
(2022) 09 TEL CK 0063
In the Telangana High Court
Case No : Writ Petition No. 33275 Of 2022

M/S Rays Technologies India Pvt Ltd

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Security Interest (Enforcement) Rules, 2002 — Rule 6(2), 8(6)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(3A), 13(4), 17, 18
Recovery of Debts [Due to Banks and Financial Institutions] Act, 1993 — Section 3

Citation : (2022) 09 TEL CK 0063

Hon'ble Judges : P.Naveen Rao, J;J. Sreenivas Rao, J

Bench : Division Bench

Advocate : P.S.Rajasekhar, V.Dyumani

Final Decision : Dismissed

Judgement

1. Heard learned counsel for petitioners Sri P.S. Rajasekhar and learned counsel for respondents Smt V.Dyumani.

2. The brief facts of the present writ petition are as under:

2.1. The first Petitioner company- M/s. Rays Technologies Pvt. Ltd obtained cash credit limit vide Account No. 50378541493 with the first Respondents Bank for a sum of Rs. 60 lakhs. The loan account was operated in the second respondent branch. As petitioner defaulted in repayment of loan, the second respondent bank initiated steps to recover the due amount under SARFAESI Act, 2002.

2.2. On 27.02.2021 the above cash credit account was declared as Non Performing Asset (NPA). On 12.07.2021, second respondent issued notice under section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs. 68,50,773/- claiming to be the amount due upon declaration of the account as non-performing asset (NPA). On 15.07.2021 and 16.07.2021, the petitioners raised objections under section 13(3A) of the Act, 2002 to second Respondent. On

04.09.2021 and 17.09.2021, the second Respondent vide email sought documents and information from the petitioners regarding the restructuring of the account. The information was submitted to the second Respondent by the petitioners. On 01.11.2021, the second Respondent issued possession notice, filed application before the jurisdictional Chief Metropolitan Magistrate, to pass orders to vest possession and the possession of the same was obtained on 01.06.2022.

2.3. On 19.01.2022, the Respondent no. 2 issued notice of intended sale of the said property vide notice under Rules 6(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002. On 06.06.2022 second respondent issued sale notice proposing to conduct sale on 28.06.2022. Sale was conducted and confirmed in favour of the highest bidder (third respondent) on 16.07.2022 for a sum of Rs. 70,20,000/-, and sale certificate was issued. This writ petition is filed praying to issue writ of mandamus and declare the action of respondents 1 and 2 to issue sale certificate in favour of third respondent as arbitrary, illegal and to quash or set aside the same.

3. Against any decision/action taken by the lender bank/financial institution under SARFAESI Act, 2002 to recover loan amount, when secured asset on which secured interest is created by the borrower and guarantor, Section 17 of the Act, 2002 provides remedy to the aggrieved person before the Debts Recovery Tribunal constituted under Section 3 of the Recovery of Debts and Bankruptcy Act, 1993. It is an effective and efficacious remedy. Whenever an aggrieved person has an effective and efficacious alternative remedy, writ Court does not entertain the writ petition and relegates the aggrieved person to avail the said remedy before knocking the doors of the writ Court. Though, there is no bar to entertain the writ petition even when an alternative remedy is available, writ Court exercises self-imposed restraint. The principles on when to exercise extraordinary jurisdiction under Article 226 of the Constitution of India are well laid down by series of judgments of High Courts and the Hon'ble Supreme Court. In L.Chandra Kumar Vs. Union of India (1997) 3 SCC 261 constitution bench of Hon'ble Supreme Court cautioned High Courts from entertaining writ petitions, if statute under which a cause of action arose also created forum for adjudication of disputes, more so, in the form of a duly constituted Tribunal presided by or comprising of legally trained person/ ex-judicial officer. The Debts Recovery Tribunal is presided by ex-judicial officer with considerable experience.

17. 2[Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1[may make an application along with such fee, as may be prescribed,]to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:.....

4. Notwithstanding this settled principle and even though petitioners have an effective and efficacious remedy under Section 17 of the to SARFAESI Act, 2002,

learned counsel for petitioners sought to contend that this Writ petition ought to be entertained and petitioners need not be compelled to take recourse to Section 17 of Act, 2002 remedy.

