

Ashima Goyal vs Reserve Bank Of India & Anr on 23 May, 2023

Author: Satish Chandra Sharma

Bench: Chief Justice, Subramonium Prasad

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IN THE HIGH COURT OF DELHI AT NEW DELHI
LPA 458/2023
ASHIMA GOYAL

RESERVE BANK OF INDIA & ANR.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% 23.05.2023 CM APPL. 27534/2023 (Exemption) Allowed, subject to all just exceptions. LPA 458/2023 & CM APPLs. 27533/2023, 27535/2023

1. The present LPA arises out of the Judgment dated 28.03.2023 passed by the learned Single Judge in W.P.(C) 3953/2023 in case of "Ashima Goyal vs. Reserve Bank of India"

2. The facts of the case reveal that the Appellant herein applied for a term loan to the tune of Rs.4,60,00,000/- which was sanctioned on 18.09.2019. The account of the Appellant was declared as Non-Performing Asset (NPA) on 16.06.2021 and thereafter, the proceedings were initiated under Section 14 of the SARFAESI Act against the Appellant. The Appellant, after being aggrieved by the proceedings initiated by Respondent No.2, preferred an appeal bearing SA No.119/2022 under Section 17 of the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/09/2023 at 22:30:53 SARFAESI Act before the Debt Recovery Tribunal (DRT). The DRT-III, Delhi dismissed the said appeal vide Order dated 14.09.2022. It is stated that after suffering a dismissal from the DRT, the Appellant approached Respondent No.2 with One Time Settlement (OTS) proposal and at the same time also preferred a writ petition being W.P.(C) 14779/2023 praying for issuance of a direction to Respondent No.2 to close the Appellant's loan account under OTS proposal. This Court directed the Respondents to consider the OTS proposal of the Appellant. However, the same was not considered by the Respondents. The Appellant, thereafter, again filed a second writ petition being W.P.(C)

3953/2023 praying for the following reliefs:

"(i) direct respondent no. 1 in exercise its power U/s 45 (JA) of the Reserve Bank of India Act, 1934 to require respondent no. 2 to adhere to NPA norms applicable to MSME loan account, before deciding non-performing assets (NPA) in face of its Covid-19 pandemic directives and regulatory package directed to be drawn in accordance with Hon'ble Apex Court judgment circulated vide its circular dated 07.04.2021 (Annexure-G);

(ii) Set-aside/quash respondent no.2's order dated 16.06.2021 (Annexure-I) being non-speaking non-

reasoned and in violation, disregard to respondent no.1's directives applicable to MSMEs sector;

(iii) direct respondent no. 2 to draw One Time Settlement in respect to petitioner loan account by enabling petitioner to deposit the same considering petitioner's property valued to be substantially & significantly much more than amount recoverable by respondent no.2 and payable by petitioner in its loan account;

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(iv) set-aside/quash respondent no. 2's order dated 10.03.2023 (Annexure-P) delivered on 15.03.2023 as nonspeaking, non-reasoned made without considering the petitioner's representation alongwith directing respondent no. 2 to produce statement of account pertaining to petitioner a MSME term loan account No. XOHEELD00003123193 taken aid for passing said order dated 16.06.2021;

(v) set-aside/quash respondent no. 2's order (Auction Order) dated 11.03.2023 (Annexure-Q) delivered on 15.03.2023 as non-speaking, non-reasoned made without considering the petitioner's representation."

3. The learned Single Judge vide the impugned Judgment herein has dismissed the writ petition by holding as under:

"9. The Hon ble Supreme Court in the case of „United Bank of India V. Satyawati Tandon and Ors., (2010) 8 SCC 110 has held that the remedy under section 17 of the SARFAESI Act, 2002 is available to any person who may be affected by the action taken under Section 13(4) or Section 14.

10. The impugned communication dated 10.03.2023 reads as under:-

"

.....

