

# Greatway Estates Pvt. Ltd vs Yes Bank Ltd. & Anr on 15 November, 2021

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

\$~113 (2021 Cause List)

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 12811/2021

GREATWAY ESTATES PVT. LTD.

..... Petitioner

Through: Mr. Sanjeev Bhandari, Mr. Ravi

Data, Mr. Rajesh Sharma &

Mr.Karan Mehta Advocates.

versus

YES BANK LTD. & ANR.

..... Respondents

Through: Mr. Rajeeve Mehra, Senior

Advocate with Mr. Hashmat Nabi

and Mr. Farah Naaz, Advocates for

R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 15.11.2021 The proceedings in the matter have been conducted through video conferencing.

1. Issue notice. Mr. Hashmat Nabi, learned counsel, accepts notice on behalf of the respondent no. 1- Yes Bank Ltd. ["the Bank"]. Respondent no. 2-RPW Projects Pvt. Ltd. has only been impleaded as a proforma respondent. Mr. Sanjeev Bhandari, learned counsel for the petitioner, states that no notice to respondent no. 2 is necessary.

2. By way of this writ petition under Article 226 of the Constitution, the petitioner seeks transfer of proceedings in an Interlocutory Application filed by it before the Debts Recovery Tribunal ["DRT"]-II, Delhi to the DRT, Jaipur for further proceedings.

3. The petitioner instituted Securitisation Application No. 118/2020 before the DRT-II, Delhi against measures taken by the Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"] against the immovable property [stated in the course of hearing to be Plot No. 4, Bhagwan Das Road, New Delhi-110001] against which the petitioner had created a mortgage in favour of the Bank.

4. The petitioner has thereafter filed I.A. No. 1410/2021, which concerns notices dated 03.09.2021 issued by the Bank. The DRT-II, Delhi issued notice in the application on 21.09.2021. However, the

matter could not be taken up for further hearing and all the DRTs in Delhi are, at present, non-functional for want of Presiding Officers. In these circumstances, the petitioner moved an application before the Debts Recovery Appellate Tribunal ["DRAT"] for transfer of the proceedings to a functional DRT in exercise of powers conferred upon the Chairperson of the DRAT under Section 17(7) of the SARFAESI read with Section 17A(2) of the Recovery of Debts and Bankruptcy Act, 1993 ["RDB Act"]. The learned Chairperson of the DRAT issued notice on the transfer application on 25.10.2021. The matter was however not taken up for further hearing. In the meanwhile, the learned Chairperson of the DRAT has also demitted office with effect from 30.10.2021 in view of a notification dated 29.10.2021 issued by the Department of Financial Service, Ministry of Finance, Government of India.

5. As all the DRTs in Delhi as well as the DRAT have been rendered non-functional, this Court has had occasion to consider similar prayers in several writ petitions. The Court has taken the view that it would be preferable to exercise the jurisdiction to transfer the proceedings to a functional DRT rather than entertaining petitions under Article 226 of the Constitution on merits. In my view, such an approach is consistent with the settled jurisprudence of the Supreme Court that the writ petitions should not be entertained in respect of SARFAESI proceedings, if it is possible for the petitioners to avail their statutory remedies.

6. 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.)

7. 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].

8. Mr. Rajeeve Mehra, learned Senior Counsel for the Bank, submits that the application filed by the petitioner before the DRT-II does not, in fact, deal with the measures taken under the SARFAESI Act at all but with actions taken pursuant to the pledge of shares in *Dish TV India Ltd.*

He, therefore, submits that the application is beyond the scope of Section 17 of the SARFAESI Act. These contentions on the maintainability and merits may be agitated by the parties before the DRT.

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

a. The Securitisation Application filed by the petitioner before the DRT-II, Delhi, being SA No. 118/2020, and pending interlocutory application(s) therein, are transferred from DRT-II, Delhi to DRT, Jaipur.

b. The Registrar, DRT-II, Delhi, is directed to transmit the records of the said Securitisation Application and pending Interlocutory Applications to DRT, Jaipur digitally. c. Mr. Bhandari, learned counsel for the petitioner, is also directed to coordinate with the Registrar DRT, Jaipur, to transmit the digital records of the aforesaid case to the DRT, Jaipur directly, if so permitted.

d. The proceedings be listed before the DRT, Jaipur for directions/hearing on 22.11.2021 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.

10. It is made clear that this Court has not entered into the merits of the controversy or the maintainability of the proceedings before the DRT, which issues may be decided by the DRT in accordance with law.

11. The writ petition stand disposed of with these directions.

PRATEEK JALAN, J NOVEMBER 15, 2021 'pv'