

Shrim Industries And Ors vs Bank Of Baroda And Anr on 10 November, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~36 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 12125/2021

SHRIM INDUSTRIES AND ORS

..... Petitioners

Through: Mr. K.K.Sharma, Senior Advocate
with Mr. Rajiv Bakshi, Advocate.

versus

BANK OF BARODA AND ANR

..... Respondents

Through: Mr. Arun Aggarwal, 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. 39505/2021 (for directions) in W.P.(C) 12125/2021

1. The present application has been filed by the petitioners seeking transfer of Securitisation Application (SA No. 285/2021) filed by them from Debts Recovery Tribunal-III, Delhi ["DRT-III, Delhi"] to Debts Recovery Tribunal, Jaipur ["DRT Jaipur"]. The petitioners have made an alternative prayer for revival and restoration of W.P.(C) 12125/2021 which was filed by them before this Court.

2. By way of W.P.(C) 12125/2021, the petitioners challenged an order dated 30.09.2021 passed by the learned Chief Metropolitan Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"] at the instance of the respondent No.1- Bank of Baroda ["the Bank"]. By the said order, the CMM had appointed a Receiver to take over the possession of the property (Shop No.12, Ground Floor, Area 136.69 Sq. Feet including Basement and Mezzanine Part of Property No. Municipal No. 1702/1703 at Krishna Bhawan, Bhagirath Place, Delhi) ["the property"].

3. By the order dated 26.10.2021 passed in W.P.(C) 12125/2021, the following directions were given:-

"2. According to the petitioners, they have approached the Debts Recovery Tribunal ["DRT"] under Section 17 of the SARFAESI Act but their petition is not being listed for want of Presiding Officers in all the three DRTs in Delhi. It is in these circumstances that the petitioners have been compelled to approach this Court under Article 226 of the Constitution, and the writ petition is being entertained only for this reason.

3. It has been brought to the notice of the Court in several matters that the DRTs in Delhi are at present without Presiding Officers and this Court had, in fact, in these circumstances entertained several petitions under Article

226. However, I have been informed today that in respect of urgent matters filed before the DRTs in Delhi, parties can also approach the Chairperson of the Debts Recovery Appellate Tribunal ["DRAT"] under Section 17(7) of the SARFAESI Act read with Section 17 A(2) of the Recovery of Debts and Bankruptcy Act, 1993 for transfer of their petitions to another DRT within the jurisdiction of the DRAT. A copy of the order dated 13.10.2021 passed by DRAT in Misc. Application No. 97/2021 arising out of S.A. No. 86/2020 has also been brought to my attention, wherein proceedings were transferred from the DRT-I, Delhi to the DRT, Jaipur on the ground of urgency.

4. Mr. K.K. Sharma, learned Senior Counsel for the petitioners, submits that the petitioners will invoke the aforesaid procedure in this case also. However, he seeks some temporary protection to the petitioners to enable them to do so.

5. In these circumstances, it is appropriate to permit the petitioners to invoke the statutory remedy available to them, instead of entertaining the present petition under Article 226 of the Constitution. In order to enable the petitioners to avail of the statutory remedy, the learned Receiver is directed to defer the taking of possession until 12.11.2021 at 11:00 AM. The possession of the property will be taken without further issuance of notice, subject to any orders passed by the DRT on the petitioners' application in terms of this order.

6. The writ petition, alongwith the pending application, is disposed of in these terms.

7. Mr. Arun Agarwal, learned counsel who appears on advance notice for the Bank, is requested to communicate this order to the Bank."

4. The present application has been necessitated in view of the fact that after passing of the order dated 26.10.2021, the post of the Chairperson, Debts Recovery Appellate Tribunal ["DRAT"], Delhi has also been vacated by virtue of a notification dated 29.10.2021, issued by the Department of Financial Services, Ministry of Finance, Government of India. In these circumstances, the situation which now subsists is that all the three DRTs, and the DRAT in Delhi are non-functional. Although

the petitioners have filed Misc. APPL. 133/2021 before the DRAT, Delhi in terms of the order dated 26.10.2021, that application has not been taken up for hearing.

5. The statutory scheme clearly envisages transfer of proceedings under the SARFAESI Act from one DRT to another. Section 17(7) of the SARFAESI Act provides as follows:-

"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."

6. The Recovery of Debts and Bankruptcy Act, 1993 ["RDB Act"] delineates the jurisdiction and power in authority of DRT under Section 17, and of the Chairperson of the DRAT under Section 17A. Section 17A(2) of the RDB Act reads as follows:-

"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."

7. It is, therefore, clear 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, the petitioner seeks exercise of such power by this Court.

8. I am of the view that such an order is merited in the facts and circumstances of the case. The petitioners' ordinary statutory remedy has been rendered unavailable for reasons beyond their 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.

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.)

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 of India.

12. For the reasons aforesaid, the application is disposed of with the following directions:-

a. SA No. 285/2021 [Shrim Industries India Limited and Ors. vs. Bank of Baroda and Anr.] is transferred from DRT-III, Delhi to DRT, Jaipur.

b. The Registrar, DRT-III, Delhi is directed to transmit the records of SA No. 285/2021 to the Registrar, DRT, Jaipur in digitised form. c. Learned counsel for the petitioners (Applicants in SA No. 285/2021) is also directed to coordinate with the Registrar, DRT, Jaipur and transmit a copy of the pending SA No. 285/2021 to DRT, Jaipur if so permitted.

d. The DRT, Jaipur is directed to take up the proceedings for hearing/directions on 15.11.2021 at 02:00 PM. DRT, Jaipur will permit the parties to appear online (by video-conferencing), if they so request.

e. The DRT, Jaipur will hear the parties and pass appropriate orders, at least on the petitioners' interim application, as expeditiously as possible, and not later than 22.11.2021.

f. The Receiver appointed by the CMM vide order dated 30.09.2021 is directed to further defer the taking of possession until 25.11.2021 at 11:00 a.m. g. The possession of the property may be taken on 25.11.2021 at 11:00 a.m. without any further notice to the petitioners, subject to orders passed by the DRT, Jaipur on the petitioners' application in terms of this order.

h. The petitioners are directed to not to create any third party interests as far as possession and title of the property are concerned and maintain status quo as far as character of the property is concerned until the aforesaid date, subject to the orders passed by the DRT.

13. It is made clear that this Court has not rendered any findings on the merits of the petitioners' case which are to be decided by the DRT, in accordance with law.

14. The application stands disposed of in these terms.

PRATEEK JALAN, J NOVEMBER 10, 2021 „vp