

M/S A. S. Technobuild Pvt Ltd vs Bank Of India & Ors on 7 December, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~126 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13878/2021

M/S A. S. TECHNOBUILD PVT LTD

..... Petitioner

Through: Mr. Dayan Krishnan, Senior
Advocate with Mr. Bhim Singh
Nagar, Advocate.

versus

BANK OF INDIA & ORS.

.....

Through: Mr. Sahil Ralli, Advocate
Mr. Pallav Saxena, Advocate
R-7.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 07.12.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPL. 43818/2021(exemption) Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 13878/2021 & CM APPL. 43817/2021(Interim stay)

1. Issue notice. Mr. Sahil Ralli, learned counsel, accepts notice on behalf of the respondent no.1-Bank of India ["the Bank"] and Mr. Pallav Saxena, learned counsel, accepts notice on behalf of respondent no.7- Patanjali Ayurved Ltd. Notice to the other respondents is not required in view of the order that I propose to pass.

2. The petitioner challenges actions taken by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"] in respect of loans taken by one M/s. Bansal Diamonds Pvt. Ltd. [respondent no.2 herein]. A specific prayer has been made in the writ petition against a sale notice dated 27.10.2021, by which the Bank placed six

mortgaged properties on auction sale. The petitioner is concerned with the properties mentioned at serial nos. 5 and 6 of the sale notice [Plot Nos. 231 and 230, Service Centre, Sector-9, Dwarka, Delhi-110075].

3. By a notice dated 16.11.2021, a Receiver appointed by the order of the Chief Metropolitan Magistrate ["CMM"] dated 04.10.2021 has proposed to take possession of property no. 230, Service Centre, Sector-9, Dwarka, Delhi-110075, on 09.12.2021.

4. The petitioner has challenged these actions by filing of an interlocutory application in its pending Securitisation Application [S.A. 153/2020] vide Diary No. 1776/2021 dated 23.11.2021, which remains pending before the Debts Recovery Tribunal ["DRT"]-II, Delhi. However, as the DRTs in Delhi are, at present, non-functional for want of Presiding Officers, the petitioner has 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 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.

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 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.

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.

xxxx xxxx xxxx

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. 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. 153/2020, and pending Interlocutory Applications therein, are transferred from the 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. 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, if so permitted.

d. The proceedings be listed before the DRT, Jaipur for directions/hearing on 08.12.2021 at 11:00 AM. DRT, Jaipur will permit the parties to appear online [by video conferencing], if they so request.

e. As the Receiver is scheduled to take possession of the property on 09.12.2021, the DRT, Jaipur is requested to pass appropriate directions latest by 11:00 AM on 09.12.2021, at least on the question of interim relief.

f. The petitioner is 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.

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

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

PRATEEK JALAN, J DECEMBER 7, 2021/'pv'