

Kapsons Engineers Pvt Ltd And Others vs Idfc First Bank Limited And Others on 6 December, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~48 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13820/2021
KAPSONS ENGINEERS
PVT LTD AND OTHERS

Through: Mr. Rajive Maini & Ms. Maini, Advs.

versus

IDFC FIRST BANK LIMITED AND OTHERS Respondents

Through: Mr. Sanjeev Singh, Mr. Prashant Tripathi, Ms. Ridhi Pahuja, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN
ORDER

% 06.12.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPLs. 43619-43620/2021(exemption) Exemptions allowed, subject to all just exceptions. The applications stand disposed of.

W.P.(C) 13820/2021 & CM APPLs. 43616-43618/2021

1. Issue notice. Mr. Sanjeev Singh, learned counsel, accepts notice on behalf of the respondent No. 1-IDFC First Bank Limited ["the Bank"]. Respondent Nos. 2 and 3 need not be served in view of the order that I propose to pass.

2. The petitioners availed of credit facilities to the tune of 25 crores from the Bank. Due to defaults in repayment, the petitioners' account was declared as Non Performing Asset on 24.05.2018, and the Bank instituted proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"]. A demand notice under Section 13(2) of the SARFAESI Act was issued on 25.03.2019 demanding a sum of approximately 27.97 crores. The petitioners were also served with a possession notice dated 06.06.2019 under Section 13(4) of the SARFAESI Act and an order of the Chief Metropolitan Magistrate ["CMM"] dated 12.09.2019 under Section 14 of the SARFAESI Act.

3. The petitioners have filed proceedings before the Debts Recovery Tribunal ["DRT"]- III, Delhi, challenging these measures (S.A. No. 242/2019), which remains pending. The DRT-III, Delhi refused to grant interim relief against taking of possession by an order dated 09.10.2019, which was challenged before the Punjab and Haryana High Court by way of CWP No. 1750/2020. The Punjab and Haryana High Court passed an order dated 15.01.2021 directing physical possession of the property to be taken, and the writ petition was subsequently disposed of as infructuous, by an order of the Division Bench dated 08.02.2021. Against the order dated 08.02.2021, the petitioners approached the Supreme Court by way of SLP(Civil) No. 19092/2021. The Supreme Court permitted the petitioner to withdraw the SLP unconditionally vide order dated 24.11.2021. In the meanwhile, the petitioner also filed an interlocutory application before DRT-III, Delhi which was dismissed on 21.01.2021 in view of the order of the Punjab and Haryana High Court dated 15.01.2021.

4. The Bank has thereafter issued notices dated 04.09.2021, 07.10.2021 and 06.11.2021 for e-auction of the property, which were first challenged before this Court in W.P.(C) 11892/2021. On 22.10.2021, this Court permitted the petitioners to withdraw the writ petition, with liberty to approach the High Court of Punjab and Haryana. Pursuant to the order dated 22.10.2021, the petitioners filed CWP No. 21624/2021 before the Punjab and Haryana High Court, which was withdrawn with liberty to avail alternative remedies, as recorded in the Division Bench order dated 26.10.2021. The petitioners have thereafter filed interlocutory applications in the pending securitisation application before DRT-III, Delhi.

5. However, as the DRTs in Delhi are at present without Presiding Officers, the applications have not been taken up for hearing. It is in these circumstances that the petitioners have been compelled to approach this Court under Article 226 of the Constitution.

6. 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 notice 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 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.

7. 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.

8. 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"

9. 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, this Court has taken the view that exercise of such power by this Court would be the appropriate course, as 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. Several orders to this effect have been passed, inter alia in W.P.(C) 12125/2021 [Shrim Industries And Ors. vs. Bank of Baroda And Anr.] and W.P.(C) 12595/2021 [Smt. Kamlesh vs. Indian Overseas Bank] on 10.11.2021.

10. Although the existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution, this Court has relied upon the judgments of the Supreme Court which make it clear, particularly in the context of proceedings under the SARFAESI Act, that the writ jurisdiction should rarely be exercised.

11. 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.)

12. 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].

13. I am of the view that the transfer of 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.

14. Mr. Singh, however, submits that no urgent orders are required in the present case. He states that the property has already been sold on 25.11.2021, and further submits that the grounds raised by the petitioners have already been adjudicated by the DRT in the earlier round of litigation.

15. Be that as it may, it is appropriate in my view for the matter to be transferred to DRT, Jaipur, as the proceedings for sale have already taken place and further alienation of the property may be imminent. Whatever the merits of the petitioners' case, their applications have not yet been heard by the DRT and an adjudication thereof is required. Naturally, it will be open to the Bank to raise these contentions before the DRT, including the contention as to the re-agitation of the contentions which have already been agitated by the petitioners.

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

a. The Bank will disclose to the petitioners through counsel, the names of the successful bidder in the auction, so that the petitioners can implead them in the proceedings pending before the DRT, if they so desire.

b. Securitisation Application No. 242/2019 filed by the petitioners before DRT-III, Delhi and pending interlocutory applications therein, are transferred from DRT-III, Delhi to DRT, Jaipur. c. The Registrar, DRT-III, Delhi, is directed to transmit the records of the said securitisation application and pending interlocutory applications to DRT, Jaipur digitally.

d. Learned counsel for the petitioners is also directed to coordinate with the Registrar, DRT, Jaipur to transmit the digital records of the aforesaid case to DRT, Jaipur, if so permitted. e. The proceedings be listed before DRT, Jaipur on 10.12.2021 at 02:00 PM for directions/hearing. DRT, Jaipur will permit the parties to appear online [through video conferencing], if they so request.

f. DRT, Jaipur is directed to hear the petitioners' case, at least on the question of interim relief, and pass appropriate orders as expeditiously as possible, and latest by 20.12.2021. g. Any further action taken by the Bank in respect of the property will be subject to the orders to be passed by DRT, Jaipur.

17. It is made clear that this Court has not entered into the merits of the petitioners' case, which will be determined by the DRT in accordance with law.

18. The writ petition, alongwith pending applications, stand disposed of.

PRATEEK JALAN, J DECEMBER 6, 2021/'pv'