(2016) 07 OHC CK 0044

In the Orissa High Court

Case No : Writ Petition (Civil) No. 11707 of 2016

Parsuram Meher		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4)

Citation : (2016) 165 AIC 834 : (2017) 2 BC 108 : (2016) 2 DRTC 727 : (2017) 1 NIJ 801

Hon'ble Judges : Mr. Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : Mr. M.K. Mallick, Senior Advocate and along with B.K. Mohanty, J. Sahu, N. Das, A. Behera and D. Solanki, Advocates, for the Petitioners; None, for the Opposite parties

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J.—The petitioner, being the proprietor of M/s. Patneswari Rice Mill situated at Jogimunda in the district of Bolangir, had availed a term loan of Rs. 60.00 lakhs, out of which the State Bank of India released Rs. 40.00 lakhs towards construction of building and installation of machineries etc. Subsequently, the petitioner intended to avail cash credit loan of Rs. 20.00 lakhs towards working capital for purchase of raw materials, which was sanctioned, but due to non-release thereof, the petitioner suffered. On account of nonpayment of term loan amount, the opposite party bank issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for brevity). Though the petitioner filed objection under Section 13(3-A) of the SARFAESI Act, the bank did not pass any reasoned/speaking order and initiated proceeding under Section 13(4) of the said Act.

At this point of time, the petitioner approached this Court by filing W.P.(C) No.

17378 of 2015, which was dismissed by a Division Bench of this Court vide order dated 30.11.2015, which reads as under:

"In view of the law laid down by the Hon ble Apex Court in various decisions e.g. United Bank of India v. Satyawati Tandon AIR 2010 SC 3413 Kanaiyalal Lalchand Sachdev v. State of Maharashtra 2011(2) SCALE 233 and GM Sri Siddeshwara Cooperative Bank Ltd. v. Sri Ikbal 2013(10) SCALE 396 this writ petition is not maintainable. The petitioner has got an alternative efficacious remedy before the DRT. How much amount the Bank has given to the petitioner and how much amount the petitioner has received are disputed questions fact which cannot be effectively adjudicated in a writ petition.

On the ground of availability of alternative remedy to the petitioner and also due to involvement of disputed questions of fact we are not inclined to entertain this writ petition and we dismiss the same.

In the event the petitioner approaches the DRT it is the duty of the Registrar of the said authority to get an appropriate order from the Presiding Officer if he is not available in the State of Odisha."

After the writ petition was dismissed, as not maintainable, the present writ petition has been filed on the ground that the promises held out by the opposite party bank in favour of the petitioner for release of cash credit loan, which was sanctioned, having not been carried out, the entire action is hit by principle of promissory estoppels and, as such, the ambit and scope of Section 17 of the SARFAESI Act being different, the grievance of the petitioner may not be appropriately adjudicated. As a consequence thereof, notices issued under Section 13(2) and 13(4) of the SARFAESI Act are void ab initio. Hence, the petitioner seeks interference of this Court.

2. Mr. M.K. Mallick, learned Senior Counsel for the petitioner states that the opposite party bank having held out a promise to release cash credit loan of Rs. 20.00 lakhs for the purpose of purchase of raw materials in the shape of working capital and the same having not been released, the bank has not kept its promise. Thereby, consequential action taken under Sections 13(2) and 13(4) of the SARFAESI Act cannot sustain.

3. Having heard learned Senior Counsel for the petitioner and upon going through the records, the matter is being disposed of at the admission stage without issuing notice to the opposite parties.

4. Learned Senior Counsel appearing for the petitioner does not dispute with regard to availing of term loan by the petitioner and default in repayment thereof. Admittedly, since the petitioner failed to repay instalment due on term loan account, his loan account was declared as NPA. Due to default in repayment of the term loan in question, the opposite party bank initiated the proceedings under Section 13(2) of the SARFAESI Act by issuing notice for payment of the outstanding loan amount. In response to the same, the petitioner filed objection

under Section 13(3-A) of the Act and, having not satisfied with the said reply, the bank proceeded with the matter under Section 13(4) of the said Act. The contention raised that the term loan and the composite loan cannot be treated as NPA, to that effect learned Senior Counsel for the petitioner has failed to produce any material before this Court for consideration. In any case, the petitioner having approached this Court against the notice under Sections 13(2) and 13(4) of the SARFAESI Act, when his earlier writ application bearing W.P.(C) No. 17378 of 2015 was dismissed vide order dated 30.11.2015 stating that the writ application was not maintainable. By way of present writ application, the petitioner wants to effectively review the said order, which this Court is not inclined to do. In view of the law laid down by the Apex Court, proceedings under the SARFAESI Act are not maintainable before this Court. In a camouflaged manner the present writ application has been filed taking recourse to purported promissory estoppels, for which this Court is also not inclined to entertain the same, particularly when nothing has been produced before this Court to substantiate such contention. This question can be considered, if the same is raised by the petitioner by filing properly constituted application before the appropriate forum.

5. In K.S. Rashid & Sons v. I.T.I. Commission, AIR 1954 SC 207, the Apex Court held that, the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse, or to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

Similar view has also been taken by the Apex Court in Century Spinning and Manufacturing Company Ltd. v. Ulhasnagar Municipal Council, AIR 1971 SC 1021 and also in subsequent plethora of decisions.

6. In Union of India v. S.P. Anand, AIR 1998 SC 2615, the Apex Court held that at the stage of preliminary hearing of a writ petition filed under Article 226, the High Court is required to consider whether on the basis of averment contained in the writ petition, the petitioner therein is entitled to seek relief prayed for and such relief can be granted by the Court in exercise of its jurisdiction under Article 226. If the Court is of the opinion that prima facie case is made out for granting the relief sought in the writ petition, the rule nisi can be issued calling upon the person or persons against whom the relief is sought, to show cause as to why such relief should not be granted. On the contrary, the Court finds that no such prima facie case is made out the writ petition has to be dismissed without issuing notice to the person or persons against whom the relief is sought. The object of placing the writ petition before the Court for prima facie hearing is to ensure that the writ petition is not frivolous in nature and at the threshold the Court should be satisfied that there are bona fide triable issues and if it is found that the writ petition on the face of it does not raise any triable issue, it is liable to be dismissed in limine. At the stage of preliminary hearing of the writ petition, the High Court before issuing a notice to the Respondents has to guard against the

Court being used as forum for gaining publicity by the person or persons moving the writ petition.

7. In view of the law laid down by the Apex Court, applying the same to the present context, once this Court, in an earlier writ petition filed by the petitioner, held that the writ petition is not maintainable, we are not inclined to entertain the present writ petition, as the order dated 30.11.2015 passed in W.P.(C) No. 17378 of 2015 by a Division Bench of this Court, having not been challenged before the higher forum, has reached its finality.

8. In the above view of the matter, the writ application merits no consideration and, as such, is dismissed. No costs.