1. We, M/s Cholamandalam Investment and Finance Company Ltd (hereinafter referred to as "we/us" for brevity's sake) are in receipt your undated letter much after the lapse of period time of deposit of Rs.50.00 lacs i.e. dated 30.11.2022 as per order dated 19.10.2022 passed by Hon'ble Delhi High Court in W.P.(C) No.14779 of 2022, and by this undated letter, which is clearly submitted after 31.12.2022 (which is evident from the said OTS letter) wherein you have referred a letter dated This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/09/2023 at 22:30:54 31.12.2022) by which, on one hand you asking for settlement with respect to captioned loan account and on other hand, raising dispute of amount(s), which already stood adjudicated before Ld. Debts Recovery Tribunal-III New Delhi in your petition i.e. SA No. 119 of 2022 against the measures taken by us under section 13(2) of the Securitisation. We wish to respond to the same in the manner as mentioned below, without prejudice to our rights and contentions available in law.

2. At the very outset, we deny each and every averment of your undated letter that are made against us as the same are unsubstantiated and sans any supporting documents. Besides, it is matter of record that every payment made by you is duly reflected in the statement of account that is maintained by us.

3. Having said that, all the payments made by you towards your loan account stands adjusted which is apparent from perusal of the statement of accounts. Besides, all of you borrowers and co-borrowers approached us seeking financial assistance to boost your business. After your complete satisfaction, you all had agreed to accept the terms and conditions forming part of sanction letter issued by us as well as loan agreement. Therefore, it is nothing but an after-thought with malafide intention to state that we are attempting to usurp your monies without due justification.

4. At the very outset, it is submitted that the Hon'ble High Court, vide order dated 19.10.2022 passed the following order in WP(C) No. 1177 of 2012 which read Inter alia as under:-

"8. In view of the above following directions are passed:

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b. Petitioners shall submit their settlement proposal Respondent No 2 within a period of fifteen days from the setting out a detailed repayment plan.

c. Petitioners shall deposit Rs. 50 lakhs with the Court on or before 1st November, 2022, and a further Rs.50 lakhs by 30th November 2022.

d. In case the Petitioners do not make the above- mentioned deposit within stipulated timelines, Respondent No.2 will be free to take action as per law.

e. In order to facilitate the settlement process parties are referred to Delhi High Court Mediation and Conciliation Centre The Mediation Centre is requested appoint Mr Sudhanshu Batra Senior Advocate in the Mediate in the present case, who is requested to conduct the same expeditiously and attempt to concede, not later than 1 month from today.

5. Despite getting extension of time, to deposit Rs 50.00 lacs, which you were required to make by 30.11.2022, therefore, you undertook to pay a sum of Rs 50.00 lacs by 30.01.2023. You, vide CM APPL. 1643/2023 sought the modification of order dated 12.12.2022, passed by Hon'ble High Court, the Hon'ble High Court passed order dated 25-01-2023 reads inter-alia as under:-

"After some arguments, learned counsel for the petitioner seeks leave to withdraw the application. He further submits that the sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only), as This is a digitally signed order.

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6. That you even failed to deposit the said amount of Rs.50.00 lacs as per your statement which is matter of record vide order dated 25.01.2023. In this regard appropriate proceedings are being initiated by us before the Hon'ble High Court.

7. It is also matter of record as per clause No.d of para No.8 of order dated 19.10.2022, that "In case the Petitioners do not make the abovementioned deposit within stipulated timelines. Responders No 7 will be free to take action as per law therefore we are proceeding to put the property auction for the recovery of the debt being one of the measures under section 13(4) of the Securitisation Act 2002.

8. It is also matter of record that the Hon'ble High Court in its order dated 19.10.2022 has categorically recorded in para No.5, which reads as under-

"4. Having regard to the well-settled position in law regarding maintainability of a writ petition in matters pertaining to SARFAESI Act, the Court prima facie finds no good ground to entertain the present petition."

9. In first page of up-numbered Paras of first page of letter dated NIL by you had been admitted that there is delay on your part in submitting the proposal of settlement.

10. It is submitted your account became Non- Performing Asset on 16.06.2022 and thus has been duly mentioned in demand notice dated 09.08.2021 under section 13(2) of the Securitization Act 2002 This is a digitally signed order.

