(2018) 05 MP CK 0024

In the Madhya Pradesh High Court

Case No : WP.5488, 5489, 5490 OF 2018

Prakash Agrawal & Anr — APPELLANT

Vs

State Bank Of India & Ors — RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

Constitution of India — Article 136, 226, 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(4), 13(8), 14, 14(3), 17, 17(1), 18
Transfer of property Act, 1881 — Section 65A, 111

Citation : (2018) 05 MP CK 0024

Hon'ble Judges : SANJAY YADAV, J;ASHOK KUMAR JOSHI, J

Bench : Division Bench

Advocate : Gaurav Mishra, M.P. Agrawal, Arvind Dudawat, Praveen Newaskar,

Final Decision : Dismissed

Judgement

Date,Balance

06.08.2011,Rs.6508.83

08.08.2011,Rs.2608.83

09.08.2011,Rs.11508.83

No.5432/2011 whereagainst present Writ Petition is filed.,

Though prima facie we observe that the petitioners have no locus to challenge the action in a writ petition, because the right of the guarantor having",

been determined in WP.5432/2011 which having attained finality; however, we refrain from passing any order, in view of the preliminary objection",

raised on behalf of the respondent No.6 as to the maintainability of the petition in view of the availability of remedy under Section 17 of 2002 Act.,

Reliance is placed on the decision in â??United Bank of India Vs. Satyawati

Tondon and others [(2010) 8 SCC 110]â? and in â??Agarwal Tracom,

Private Limited Vs. Punjab National Bank and others (2018) 1 SCC 626â??.,

In Satyawati Tondon (supra), it is held:",

â??42. There is another reason why the impugned order should be set aside. If respondent 1 had any tangible grievance against the notice issued,

under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression",

â??any personâ? used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who",

may be affected by the action taken under Section 13(4) or Section 14.,

Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters",

within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and,

effective.,

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 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, 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 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??",

Though learned counsel appearing for the petitioner has laboured hard to distinguish the decision rendered in M/s Satyawati Tondon (supra) and has,

relied upon the decisions in Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others: (2014) 6 SCC 1,

[paragraph 29 the reliance whereof has been placed] wherein their Lordships were pleased to observe :,

â??29- Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or,

any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any,

court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District",

Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions,

attaching finality to the decision of an authority excluding the power of any other authority or Court to examine such a decision will not be a bar for the,

High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot takeaway a power vested by the,

Constitution. To quote, the observations of this Court in Columbia Sportswear Company v. Director of Income Tax, Bangalore[(2012) 11 SCC 224]:",

â??17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court,

under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the Legislature making the decision of the,

tribunal final or conclusive, we hold that sub-section (1) of Section 245S of the Act, insofar as, it makes the advance ruling of the Authority binding on",

the applicant, in respect of the transaction and on the Commissioner and income-tax authorities subordinate to him, does not bar the jurisdiction of this",

Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge,

to the advance ruling of the Authority.â? In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be", challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High",

Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled",

principles of law.â??,

Evidently, the decision in Harshad Govardhan Sondagar (supra) was in the context of the exercise of power by the District Magistrate under Section",

14 of the Act of 2002, in respect of leases created prior to mortgage which created secured assets and leases created afterÂ creation of the",

mortgage, vide Section 65-A of the Transfer of property Act, 1881, but prior to receipt of Section 13 (2) of the Act of 2002 notice by borrower. In",

these class of cases it was held that unless and until the lease is validly terminated as per any of the modes specified in Section 111 of the Act of,

1881, including surrender of lease by lessee to secured creditors or Chief Metropolitan Magistrate/ District Magistrate, such leases would not stand",

automatically determined upon action being initiated under Section 13/Section 14 of the Act of 2002. Such is not the case as the present one. The,

petitioner having mortgaged their subject properties towards security and the properties being secured assets are subjected to the proceedings under,

Section 14 of the 2002 Act.,

Whereas the case at hand frescoes different facts that these petitioners are the purchasers from the mortgagor whose property was already sold in,

auction. It is for the petitioners to establish that they have any right of redemption as would prevent a proceeding under Section 14 of 2002 Act. For,

that the petitioners will have to invoke the jurisdiction of the Tribunal under Section 17 of 2002 Act or any other forum under law.,

In view whereof, the objection as to the maintainability is upheld. Petitions are dismissed with the liberty to the petitioners to take recourse to remedy",

under Section 17 of 2002 Act or any other forum as per law. No costs.,