

(2021) 02 SHI CK 0148
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 635 Of 2021

Harbans Lal

APPELLANT

Vs

State Bank Of India And Others

RESPONDENT

Date of Decision : 10-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 13(4), 17, 18

Citation : (2021) 02 SHI CK 0148

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Y.P.S. Dhaulta, Hemant Vaid, Arvind Sharma, Raju Ram Rahi, Amit Dhumal

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Heard learned counsel for the petitioner.
2. By way of instant petition, petitioner has challenged the proceedings initiated by the respondents/Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI). A Division Bench of this Court in CWP No.5730/2020, titled as M/s Amar Traders Vs. Punjab National Bank & Others, decided on 17.12.2020, relying upon various pronouncements of Honâ??ble Apex Court, held that when an efficacious alternative remedy under the SARFAESI Act is available to the petitioner then the writ petition under Article 226 of the Constitution of India shall not be maintainable. Relevant portion thereof reads as under:Â?

4. The Hon'ble Supreme Court has strongly deprecated the tendency of the High Courts in entertaining the writ petitions filed under Article 226 of

the Constitution of India by the aggrieved persons without availing alternative and efficacious remedy available to them and more particularly, in the

matters, which arise under the SARFAESI Act.

5. In *State Bank of Travancore vs. Mathew K.C.*, (2018) 3 SCC 85, the Hon'ble Supreme Court while dealing with alternative remedy under the

SARFAESI Act held as under:

3. The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the

remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal

under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the

Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on

United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and *General Manager, Sri Siddeshwara Cooperative Bank Limited and*

another vs. Ikbali and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The

Division Bench erred in declining to interfere with the same.

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8. The statement of objects and reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level

playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take

possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial

practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial

institutions. The Narasimhan Committee I and II as also the Andhyarujina

Committee constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as "the DRT Act") with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order.

9. xxx

10. In *Satyawati Tandon* (supra), the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding :Â?

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. ***

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory

remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse

impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their

discretion in such matters with greater caution, care and circumspection.â??

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15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands

well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing

the relevant law. In financial matters grant of exÂ parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved

has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers

expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity

as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be

permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in Satyawati Tandon

(supra), has also not been kept in mind before passing the impugned interim order:Â â??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, Whirlpool Corpn. v. Registrar of Trade Marks and

Harbanslal Sahnia v. Indian Oil Corpn. Ltd . And some other judgments, then the High Court may, after considering all the relevant parameters and

public interest, pass an appropriate interim order.â??

16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that

too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent

developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could

be sought of the interim order cannot be considered sufficient justification to have declined interference.

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy

Engineering Works (P) Ltd. and Another , 1997 (6) SCC 450, observing :Â?

â?? 32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the

least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to

the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not

applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of

the parties. It is time that this tendency stops.â??

6. Similar question of law again came up for consideration before the Hon'ble Supreme Court in ICICI Bank Limited and ors. vs. Umakanta

Mohapatra and ors., (2019) 13 SCC 497, wherein it was observed as under:Â?

â??2. Despite several judgments of this Court, including a judgment by Honâ??ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in

Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C ., (2018) 3 SCC 85, the High Courts continue to entertain matters which

arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act , 2002 (SARFAESI), and keep

granting interim orders in favour of persons who are NonÂ? Performing Assets

(NPAs).

3. The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this

Court, held as follows:

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd. vs. Prem*

Heavy Engineering Works (P) Ltd. and Another, (1997) 6 SCC 450, observing: “

32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the

least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to

the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not

applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of

the parties. It is time that this tendency stops.”

4. The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.

7. Similar reiteration of law can be found in a recent judgment rendered by Hon'ble Three Judges of Supreme Court in Criminal Appeal No. 377/2020,

titled as *K. Virupaksha and anr. vs. State of Karnataka and anr.*, dated 3.3.2020.

8. In view of the aforestated clear legal position settled by the Hon'ble Supreme Court coupled with the fact that the petitioner has not exhausted the

alternative remedy under the SARFAESI Act, the present petition is not maintainable and accordingly dismissed on this ground alone, so also the

pending application(s), if any.

The petition is accordingly dismissed being not maintainable reserving liberty to the petitioner to move appropriate forum for redressal of his grievance

in accordance with law. Pending applications, if any, shall also stand disposed of.