

M/S Sewa Nand Ravinder Kumar And Company ... vs Union Bank Of Indta on 17 November, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~49 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 12931/2021

M/S SEWA NAND RAVINDER
KUMAR AND COMPANY & ANR.

Through: Ms. Svetlana
Advocate.

.....
Khiyung

versus

UNION BANK OF INDIA

..... Respondent

Through: Mr. Rupak Srivastava, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 17.11.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPL. 40718/2021 (for exemption) Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 12931/2021 & CM APPL. 40717/2021 (for stay)

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

2. The petitioners assail orders dated 28.09.2021 and 29.09.2021 passed by the learned Chief Metropolitan Magistrate ["CMM"] on the Bank's application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFEASI Act"]. By the said orders, the learned CMM appointed a Receiver to take possession of the properties of the petitioners. The order dated 28.09.2021 covers six properties, including five shops and a godown, which are enumerated in paragraph 8 of the order. The order dated 29.09.2021 is in respect of a property bearing No. 83, A Block, Pocket KU, Pitampura, Delhi-110088.

3. The properties were, admittedly, given as security for cash credit facilities taken by the petitioners from the Bank. The petitioners having failed to repay, the Bank commenced proceedings under the

SARFAESI Act. One of the Receivers appointed by the learned CMM has given a notice dated 08.11.2021, purporting to take possession of one of the shops of the petitioners on 25.11.2021.

4. The petitioners have challenged the learned CMM's order dated 28.09.2021 by way of an interlocutory application filed in SA No. 124/2021, which remains pending before the Debts Recovery Tribunal- III ["DRT"], Delhi. However, the said application has not been taken up for hearing as the DRTs in Delhi are, at present, non-functional for want of Presiding Officers. It is in these circumstances that the petitioners have been compelled to approach this Court under Article 226 of the Constitution.

5. 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 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 the DRT, Jaipur, which is the only functional DRT within the jurisdiction of the DRAT, Delhi. This Court also disposed of petitions under Article 226 with liberty to the petitioners to approach the DRAT, Delhi for such relief.

6. 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.

7. 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"

8. It is clear from the above that the Chairperson of the DRAT has jurisdiction 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 petitioners' 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. 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.

9. Although the existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226, 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.

10. 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 Digitally signed By:SHITU insist that before availing remedy under Article 226 of the NAGPAL Signing Date:18.11.2021 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.)

11. 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 and Others (2021) 2 SCC 392 [paragraph 22].

12. 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

13. As the physical possession of one of the properties is intended to be taken on 25.11.2021, Ms. Svetlana Khiyungdzuzu, learned counsel for the petitioners, seeks some interim protection. She submits that the total amount due under the facilities taken by the petitioners is to the tune of 4.56 Crores, out of which a sum of approximately 60 Lakhs is now overdue. The figures stated by Mr. Srivastava are not very different. According to him, the total amount due is approximately 4.66 Crores and the petitioners have already defaulted in repayment to the extent of approximately 66 Lakhs.

14. In order to enable the petitioners to invoke their statutory remedies, I am of the view that some interim protection is required to be granted, subject to deposit of a substantial amount, without prejudice to the rights and contentions of the parties.

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

a. SA No. 124/2021 pending before the DRT-III, Delhi, and pending interlocutory application(s) therein, are transferred from the DRT- III, Delhi to the DRT, Jaipur. The petitioners are at liberty to file an application against the order of the learned CMM dated 29.09.2021, if not already filed, by tomorrow, i.e. 18.11.2021. If such an

application is filed, it will also be transferred to the DRT, Jaipur.

b. The Registrar, DRT-III, Delhi, is directed to transmit the records of the said securitisation application and pending interlocutory application(s) to the DRT, Jaipur digitally.

c. Ms. Khiyungdzuzu is also directed to coordinate with the Registrar, DRT, Jaipur to transmit the digital records of the aforesaid case to the DRT, Jaipur, if so permitted. d. The proceedings be listed before the DRT, Jaipur on 30.11.2021 at 2:00 PM for directions/hearing. The DRT, Jaipur will permit the parties to appear online [through video conferencing], if they so request.

e. The 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 10.12.2021. f. Subject to any orders passed by the DRT, Jaipur in terms of the aforesaid directions, the Receivers appointed by the orders of the learned CMM dated 28.09.2021 and 29.09.2021 are directed to defer the proceedings for taking physical possession of the properties until 13.12.2021. The Receiver, who has already given notice dated 08.11.2021, will not be required to give any further notice to the petitioners for taking of possession of the property in question [No. 352/1, First Floor (without roof rights), on property No. III/352, Kartra Husain Bux, Khari Baoli, Delhi-110006], subject to any orders passed by the DRT, Jaipur on the petitioners' application(s) in terms of this order.

g. The petitioners are directed not to create any third-party interests in the title or possession of the properties, and to maintain status quo with regard to the character of the properties.

h. The aforesaid order is subject to deposit of a sum of 20 Lakhs by the petitioners with the Bank by 24.11.2021, a further sum of 20 Lakhs by 03.12.2021, and a further sum of 20 Lakhs by 10.12.2021. The aforesaid amounts be deposited and accepted without prejudice to the rights and contentions of the parties and subject to the orders that will be passed by the DRT, Jaipur. Failure of the petitioners to deposit any of the aforesaid instalments will result in an automatic vacation of the interim order and the Receivers will be entitled to take possession of the properties upon 48 hours' notice to the petitioners, subject to any orders that will be passed by the DRT, Jaipur.

16. It is made clear that this Court has not entered into the merits of the petitioners' case, which are to be decided by the DRT, Jaipur in accordance with law.

17. The writ petition, alongwith the pending application, is disposed of in terms of aforesaid directions.

PRATEEK JALAN, J NOVEMBER 17, 2021 'vp' /