REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1281 OF 2018
(Arising out of SLP (C) No.24610 of 2015)

AUTHORIZED OFFICER, STATE BANK OF TRAVANCORE AND ANOTHER .....Appellant(s)

VERSUS

MATHEW K.C. .....Respondent(s)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. The present appeal assails an interim order dated 24.04.2015 passed in a writ petition under Article 226 of the Constitution, staying further proceedings at the stage of Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as the 'SARFAESI Act'), on deposit of

Rs.3,50,000/-within two weeks. An appeal against the same has also been dismissed by the Division Bench observing that counter affidavit having been filed, it would be open for the Appellant Bank to seek clarification/modification/variation of the interim order.

3. Shri H.P. Raval, learned Senior Counsel appearing for the Appellants, submits that the loan account of the Respondent was declared a Non-Performing Asset (NPA) on 28.12.2014. The outstanding dues of the Respondent on the date of the institution of the writ petition was Rs.41,82,560/-. Despite repeated notices, the Respondent failed and neglected to pay the dues. Statutory notice under Section 13(2) of the SARFAESI Act was issued to the Respondent on 21.01.2015. The objections under Section 13(3A) were considered, and rejection was communicated by the Appellant on 31.3.2015. Possession notice was then issued under Section 13(4) of the Act read with Rule 8 of The Security Interest (Enforcement)

Rules, 2002 (hereinafter referred to as 'the Rules') on 21.04.2015.

4. 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 Debt 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 vs. Satyawati Tandon and others***, 2010 (8) SCC 110, and ***General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Ikbal and others***, 2013 (10) SCC 83. 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. Shri Roy Abraham, learned Counsel for the Respondent, submitted that it was desirous to repay the loan, and merely sought regularisation of the loan account. The inability to service the loan was genuine, occasioned due to market fluctuations causing huge loss in business, beyond the control of the Respondent. The failure of the Bank to consider the request for regularisation of the loan account, the absence of a right to appeal under Section 17 against the order passed under Section 13(3A), the Respondent was left with no option but to prefer the writ application as the Respondent genuinely desired to discharge the loans. The collateral security offered included agricultural lands also, which had to be excluded under Section 31 of the SARFAESI Act. There had been violation of the principles of natural justice. A large number of similar writ applications are pending before the High Court preferred by the concerned borrowers, but the Bank has singled out the present Respondent alone for a challenge.

6. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loathe 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 ***Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal,*** 2014 (1) SCC 603, as follows:

> "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, Titaghur Paper Mills case 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. The pleadings in the writ petition are very bald and contain no statement that the grievances fell within any of the well defined exceptions. The allegation for violation of principles of natural justice is rhetorical, without any details and the prejudice caused thereby. It harps only on a desire for regularisation of the loan account, even while the Respondent acknowledges its own inability to service the loan account for reasons attributable to it alone. The writ petition was filed in undue haste in March 2015 immediately after disposal of objections under Section 13(3A). The legislative scheme, in order to expedite the recovery proceedings, does

not envisage grievance redressal procedure at this stage, by virtue of the explanation added to Section 17 of the Act, by Amendment Act 30 of 2004, as follows :-

> "***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 the borrower) to make an application to the Debts Recovery Tribunal under this sub-section."

8. The Section 13(4) notice along with possession notice under Rule 8 was issued on 21.04.2015. The remedy under Section 17 of the SARFAESI Act was now available to the Respondent if aggrieved. These developments were not brought on record or placed before the Court when the impugned interim order came to be passed on 24.04.2015. The writ petition was clearly not instituted bonafide, but patently to stall further action for recovery. There is no pleading why the remedy available under Section 17 of the Act before the Debt Recovery Tribunal was not efficacious and the

compelling reasons for by-passing the same. Unfortunately, the High Court also did not dwell upon the same or record any special reasons for grant of interim relief by direction to deposit.

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 vs. O.C. Krishnan and others***, (2001) 6 SCC 569, 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 ***Satyawati Tandon*** (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.

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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."

12. In ***Union Bank of India and another vs. Panchanan Subudhi***, 2010 (15) SCC 552, further proceedings under Section 13(4) were stayed in the writ jurisdiction subject to deposit of Rs.10,00,000/- leading this Court to observe as follows :

> "7. In our view, the approach adopted by the High Court was clearly erroneous. When the respondent failed to abide by the terms of one-time settlement, there was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the respondent under Section 17 of the Act."

13. The same view was reiterated in ***Kanaiyalal Lalchand Sachdev and others vs. State of Maharashtra and others***, 2011 (2) SCC 782 observing:

> "23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.;

Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)"

14. In ***Ikbal*** (supra), it was observed that the action of the Bank under Section 13(4) of the 'SARFAESI Act' available to challenge by the aggrieved under Section 17 was an efficacious remedy and the institution directly under Article 226 was not sustainable, relying upon ***Satyawati Tandon*** (Supra), observing :

> "27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.
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> 28.....In our view, there was no justification whatsoever for the learned Single Judge to allow the borrower to bypass the efficacious remedy provided to him under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts indicated above. The

> Division Bench also erred in affirming the erroneous order of the Single Judge."

15. A similar view was taken in ***Punjab National Bank and another vs. Imperial Gift House and others,*** (2013) 14 SCC 622, observing:-

> "3. Upon receipt of notice, the respondents filed representation under Section 13(3-A) of the Act, which was rejected. Thereafter, before any further action could be taken under Section 13(4) of the Act by the Bank, the writ petition was filed before the High Court.
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> 4. In our view, the High Court was not justified in entertaining the writ petition against the notice issued under Section 13(2) of the Act and quashing the proceedings initiated by the Bank."

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*** (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*, *Whirlpool Corpn.* v. *Registrar of Trade Marks* and *Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.* 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.

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in ***Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Another***, 1997 (6) SCC 450, observing :-

> "32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

19. The impugned orders are therefore contrary to the law laid down by this Court under Article 141 of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed.

20. All questions of law and fact remain open for consideration in any application by the aggrieved before the statutory forum under the SARFAESI Act.

.....J.
(Rohinton Fali Nariman)

.....J.
(Navin Sinha)

New Delhi,
January 30, 2018