5. According to learned counsel, Reserve Bank of India (RBI) notified guidelines on 6.9.2020 on restructuring of advances to the Micro, Small and Medium Enterprise (MSME) borrowers. RBI directed all banks and financial institutions that existing loans to MSME classified as standard may be restructured without a downgrade in the asset classification. These instructions are extended by notification dated 5.5.2021. These guidelines have statutory force and binding on the banks/financial institutions as held by Hon'ble Supreme Court in Central Bank of India Vs Ravindra & others 2002 (1) SCC 367.

5.1. Petitioner is registered as an MSME with Government of India. Account of the petitioners was 'Standard' as on 1.3.2020. The above guidelines notified by the RBI are applicable to petitioners. If these guidelines were followed, the petitioners' account could not have been declared as Non Performing Asset (NPA). As these guidelines are binding on the respondent bank, its decision to hold petitioners account as NPA and taking recourse to SARFAESI Act, 2002, is ex-facie illegal.

5.2. He would submit that as RBI guidelines have statutory force, a right is vested in him to seek enforcement of those guidelines in a writ petition under Article 226 of the Constitution of India. As petitioners are seeking to assert their right under RBI guidelines, the writ petition is maintainable and they need not be compelled to take recourse to Section 17 of the Act, 2002. Further, the Tribunal can not enforce compliance of RBI guidelines. It can only decide the legality of actions taken under the Act and therefore is not an effective and efficacious remedy.

5.3. In support of his contentions, learned counsel placed reliance on the following decisions:

i) Central Bank of India Vs Ravindra & others ii) Sravan Dall Mill P. Limited vs. Central Bank of India and Ors (2009) 6 ALD 616 (DB), iii) Sardar Associates and others Vs Punjab & Sind Bank and others (2009) 8 SCC 257, iv) Smt R Vimala Vs State Bank of India 2016 SCC OnLine Hyd 276= (2017) 1 SLD 193 (DB), and v) ITC Limited Vs Blue Coast Hotels Limited (2018) 15 SCC 99.

6. Per contra, according to learned counsel for respondent bank, the writ petition is not maintainable. If petitioners are aggrieved by the actions/decisions of the bank under SARFAESI Act, 2002, they have to avail remedy under Section 17 of the Act, 2002. The Tribunal is competent to go into all issues as urged in this writ petition. It is an effective and efficacious remedy.

6.1. He would submit that various steps are taken by the bank starting with declaring the account as NPA, taking symbolic possession, taking physical possession, action sale notice, conducting of auction and confirming the sale to

highest bidder but at no stage the petitioners raised the plea that provisions of SARFEASI Act, 2002 are not applicable and that RBI guidelines have to be complied. He would further submit that long ago petitioners' account was declared as NPA and therefore petitioners account cannot be called as standard account.

6.2. He would submit that writ of mandamus is not maintainable to seek to set aside sale certificate. Further, this writ petition is filed after sale of secured asset was successfully conducted and property was registered in the name of purchaser.

7. Issue for consideration is whether writ petition is maintainable when petitioners have an effective and efficacious remedy under Section 17 of the Act, 2002 before the Debts Recovery Tribunal?

8. Section 17 of the Act, 2002 creates a remedy to an aggrieved person against any action/decision of a bank/financial institution in the process of recovering the loan/financial assistance advanced by it. In an application filed under Section 17, the Tribunal can go into all aspects concerning the actions/ decisions, taken by the bank/financial institution. In the process of testing the validity of actions/ decisions, scope of RBI guidelines, their application to a borrower and violation thereof, as alleged by petitioners, can also be gone into by the Debts Recovery Tribunal. If established, the Debts Recovery Tribunal can hold the decision of the respondent bank declaring the account of petitioners as NPA, as illegal. As a corollary all the further steps taken by the bank under SARFAESI Act, 2002 can also be declared as illegal. Thus, remedy under Section 17 of the Act, 2002 is an effective and efficacious remedy.

9. In *GM, Sri Siddeshwara Co-operative Bank Ltd. and Ors. vs. Ikbali and Ors* (2013) 10 SCC 83 the Hon'ble Supreme Court considered the scope of power of Debts Recovery Tribunal. It is held:

"23. There is one more aspect in the matter which has troubled us. Against the action of the Bank Under Section 13(4) of the SARFAESI Act, the borrower had a remedy of appeal to the Debts Recovery Tribunal (DRT) Under Section 17. The remedy provided Under Section 17 is an efficacious remedy. The borrower did not avail of that remedy and further remedies from that order and instead directly approached the High Court in extraordinary jurisdiction under Article 226 of the Constitution of India.