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11. That you filed a petition under section 17(1) of the Securitization Act 2002 before Ld. Debts Recovery Tribunal New Delhi, and the Ld. DRT-II Delhi after considering your all contentions and objections was pleased to pass detailed speaking order dated 14.09.2022 in S.A.No.119 of 2022, and dismissed your case petition. Order dated 14.09.2022 is annexed by you with your petition at page No.44 as Annexure P-4.

12. Thus, the remedy against the said order dated 14.09.2022 lies before the Hon'ble Debts Recovery Appellate Tribunal, New Delhi under section 18(1) of the Securitization Act 2002. by way of appeal within 30 days from passing the said order, which you never availed. Rather, you preferred the writ petition by impleading Reserve Bank of India as respondent No 1 herein, and sought relief(s) against the measures taken by us under Securitization Act 2002 with regard to secured asset, which is liable to be sold for the recovery of the debt.

13. That you had a chance to represent and in file This is a digitally signed order.

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discharge the liability of the debt as claimed by us we proceeded to take measures under section 13(2) of the Securitization Act 2002, which you failed to file. Rather the Ld. DRT II Delhi after considering your all contentions and objections was pleased to pass detailed speaking order dated 14.09.2022 in S.A.No 119 of 2022, and dismissed your case petition.

14. At the very first page last para of your letter dated NIL, you are questioning the form and of the statement of accounts, which should have been depicted in the statement of account. In this regard, the statement of accounts are clear and detailed. Complete statement of accounts were provided to you from time to time also now you asking demanding dues of the bank by us, you are raising such frivolous dispute about the form of the statement of accounts. Now asking the statement of accounts in three columns, as per your version, is neither in law nor as per procedure of the company. The statement of accounts maintained by us in ordinary course of banking business activity, is rather more exhaustive and detailed and the copy of the same has been provided to you from time to time. The amount(s) of interest and principal and or instalments, are clearly shown outstanding and thus, you stand in this regard not acceptable and thus rejected.

15. Your redrafted so called ledger is completely vague and not as per the terms of the sanction, rather, you are raising disputed of the alleged debt/secured asset, which stood adjudicated by La DRT-III Delhi vide dated 14.09.2022.

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16. Your letter dated 31.12.2022, raising various disputes and asking for information, we have already submitted statement of accounts to you from time to time and now, after the dismissal of your case by Ld. DRTIII Delhi you have again raised the issues vide OTS letter and also letter dated 31.12.2022. The statement of accounts submitted by us are correct and legal and there is no legal infirmity in the same.

17. The letter with reference to OTS and letter dated 31.12.2022 is nothing but asking our explanation in form of question, after the adjudication of your case which stood dismissed by Ld. DRT-III Delhi vide order dated 14.09.2022 is completely out of context and no sanctity in the eyes of law.

18. You have submitted alleged OTS for a sum of Rs.250.00 lacs as against the total outstanding of Rs.5,26,85,370/- as on 19.10.2022 and Rs.85,29,573.00/- as on date (total Rs.6,12,14,943.00/-) and your offer to pay Rs 250.00 crores is completely vague and no rationale with the value of the property/secured asset i.e. secured asset with us. During discussions in the month of December 2022 we told you that if you pay Rs 50 crores by 31.03.2021 with interest at the rate at 12 wef 19.10.2022, before 15.03.2023, we can refer the matter to for approval to which you did not agree.

19. The loss of business and also loss in the family has been duly considered by us and we assured you at that point of time in December 2022, that we can consider the waiver the balance amount and told you that for rest of the balance we will not file suit for recovery of recovery case in DRT. if you pay the said amount by 15.03.2023 which was reasonable and bonafide, but you kept on pressing to accept Rs 250.00 lacs, which we are unable to accept.

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20. You have admitted an amount of Rs.274.74 lacs being the principal amount by asking for complete waiver of interest, from the date of sanction of loan, which is not possible and hence rejected.

21. Since you have failed to liquidate the entire dues as stated in this reply/letter, and also violated the order dated 19.10.2022 and order dated 25.01.2023 passed by Hon'ble High Court, we are proceeding ahead under section 13(4) of the Securitisation Act 2002 against the secured asset."

