

Mr Sujay Narendra Sumbh & Anr vs Housing Development Finance ... on 16 November, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~40 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 12808/2021 & CM APPL. 40360/2021

MR SUJAY NARENDRA SUMBH & ANR.

..... Petitioners

Through: Mr. Gaurav Bahl, Advocate

versus

HOUSING DEVELOPMENT

FINANCE CORPORATION LTD & ANR.

..... Respondents

Through: Mr. Rishabh Sahu, Advocate with

Mr. AR Aju Ashok, Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 16.11.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. Issue notice. Mr. Rishabh Sahu, learned counsel for the respondent No. 1-HDFC Limited ["HDFC"], accepts notice.

2. The petitioners challenge a possession notice dated 02.11.2021 issued by the Receiver appointed by the order of the Chief Metropolitan Magistrate ["CMM"] dated 23.10.2021 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ["SARFAESI Act"]. By the said order, the CMM directed the Receiver to take possession of the petitioners' property [Flat No. 2/703, 7th Floor, Block-2, Jaypee CGHS Ltd., Plot No. 2, Sector-22, Dwarka, Delhi, 110075] ["the property"]. The Receiver has given notice that she intends to take possession on 18.11.2021 at 12:00 noon.

3. The property was admittedly given as security by the petitioners for a housing loan taken by them from HDFC. In view of their default in repayment, HDFC commenced proceedings under the SARFAESI Act. The order of the CMM has been passed on HDFC's application.

4. The petitioners have challenged the measures taken by HDFC by way of an application under Section 17 of the SARFAESI Act, filed vide Diary No. 223/2021 dated 11.11.2021 before the DRT-I, Delhi. However, the said application has not been taken up for hearing as the Debts Recovery

Tribunals ["DRTs"] in Delhi are not functioning at present 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 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. 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 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.)

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 to 15], and the recent judgment in *C. Bright vs. District Collector 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 226 of the Constitution.

13. As the physical possession of the property is intended to be taken on 18.11.2021, Mr. Gaurav Bahl, learned counsel for the petitioners, seeks some interim protection. He submits that the petitioners failed to pay two EMIs of approximately 1.76 Lakhs each. Mr. Rishabh Sahu, learned counsel for HDFC, on the other hand, submits that the principal amount due under the loan is approximately 1.49 Crores and the overdue amount today stands at approximately 13 Lakhs until October, 2021.

14. Having regard to the aforesaid contentions, I am of the view that the petitioners are entitled to some interim protection until their applications can be heard by the DRT, Jaipur. However, in order to protect the interest of HDFC also, the interim relief is granted subject to a deposit being made, 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. The securitisation application filed by the petitioners before the DRT-I, Delhi vide Diary No. 223/2021 dated 11.11.2021 and pending applications therein are transferred from the DRT-I, Delhi to the DRT, Jaipur.

b. The Registrar, DRT-I, Delhi, is directed to transmit the records of the said securitisation application and pending interlocutory applications to the DRT, Jaipur digitally.

c. Mr. Bahl 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 29.11.2021 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 Receiver is directed to defer the proceedings for taking physical possession of the property until 13.12.2021 at 12:00 noon. The Receiver will not be required to give any further notice to the petitioners for taking of possession of the property, 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 property, and to maintain status quo with regard to the character of the property.

16. The aforesaid order is subject to deposit of a sum of 3.5 Lakhs by the petitioners with HDFC by 25.11.2021 and a further sum of 3.5 Lakhs by 07.12.2021. 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.

17. 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 in accordance with law.

18. Learned counsel for the parties are at liberty to communicate this order to the Receiver.

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

PRATEEK JALAN, J NOVEMBER 16, 2021 'j'/'