26. In *United Bank of India v. Satyawati Tandon and Ors.* (2010) 8 SCC 110, the Court was concerned with an argument of alternative remedy provided Under Section 17 of SARFAESI Act. Dealing with this argument, the Court had observed that where an effective remedy was available to the aggrieved person, the High Court must insist that before availing the remedy under Article 226 the alternative remedies available to him under the relevant statute are exhausted. In paragraphs 43, 44 and 45 (pg. No. 123) of the Report, the Court stated as follows:

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the Petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented."

(Emphasis supplied)

9.1. In *Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C.* (2018) 3 SCC 85 Supreme Court held:

"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 v. Satyawati Tandon and Ors.* 2010 (8) SCC 110, and *General Manager, Sri Siddeshwara Cooperative Bank Limited and Anr. v. Ikbali and Ors.* 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.

....

7. The Section 13(4) notice along with possession notice Under Rule 8 was issued on 21.04.2015. The remedy Under Section 17 of the SARFAESI Act was now available to the Respondent if aggrieved...The writ petition was clearly not instituted bonafide, but patently to stall further action for recovery. There is no pleading why the remedy available Under Section 17 of the Act before the Debt

Recovery Tribunal was not efficacious and the compelling reasons for by-passing the same. Unfortunately, the High Court also did not dwell upon the same or record any special reasons for grant of interim relief by direction to deposit.

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 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.

.....

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:

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.

14. A similar view was taken in *Punjab National Bank and Anr. v. Imperial Gift House and Ors.* (2013) 14 SCC 622, observing:

3. Upon receipt of notice, the Respondents filed representation Under Section 13(3-A) of the Act, which was rejected. Thereafter, before any further action could be taken Under Section 13(4) of the Act by the Bank, the writ petition was filed before the High Court.

4. In our view, the High Court was not justified in entertaining the writ petition against the notice issued Under Section 13(2) of the Act and quashing the proceedings initiated by the Bank.”

(Emphasis supplied)

10. The learned counsel for the petitioners contended that this writ petition under Article 226 is maintainable, by relying on the Andhra Pradesh High Court judgment in *Sravan Dall Mill P. Limited* (supra) where it was held that a Writ Petition under Article 226 of the Constitution of India is maintainable at the stage of section 13(3A) of the SARFAESI Act, 2002. Firstly, in the instant case sale was confirmed and property was registered in the name of purchaser. It is no more at the stage of Section 13 (3A). As analyzed by the Delhi High Court in *Sigma Generators Pvt. Ltd. v. Oriental Bank of Commerce* 2014 SCC OnLine Del 7198, the High Court was dealing with a situation after Section 13 (3A) stage and when creditor had not taken any further action. Secondly, time and again Hon’ble Supreme Court is cautioning the High Courts not to interject special dispensation under SARFAESI Act and not to entertain writ petitions against decisions/orders made by Banks/Financial Institutions to recover the loan advanced by them. Therefore, this decision does not come to the aid of petitioner.

11. Further, in the case of *Sigma Generators Pvt. Ltd.* (supra) the division bench of Delhi High Court has distinguished the above AP High Court Judgment in the following manner:

“The counsel for the appellants / writ petitioners has pegged his case on the judgment of the Division Bench of the Andhra Pradesh High Court in *M/s. Sravan Dall Mill P. Ltd. Vs. Central Bank of India* AIR 2010 Andhra Pradesh. The High Court of Andhra Pradesh in the said judgment held that the remedy of judicial review under Article 226 of Constitution of India is available with respect to a decision of a creditor declaring the debtor’s account as an NPA by issuing a notice under Section 13(2) of the SARFAESI Act. However the said remedy was

held to be available, because in that case the creditor, after issuing notice under Section 13(2) on 14th June, 2006 and inspite of the debtor representing / objecting under Section 13(3A) thereagainst, neither passed any order on the said representation/objection, nor took any measures under Section 13(4) of the SARFAESI Act. In view thereof, it was held that declaring the account as NPA by itself leads to serious consequences and when measures under Section 13(4) are not taken by the creditor, debtor is also deprived of seeking redressal under Section 17 of the said Act" (Para 8)

