

# Mahipal Singh Yadav vs Union Bank Of India (Formerly Andhra ... on 1 December, 2021

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

\$~50 (2021 Cause List)

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13578/2021 & CM APPL. 42862/2021

MAHIPAL SINGH YADAV

Through:

.....  
Mr. Ayush Chaudhary & Mr.  
Tanwar, Advocates

versus

UNION BANK OF INDIA

(FORMERLY ANDHRA BANK)

Through: Mr. O P Gaggar, Advocate

..... Respondent

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 01.12.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. Issue notice. Mr. O.P. Gaggar, learned counsel, accepts notice on behalf of the respondent- Union Bank of India ["the Bank"].

2. The petitioner was admittedly a guarantor of a loan availed by one M/s J.S. Medimax Private Limited, for which purpose the petitioner also mortgaged his residential property (D-2/13, Plot No 23, Khasra No 16/25, Village Dabri, Vashisht Park, New Delhi-110046) ["the property"] to the Bank. In view of the failure of the borrower and the guarantor to repay the loan, the Bank initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"] in 2018. A notice dated 02.01.2018 under 13(2) of the SARFAESI Act was issued whereby the Bank demanded a sum of approximately Rs. 28 crores. Further notice under Section 13(4) of the SARFAESI Act was also issued, which was challenged by the petitioner in proceedings under Section 17 of the SARFAESI Act [S.A. No. 22/2019], which remains pending before the Debts Recovery Tribunal ["DRT"] -I, Delhi.

3. As the petitioner was not granted any interim relief by the DRT, the Bank has since conducted an auction of the property on 15.09.2021. The property has been sold to the only bidder who matched

the reserve price. According to the petitioner, the sale is contrary to the provision of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002. The petitioner has filed Interlocutory Applications in the pending Securitisation Application against the recent steps taken by the Bank. However, the proceedings have not been taken up for hearing as DRT-I, Delhi, is at present without a Presiding Officer. This has compelled the petitioner to approach this Court under Article 226 of the Constitution.

4. As all the three DRTs in Delhi are without Presiding Officers, several petitions have been filed in this Court seeking similar reliefs. Although some petitions under Article 226 of the Constitution were entertained, it was thereafter brought to the knowledge of the Court that the Debts Recovery Appellate Tribunal ["DRAT"] is empowered to transfer the applications/petitions to another functional DRT within the jurisdiction of the DRAT on the ground of urgency, in exercise of the powers conferred by Section 17(7) of the SARFAESI Act read with Section 17A(2) of the Recovery of Debts and Bankruptcy Act, 1993 ["RDB Act"]. Several orders were passed by the DRAT, Delhi transferring the proceedings from the DRTs in Delhi to DRT, Jaipur, which is the only functional DRT within the jurisdiction of the DRAT, Delhi. This Court also disposed of petitions under Article 226 of the Constitution with liberty to the petitioners to approach the DRAT, Delhi for such relief.

5. However, the aforesaid course has now been rendered impossible by virtue of the fact that the learned Chairperson of the DRAT, Delhi has also demitted office on 30.10.2021 in terms of a notification dated 29.10.2021, issued by the Department of Financial Services, Ministry of Finance, Government of India.

6. The question to be considered in these circumstances is whether it would be appropriate to entertain the present proceedings on merits, or for this Court to exercise the power under Section 17(7) of the SARFAESI Act read with Section 17A(2) of the RDB Act, which read as follows:-

Section 17(7) of the SARFAESI Act -

"17- Right to Appeal-

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of 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."

Section 17A(2) of the RDB Act -

"17A - Power of Chairperson of Appellate Tribunal xxxx xxxx xxxx (2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal"

7. It is clear from the above that the Chairperson of the DRAT has jurisdiction to transfer a case from one DRT under his/her jurisdiction to another DRT. In the present situation where the office of the Chairperson of DRAT, Delhi is also vacant, I am of the view that exercise of such power by this Court would be the appropriate course. The petitioner's ordinary statutory remedy has been rendered unavailable for reasons beyond its control. Enabling a party to invoke that remedy is preferable to entertaining the case on merits in writ proceedings. Although the existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution, the judgments of the Supreme Court make it clear, particularly in the context of proceedings under the SARFAESI Act, that the writ jurisdiction should rarely be exercised.

8. In *United Bank of India vs. Satyawati Tondon and Others* (2010) 8 SCC 110, the Court held as follows:-

"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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45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

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 [(1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

(Emphasis supplied.)

9. The observations in Satyawati Tondon (supra) have been followed by the Supreme Court inter alia in Authorized Officer, State Bank of Travancore and Another vs. Mathew K.C. (2018) 3 SCC 85 [paragraphs 5, 9 to 15], and the recent judgment in C. Bright vs. District Collector and Others (2021) 2 SCC 392 [paragraph 22].

10. I am of the view that the transfer of the proceedings in the present case also to a functional DRT would be consistent with this approach of the Supreme Court, rather than entertaining the proceedings under Article 226 of the Constitution.

11. For the aforesaid reasons, the writ petition is disposed of with the following directions:

a. S.A. No. 22/2019, alongwith pending Interlocutory Applications, filed by the petitioner before the DRT-I, Delhi, is transferred to DRT, Jaipur.

b. The Registrar, DRT-I, Delhi is directed to transmit the records of the said Securitisation Application and pending Interlocutory Applications to DRT, Jaipur digitally.

c. Learned counsel for the petitioner is also directed to coordinate with the Registrar DRT, Jaipur, to transmit the digital records of the applications to the DRT, Jaipur, if so directed. d. The application be listed before DRT, Jaipur for directions/hearing on 07.12.2021 at 2:00 PM. DRT, Jaipur will permit the parties to appear online [through video-conference] , if they so request. e. DRT, Jaipur is directed to hear the petitioner's case at least on the question of interim relief, and pass appropriate orders, as expeditiously as possible, and at the latest by 13.12.2021.

f. Any further action taken by the Bank will be subject to the orders passed by DRT, Jaipur on the petitioner's application(s) in terms of this order.

12. It is made clear that this Court has not entered into the merits of the petitioner's case, which will be adjudicated by the DRT in accordance with law.

13. The writ petition, alongwith the pending application, is disposed of with these directions.

PRATEEK JALAN, J DECEMBER 1, 2021 „hkaur