

(2022) 06 MP CK 0040
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12032 Of 2022

Devendra Kumar Rai

APPELLANT

Vs

State Bank Of India And Others

RESPONDENT

Date of Decision : 13-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 17, 18, 18(1)

Citation : (2022) 06 MP CK 0040

Hon'ble Judges : Sujoy Paul, J;Prakash Chandra Gupta

Bench : Division Bench

Advocate : N.S. Ruprah, Prabhanshu Shukla

Final Decision : Disposed Of

Judgement

Sujoy Paul, J

1. Heard on the question of availability of alternative remedy.
2. The petitioner in para 3 of writ petition declared that " he has availed all the remedies which are available to him in the law...."
3. Shri Prabhanshu Shukla, Advocate raised an objection about availability of alternative remedy under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
4. Shri Ruprah learned counsel for the petitioner submits that the impugned order dated 22.04.2022 (Annexure-P/1) is an interlocutory order passed by the Debts Recovery Tribunal. The Apex Court in (2018) 3 SCC 85 (Authorised Officer, State Bank Of Travancore and Another Vs. Mathew K.C.) deprecated the practice of entertaining writ petition despite availability of alternative remedy but said judgment is distinguishable. Para-6 of the said judgment is relied upon to contend that the pleadings in the writ petition were bald and ambiguous. In this backdrop, the Supreme Court deprecated the practice of entertaining the petition

by the High Court.

5. Shri Ruprah submits that the present writ petition is properly drafted and pregnant with the necessary specific pleadings. Thus, principle laid down in the judgment of Mathew K.C. (Supra) cannot be pressed into service.

6. Learned counsel for the petitioner submits that learned Debts Recovery Tribunal came to hold that under the provisions of Securitisation Act, no interim relief is due to the petitioner. Hence, the only remedy to the petitioner is of filing of present petition.

7. Shri Prabhanshu Shukla, learned counsel for the respondent/Bank placed reliance on the recent order of Supreme Court dated 11.05.2022 passed in Special Leave to Appeal (C) No.(s). 13241-13242/2019 (Kotak Mahindra Bank Limited Vs. Dilip Bhosale), wherein the Apex Court again deprecated the practice of entertaining the writ petition despite availability of alternative remedy.

8. We have heard learned counsel for the parties on the question of alternative remedy.

9. Section 18(1) of the Securitisation Act reads as under :

18. Appeal to Appellate Tribunal. - (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

[Emphasis supplied]

10. A plain reading of the appellate provision makes it clear that the legislature in its wisdom has used the words "any order" made by the Debts Recovery Tribunal against which the appeal lies. The expression "any order" in our view is wide enough to include an interlocutory order.

11. We find support in our view from judgments of various High Courts. Dr. D.Y. Chandrachud (as His Lordship then was) speaking for Division Bench of Bombay High Court in (2010) SCC OnLine Bom 1733 (Vinay Container Services Pvt. Ltd. Vs. Axis Bank) opined as :

"8. Section 18 provides a right of appeal to a person aggrieved by any order made by the Debts Recovery Tribunal under section 17. The right of appeal under section 18 arises in respect of "any order made by the Debts Recovery Tribunal" albeit under section 17. The section refers to any order and those words are comprehensive enough to include a final as well as an interlocutory order."

12. The same view is followed by the Division Bench of Delhi High Court in 2011 SCC OnLine Del 1189 (Sand Plast (India) Ltd. Vs. Punjab National Bank) (also reported in AIR 2011 Delhi 196). The another Division Bench of Bombay High Court in (2013) SCC OnLine Bom 2098, Keystone Constructions Vs. State Bank of India has followed the same ratio. The Himchal Pradesh High Court in 2015

SCC OnLine HP 2436 (Amy Agro Pvt. Ltd. Vs. State Bank of Patiala) opined that even interlocutory order passed question before Appellate Tribunal by filing the said Act. by DRT can be called in appeal under Section 18 of

13. So far as factual backdrop of the present case is concerned, in our view DRAT is best suited to examine the factual aspects as well. There is nothing which makes it obligatory for us to entertain this writ petition when efficacious alternative remedy is available to the petitioner.

14. In Kotak Mahindra Bank Limited Vs. Dilip Bhosale, (supra) the Apex Court held as under:-

"Before parting with the order, we would like to observe that this Court is consistent of the view and can be noticed from the judgment in United Bank of India Vs. Satyawati Tandon & Ors. (2010) 8 SCC 110, that when a remedy under the statute is available and in the instant case which indeed was availed by the respondent/borrower, filing of a writ petition under article 226 of the Constitution is to be discouraged by the High Court."

15. In view of availability of alternative remedy, the interference is declined. The petition is disposed of by reserving liberty to the petitioner to avail alternative remedy of appeal.