

(2022) 11 CHH CK 0011

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 48 Of 2021, 2686 Of 2022

Dinesh Chandra Tiwari

APPELLANT

Vs

Presiding Officer, Debts Recovery Tribunal

RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Security Interest (Enforcement) Rules, 2002 — Rule 6(2), 8(5), 8(6)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(3), 13(4), 13(4)(a), 17, 17(3), 18

Citation : (2022) 11 CHH CK 0011

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Dinesh Chandra Tiwar, Ankit Singhal, P. Acharya, Anurag Dayal Shrivastava, Pragya Pandey

Final Decision : Dismissed

Judgement

1. As both the writ petitions are interconnected and common aspects are arisen for consideration, they are heard and disposed of by this common order.
2. Writ Petition (C) No.48 of 2021 has been preferred by the Petitioner being aggrieved by the order dated 16.12.2020 (Annexure P1) passed by the Debts Recovery Tribunal (henceforth 'the DRT'), Jabalpur sitting at Cuttack in S.A. No.134 of 2016, whereby the DRT has dismissed the SA/application moved by the Petitioner.
3. Writ Petition (C) No.2686 of 2022 has been preferred by the Petitioner being aggrieved by the order dated 19.5.2022 passed by the DRT, Jabalpur in S.A. No.133 of 2016, whereby the SA/application moved by the Petitioner has been dismissed by the DRT.
4. In both the cases, the Petitioner had availed a loan facility from the Respondent/Bank of Baroda through cash credit and term loan. However, the

Petitioner failed to repay the loan within the due time. Both the accounts of the Petitioner in both the cases were classified as Non Performing Asset (henceforth 'the NPA'). In both the loan cases, property has been mortgaged by the Petitioner for getting the loan facility. As both the accounts of the Petitioner were classified as NPA, the Respondent/Bank issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth 'the Act of 2002') and the Petitioner was asked to pay the remaining dues along with the applicable interest. The Petitioner did not avail the statutory remedy provided under Section 13(3) of the Act of 2002 and did not make any representation before the Bank authorities. After the Petitioner's failure to deposit the amount due with the Respondent/Bank, the Bank issued a possession notice under Section 13(4) of the Act of 2002 and took possession of the secured assets of the Petitioner. The Petitioner filed an application under Section 17 of the Act of 2002 before the DRT in both the cases. Meanwhile, the Respondent/Bank issued auction notice in pursuance of Rules 6(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002 (henceforth 'the Rules of 2002'). Valuation report from approved valuer is also obtained in pursuance of Rule 8(5) of the Rules of 2002. Residential building of the Petitioner was auctioned for Rs.13.17 Lakhs against the reserve price of Rs.12.87 Lakhs. Another secured assets land, factory and building of the Petitioner were also auctioned for Rs.69.35 Lakhs. Both the SAs/applications preferred by the Petitioner have been dismissed by the DRT vide the aforementioned impugned orders. Hence, these writ petitions by the Petitioner.

5. Learned Counsel appearing for Respondents 2 and 3 and Learned Counsel appearing for Respondent 6 submitted that both the writ petitions are liable to be dismissed on the ground of maintainability alone. It was submitted that as the Petitioner has alternative remedy available under Section 18 of the Act of 2002 against the orders passed by the DRT, these writ petitions moved under Article 226 of the Constitution of India are not maintainable. It was further submitted that the DRT after providing reasonable opportunity of hearing to the Petitioner in both the cases has passed the reasoned orders and, therefore also, these writ petitions under Article 226 of the Constitution of India are not maintainable.

6. Opposing the above arguments advanced on behalf of Respondents 2, 3 and 6, Petitioner Dinesh Chandra Tiwari in person in both the writ petitions submitted that the DRT has passed the orders without caring the written submission filed by him and has illegally dismissed the SAs/applications moved by him. As the opportunity of hearing has not been provided to him and arbitrary orders have been passed, the present writ petitions under Article 226 of the Constitution of India are maintainable. Reliance has been placed by him on a judgment passed by the Madras High Court in *The District Collector, Chennai v. Mr. R. Vetri and others* on 4.8.2022 (Review Application No.166 of 2021 in W.P. No.15507 of 2021). The Petitioner also relied on a judgment passed by the Supreme Court in *Ram Kishun v. State of Uttar Pradesh*, (2012) 11 SCC 511.

7. Learned Counsel appearing for Respondent 4 and Learned Counsel appearing for Respondent 5 supported the arguments raised on behalf of Respondents 2, 3 and 6.

8. I have heard the rival contentions put forth on behalf of the parties and perused the writ petitions, the impugned orders, the annexures and other material available with due care.

9. From perusal of the impugned orders dated 16.12.2020 and 19.5.2022 passed by the DRT, it reveals that the Petitioner was represented by his Counsel and from perusal of the order sheet dated 13.5.2022 recorded in SA No.133 of 2016, it appears that on that date also Counsel for the Petitioner was present and with the consent of both the parties arguments were heard and the order was passed on 19.5.2022. Thus, it is clear that in SA No.133 of 2016, reasonable opportunity of hearing has been provided to the Petitioner and the reasoned order has been passed. Likewise, in SA No.134 of 2016, it also appears from perusal of the impugned order dated 16.12.2020 that the Petitioner was represented by his Counsel since beginning. Further, from perusal of paragraphs 5 to 8 of the impugned order dated 16.12.2020, it also appears that the contention of the Petitioner was duly recorded and discussed by the DRT and the DRT has passed the reasoned order. Therefore, the contention of the Petitioner that he has not been given any opportunity of hearing is not sustainable.

10. In *K. Virupaksha v. State of Karnataka*, (2020) 4 SCC 440, it was held by the Supreme Court as under:

"15. The SARFAESI Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance, as already taken note of by the High Court in writ proceedings, if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of the SARFAESI Act. This view is fortified by the decision of this Court in *Indian Overseas Bank v. Ashok Saw Mill*, (2009) 8 SCC 366 wherein it is held as hereunder: (SCC pp. 375-76, paras 34-37)

"34 . The provisions of Section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause (b) of sub-section (4) of Section 13.

35 . In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of

the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted.” (emphasis supplied)

11. In *Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir*, 2022 SCC OnLine SC 44, it was observed by the Supreme Court thus:

“43. Applying the law laid down by this Court in the case of *Mathew K.C.* (supra) to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the Court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13.8.2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs.1 Crore only (in all Rs.3 Crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs.117 Crores. The ad-interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of Court. It appears that the High Court has initially granted an ex-parte ad-interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the

financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed.”

12. Looking to the law laid down by the Supreme Court and considering the fact that proper opportunity of hearing has been afforded by the DRT to the Petitioner in both the instant cases, it is held that both the present writ petitions are not maintainable. The Petitioner has only remedy available to file an appeal as contained in Section 18 of the Act of 2002.

13. The case laws cited by the Petitioner are not applicable to the present cases as they are distinguishable on facts.

Consequently, both the writ petitions are dismissed with the aforesaid observations.