"It is therefore evident that the facts of the present case are materially different from that before the Andhra Pradesh High Court in the judgment supra. In that case, a notice dated 14th June, 2006 under Section 13(2) of the Act was issued and till the judgment in 2009, no action under Section 13(4) had been taken. It was in that context that it was held that a challenge to the notice under Section 13(2) was maintainable, as the creditor Bank having not taken action under Section 13(4), the remedy under Section 17 was not available. However here, the respondent OBC has admittedly taken action under Section 13(4) of the Act, though after filing of the writ petition and thus the remedy under Section 17 is available to the appellants / writ petitioners. The appellants / writ petitioners by rushing to this Court, immediately after the notice under Section 13(2) and challenging the same, cannot interfere with the scheme of the SARFAESI Act, whereunder the respondent OBC after considering the representation against the notice under Section 13(2) and after rejecting the same, is entitled to take action under Section 13(4) of the Act. It may be mentioned that no time for taking action under Section 13(4), after issuance of the notice under Section 13(2) has been specified and the action under Section 13(4) in the present case has been taken within reasonable time."

(Para 10).

"We may record that a Division Bench of the High Court of Madras in N.A.K.G. Cotfibres Private Ltd. Vs. Zonal Manager also has taken the view that if the Bank has not followed the procedures contemplated under Section 13(2) or under Section 13(3A) or Section 14, the proper course open to the petitioner is to approach the DRT under Section 17 and not to rush to the Court with a writ petition. The view of the Madras High Court thus appears to be that even if the creditor Bank, after issuing notice under Section 13(2) does not take further steps, the remedy available to the aggrieved debtor is under Section 17 only."(para 17)

11.1. The aforesaid ratio was also followed by the Delhi High Court in the case of Yashwant Singh v. Indian Bank, 2015 SCC OnLine Del 9625. It has referred to decision of other High Court.

The Delhi High Court held that:

"We find a Single Judge of the Calcutta High Court in Core Ceramics Ltd. v. Union of India also to have taken a view that once the bank authorities have classified

an account as NPA, the writ Court would have little or no role to play in deciding such an issue in view of the complete autonomy of the Banks and financial institutions in asset classification under the SARFAESI Act and upheld in *Mardia Chemicals Ltd. and Transcore*. Similarly, a Division Bench of Madras High Court in *Gain -N-Nature Food Products v. Union of India* has held that if a Bank or financial institution forms an opinion that an account of a borrower has become an NPA, such opinion is not justiciable in a Court exercising jurisdiction under Article 226 of the Constitution because Section 13(2) does not use the expression "and his account in respect of such debt has become a Non - Performing Asset" but uses the expression "and his account in respect of such debt is classified by the secured creditor as Non Performing Asset"[para 8(Y)].

"The question, whether declaration of an account as an NPA is a jurisdictional fact is no longer res integra. A Division Bench of this Court in *Triton Corporation Limited v. Karnataka Bank* held that a jurisdictional fact is one on the existence of which depends the jurisdiction of a Court, tribunal or an authority and which fact if does not exist, the Court or tribunal cannot act. In contradiction, it was further held that the determination by the Bank whether the account of a borrower is a NPA or not, cannot be classified as jurisdictional fact but would fall in the category of adjudicatory facts relating to the merits." [para 8(Z)]

12. The law declared by Hon'ble Supreme Court is binding on all High Courts. Hon'ble Supreme Court clearly held that remedy under Section 17 of the Act, 2002 is an effective and efficacious remedy and the High Court should not entertain writ petitions directly without availing the remedies provided by the Act. In view of the law laid down by Hon'ble Supreme Court, the decision in *Srawan Dall Mills Private Limited* is no more good law, even assuming that it has given a blanket opening to file writ petition under Article 226 of Constitution of India without availing the remedy under Section 17 of the Act, 2002.

13. Further, it is not the case of petitioners that there is urgency in the matter and the Tribunal may not grant an immediate relief. Firstly, Tribunal is competent to grant interim protection and secondly, there is no tearing hurry in the case in as much as already secured asset was sold and property was registered in the name of purchaser.

14. Having regard to the view expressed by various High courts and the Hon'ble Supreme Court, when petitioners have an effective and efficacious remedy under Section 17 of the Act, 2002, we are not inclined to entertain the writ petition. The writ petition is dismissed leaving open to the petitioners to avail remedy provided by Section 17 of the Act, 2002.

15. It is made clear that we have not expressed opinion on merits and it is open to the petitioners to raise all pleas available to them in law before the Debts Recovery Tribunal. Miscellaneous applications, if any pending, stand dismissed.