

Smt. Kamlesh vs Indian Overseas Bank on 10 November, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~41 (2021 Cause List)
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 12595/2021
SMT. KAMLESH Petitioner
Through: Mr. Raghav Kapoor, Advocate
versus
INDIAN OVERSEAS BANK Respondent
Through: Mr. R.K. Sinha, Advocate
CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 10.11.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM Appl. 39666/2021 (exemption) Exemption allowed, subject to all just exceptions. The application is disposed of.

W.P.(C) 12595/2021

1. Issue notice. Mr. R.K. Sinha, learned counsel, accepts notice on behalf of the respondent- Indian Overseas Bank ["the Bank"].

2. The petitioner seeks recourse against proceedings taken by the Bank in respect of the petitioner's four properties enumerated below:

"a) Built up house property bearing No. A-168 out of Khasra No.446 situated in extended Lal Dora abadi in Village PO- Mahipalpur, Tehsil-Vasant Vihar New Delhi-110037 owned by Smt. Kamlesh Sehrawat admeasuring 200 Sq Yard.

b) Land & Building bearing plot of Khasra No.523 Situated in Lal Dora Abadi of Village PO-

Mahipalpur, Tehsil-Vasant Vihar New delhi-110037 owned by Smt. Kamlesh Sehrawat admeasuring 87 sq yard with boundaries, EAST-GALI 3 FT WIDE, WEST-HOUSE OF SRI SAHIB SINGH, NORTH-GALI 6 FT WIDE, SOUTH-HOUSE OF SHRI KRISHAN.

c) Land & Building bearing plot of Khasra No.523 Situated in Lal Dora Abadi of Village PO-

Mahipalpur, Tehsil-Vasant Vihar New Delhi-110037 owned by Smt. Kamlesh Sehrawat admeasuring 190 sq yard with boundaries, EAST-GALI 4 FT WIDE, WEST-RASTA 15 FT WIDE, NORTH-RAST A 10 FT WIDE, SOUTH-PROPERTY OF SRI INDERJIT.

d) Land & Building bearing plot of Khasra No.523 Situated in Lal Dora Abadi of Village PO-

Mahipalpur, Tehsil-Vasant Vihar New Delhi-110037 admeasuring 120 sq yard with boundaries, EAST- House of Smt. Kamlesh Sehrawat, WEST-Rasta 15 FT wide, NORTH-Rasta 10 FT wide, SOUTH-Property Of Sri Mahavir Singh."

3. The properties were admittedly mortgaged to the Bank in respect of three different loans taken by the petitioner against security of the said properties. In view of the petitioner's default in payment of the EMIs, the Bank commenced proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"]. By an order dated 11.10.2021 under Section 14 of the SARFAESI Act, the learned Additional Chief Metropolitan Magistrate ["ACMM"] appointed four Receivers over the aforesaid properties, and directed them to take possession thereof. The Receivers have since served notices by affixation upon the properties in question, proposing to take possession on 12.11.2021.

4. The petitioner has filed a Securitisation Application vide Diary No. 133/2021 dated 06.11.2021, before the Debts Recovery Tribunal-II, Delhi ["DRT-II, Delhi"] under Section 17 of the SARFAESI Act. However, the application has not been taken up for hearing in view of the fact that the office of the Presiding Officer of DRT-II, Delhi is vacant. It is in these circumstances that the petitioner has been compelled to approach this Court under Article 226 of the Constitution of India.

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 knowledge 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 the 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, I am of the view that exercise of such power by this Court would be the appropriate course. The petitioner's ordinary statutory remedy has been rendered unavailable for reasons beyond her control. Enabling a party to invoke that remedy is preferable to entertaining the case on merits in writ proceedings. Although the existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution, the judgments of the Supreme Court make it clear, particularly in the context of proceedings under the SARFAESI Act, that the writ jurisdiction should rarely be exercised.

9. 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.)

10. 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].

11. I am of the view that the transfer of the proceedings 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.

12. Mr. Raghav Kapoor, learned counsel for the petitioner, submits that the physical possession of the properties are to be taken on 12.11.2021. He, therefore, seeks some interim protection. Mr. R.K. Sinha, learned counsel for Bank, submits that the total outstanding in respect of the credit facilities taken by the petitioner is to the tune of approximately 42 lakhs. I find that the petitioner has relied upon a message sent by the bank on 10.09.2021 by which she was asked to deposit a sum of 3 lakhs as committed by her. Although Mr. Kapoor submits that certain amounts have been deposited even after the aforesaid communication, it is not disputed that the entire amount of 3 lakhs was not so deposited.

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, under Diary No. 133/2021 dated 06.11.2021 is 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 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 applications to the DRT, Jaipur, if so directed.
 - d. The application be listed before the DRT, Jaipur for directions/hearing on 15.11.2021 at 2:00 PM. DRT, Jaipur will permit the parties to appear online, 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, and at the latest by 25.11.2021. f. Subject to any other orders passed by the DRT, Jaipur in terms of the aforesaid directions, the Receivers appointed by the order of the ACMM dated 11.10.2021 are directed to defer the proceedings for taking physical possession of the properties until 29.11.2021 at 11:00 AM. The Receivers will not be required to give any further notice to the petitioner for taking of possession of the properties on 29.11.2021 at 11:00 AM, subject to any orders passed by the DRT, Jaipur on the petitioner's application(s) in terms of this order. g. The aforesaid order is subject to deposit of a sum of 3 lakhs by the petitioner with the Bank by 18.11.2021. The aforesaid amount will be deposited and accepted without prejudice to the rights and contentions of the parties and subject to the orders that may be passed by the DRT, Jaipur. h. The petitioner is 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.
14. It is made clear that this Court has not entered into the merits of the petitioner's case and the aforesaid order is passed only to enable the petitioner to invoke her statutory remedies.
15. The writ petition is disposed of with these directions.

NOVEMBER 10, 2021/„hkaur

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