11. It is seen that in the instant case, what is being stated by the petitioner is that she is entitled to enter into OTS on account of various reasons as has been indicated. The fact remains that the respondent-NBFC has already issued an auction notice and the auction is scheduled for 31.03.2023. Whether the circulars issued by the RBI are applicable in the instant case of the petitioner and whether petitioner is at all entitled for any benefit thereunder, are all issues which can still be adjudicated by the concerned DRT if appropriate proceedings are taken up before it. It is also to be noted that the petitioner with respect to the recovery measures has already been prosecuting her case before the DRT.

12. In view of the aforesaid facts and circumstances of the case, this court under Article 226 of the Constitution of India normally cannot be called upon to adjudicate the justifiability of not entering into the OTS under the specific terms. It is completely a commercial decision to be taken by the respondent- NBFC. The Hon'ble Supreme Court in the case of „Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345 has held as under:-

"18. Even otherwise, it is required to be noted that a writ petition against the private financial This is a digitally signed order.

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performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the Sarfaesi Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the Sarfaesi Act and no writ petition would lie and/or is maintainable and/or entertainable."

13. It is also to be noted that the impugned decision is taken by the respondent-NBFC in terms of the observations made by this court in its order dated 02.03.2023 in W.P. (C) No.14779/2022. In the said petition, this court on 19.10.2022 had prima facie noted that no good ground is made out to entertain the petition, and only on account of settlement proposal, some directions were given.

14. This court vide order dated 25.01.2023 in CM APPL. 1643/2023 again extended the time to pay certain amount, which are as under:-

"1. After some arguments, learned counsel for the petitioner seeks leave to withdraw the application. He further submits that the sum of Rs.50,00,000/- (Rupees Fifty Lakhs only), as already directed by This is a digitally signed order.

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2. The application is, accordingly, dismissed as withdrawn."

15. The said petition i.e. W.P. (C) No.14779/2022 is still pending. The directions passed therein are not complied with.

16. In view of the aforesaid, this court is not inclined to accept the prayer made by the petitioner. There cannot be multiple proceedings before multiple authorities with respect to the same cause. The nature of relief sought in the instant petition, if is granted, the same would have effect on the recovery proceeding of debt. The instant petition is thus dismissed along with the pending application."

4. The learned Single Judge, after placing reliance upon the „United Bank of India V. Satyawati Tandon and Ors., (2010) 8 SCC 110 as well as Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345, has arrived at a conclusion that the Appellant is having a remedy of approaching the Debt Recovery Tribunal (DRT).

5. The track record of the Appellant reveals that on some pretext or the other, the Appellant does not want to pay the outstanding dues and has engaged the Respondents in litigation either before the DRT or before this Court.

6. The Apex Court in the case of M/s South India Bank Ltd. & Ors. vs. Naveen Mathew Philip & ANR. ETC. ETC in SLP (Civil) Nos.22021- 22022 of 2022 dated 17.04.2023 has held that when there is a specialised Tribunal which has been constituted to deal with specific, then Courts must This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/09/2023 at 22:30:55 be slow to interfere under Article 226 of the Constitution of India. The Apex Court has observed as under:

"16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative. We wish to quote with profit a recent decision of this Court in Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771,

25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy"

and its judicial exposition. In Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] , a two- Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-

15) "14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

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15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

26. Following the dictum of this Court in Whirlpool [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] , in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , this Court noted that : (Harbanslal Sahnia case [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] , SCC p. 110, para 7) "7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of This is a digitally signed order.

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27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the

Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/09/2023 at 22:30:55 27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal."

(emphasis supplied)

7. The issue raised in the present case regarding applicability of circular issued by Reserve Bank of India can certainly be raised before the DRT and, therefore, this Court is of the opinion that the Appellant is having equally This is a digitally signed order.

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8. Resultantly, the LPA is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ SUBRAMONIUM PRASAD, J MAY 23, 2023 S. Zakir This is a digitally signed order.

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