(2022) 03 J&K CK 0047

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 566 Of 2022, Civil Miscellaneous No. 1410 Of 2022

Fayaz Ahmad Dandroo & Anr — APPELLANT

Vs

Punjab National Bank & Ors — RESPONDENT

Date of Decision : 28-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Securitisation And Reconstructing Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 4, 13, 17

Citation : (2022) 03 J&K CK 0047

Hon'ble Judges : Ali Mohammad Magrey, J;Mohan Lal, J

Bench : Division Bench

Advocate : Muzaffar Ahmad Bakkal, Tahir Majid Shamsi, A. Hanan Kalwal, Z. A. Shah

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

Through the medium of the instant Petition, the Petitioners have sought the indulgence of this Court in granting them the following relief(s):

i. The impugned Standing Order No. S.O. 1123 (E) dated 18-03-2020, S.O. 3807 (E) dated 26-10-2022 issued by the Ministry of Home Affairs and S. O. No. 4145 (E) dated 10-09-2021 passed by Ministry of Finance may be quashed/ set-aside being unconstitutional and against the scheme of Reorganization Act 2019 and Removal of Difficulties Act 2019;

ii. The notices dated 04-01-2018 may kindly be quashed and respondent bank be directed to act on the OTS scheme and allow the petitioners to settle the remaining loan amount;

iii. Any other appropriate writ, direction or order as the Hon'ble Court may deem fit in the facts and circumstances of the case be also passed in favour of the petitioners and against the respondents.”

From the perusal of the pleadings on record, what emerges is that the Petitioners are borrowers of financial assistance from the Respondent-Bank and, having failed to repay the same within the specified timeframe, the Respondent-Bank appears to have proceeded against the Petitioners in terms of the provisions of the Securitisation and Reconstructing of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘the Act of 2002’).

Section 17 of the Act of 2002, which is an additional safeguard, gives a person, including the borrower, aggrieved by any of the measures referred to in Sub-Section 4 of Section 13 of the Act of 2002 taken by the secured creditor or his authorized officer under this Chapter, an option to make an application along with such fee as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within. In these circumstances, the Petitioners could have made an application to the Debts Recovery Tribunal which is a remedy created under the Statute and on the strength of such a Scheme, the Petitioners could have taken the recourse to the said provision. It is settled legal position that where a statutory right to file an appeal has been provided for it is not open to the High Court to entertain a Petition under Article 226 of the Constitution. The Hon’ble Supreme Court, in a recent judgment rendered in case titled ‘Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir & Ors.’ decided on 12th of January, 2022 in Civil Appeal Nos. 257-259 of 2022, has already reiterated this legal position. We, in this behalf, are also fortified by the view taken by a Coordinate Division Bench of this Court at Jammu Wing in case titled ‘G. A. Mineral Water Company Pvt. Ltd. V. Union of India & Ors.’, reported as ‘2018 (4) JKJ 231’.

Confronted with the above position, the learned Counsel for the Petitioners submitted that since the Debts Recovery Tribunal, before whom the Petitioners are supposed to file appeal as per the Act of 2002, is not available with regard to the Union Territory of Jammu and Kashmir, as such, the Petitioners have been left with no other remedy but to approach this Court though the medium of the instant Petition.

In view of the stand taken by the learned Counsel for the Petitioners, we had asked Mr Tahir Majid Shamsi, the learned Assistant Solicitor General of India (ASGI), to clarify the position as regards the availability of the Debts Recovery Tribunal qua the cases relating to the Union Territory of Jammu and Kashmir. Mr Shamsi, the learned Assistant Solicitor General of India, submitted that in terms of communication dated 10th of September, 2021 issued by the Ministry of Finance, Department of Financial Services, Government of India, the area of jurisdiction of the Debs Recovery Tribunal-1, Chandigarh has been extended to the cases relating to the Union Territory of Jammu and Kashmir. That apart, the learned Assistant Solicitor General of India has also submitted that by communication dated 20th of February, 2022 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India, Shri Anand Sagar Narang, Retired District Judge (HCS-Judicial Branch) stands already appointed as the Presiding Officer in the Debts Recovery Tribunal, Chanbdigarh-1.

In the light of the above facts and circumstances, coupled with the clarification rendered by the learned Assistant Solicitor General of India with regard to availability of the forum prescribed as per the Act of 2002, we deem it just and proper to dispose of this Petition giving liberty to the Petitioners to approach the Debts Recovery Tribunal (DRT, Chandigarh-1) constituted by the Government for seeking redressal of their grievance(s) in tune with the mandate of the Act of 2002 within a period of one month from today. We order accordingly to that extent. We, at the same time, feel that the concern expressed by the learned Counsel for the Petitioners about the time required by the Petitioners to approach the Tribunal at Chandigarh for the relief claimed is well founded. Accordingly, we, while allowing the Petitioners to file the appeal before the Tribunal within one month from today, as aforesaid, also give liberty to the Petitioners to file a representation before the Respondent-Bank for seeking settlement/ redressal of their grievance(s) within one week from today, which shall be considered by the Respondent-Bank on its own merits within the above stipulated period of one month and before proceeding further in the matter.

Writ Petition disposed of as above, along with the connected CM.

