme Court has held that there are certain exceptions enumerated in paragraph 29 of the judgment, in which power can be invoked under Article 226 of the Constitution but where the action has been taken or the order has been passed, in compliance of the provisions of natural justice and the case does not fall under the exceptional clauses, the High Court should refrain from entertaining such petitions. Vide paragraphs 29, 30, 31, 32 & 33 of the judgment the Supreme Court held held thus:

> *"29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*
>
> > ***(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;***
> >
> > ***(ii) it has acted in defiance of the fundamental principles of judicial procedure;***
> >
> > ***(iii) it has resorted to invoke the provisions which are repealed; and***
> >
> > ***(iv) when an order has been passed in total violation of the principles of natural justice.***
>
> *30. It has however been clarified 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.*
>
> *31. Undisputedly, the present case would not come under any of the exceptions as carved out by this Court in the case of Chhabil Dass Agarwal (supra).*
>
> *32. We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.*
>
> *33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of Satyawati Tondon (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out*

of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

> *"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."*

(Emphasis added)

12. The case in hand also does not fall in the exception clauses.

13. In view of the above, preliminary objection raised by the learned counsel for the contesting respondent – bank is upheld.

14. The petition thus lacks merit and is, accordingly dismissed on the ground of alternative remedy.

15. Liberty rests with the petitioner to avail the alternative remedy, if so advised.

16. Subject to the aforesaid liberty, this petition is dismissed and is, accordingly, consigned to records.

Order Date :- 28.5.2024
Atmesh/ Sanjeev