

(2022) 09 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Petition No. 19444 Of 2022

Pramila Dosi And Others

APPELLANT

Vs

IDFC First Bank Limited And Others

RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 14, 17, 17(2), 17(3), 17(7)
Recovery Of Debts And Bankruptcy Act, 1993 — Section 19(25)

Citation : (2022) 09 MP CK 0027

Hon'ble Judges : Sujoy Paul, J;Prakash Chandra Gupta, J

Bench : Division Bench

Advocate : Mohd. Wajid Hyder, Aarish Hyder, Kishore Shrivastava, Shashank Verma, Malikarjun Khare, Ankit Agrawal

Final Decision : Disposed Of

Judgement

Sujoy Paul, J

1. This petition filed under Article 226/227 of the Constitution of India takes exception to the order of the Debt Recovery Tribunal (in short 'Tribunal') dated 22.6.2022 (Annexure P/3) whereby the Tribunal while granting interim relief to the petitioners imposed a condition of deposit of Rs.1 Crore and 50 Lacs before respondent no. 1 within two months. The petitioners feeling aggrieved by the said condition, filed an application for review/modification of order dated 22.6.2022 which came to be dismissed by another impugned order dated 8.7.2022 (Annexure P/6).

2. Draped in brevity, the admitted facts between the parties are that the petitioners being guarantors and mortgagors of their properties, obtained loan and could not repay the same to the Bank. The Bank proceeded against the petitioners by instituting application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002, (for brevity 'Securitisation Act').

3. In turn, the District Magistrate passed the order dated 20.5.2022. The said order of District Magistrate became subject matter of challenge in the appeal filed by the petitioners under Section 17 of the Securitisation Act. The petitioners pressed their interim prayer before the Tribunal. The Tribunal by the impugned order dated 22.6.2022 granted a conditional interim order and directed the petitioners to deposit Rs.50 lacs within fifteen days i.e. upto 7.7.2022 and remaining Rs. 01 Crore in two installments within

45 days therefrom. The review application was dismissed by passing a detailed order dated 8.7.2022.

4. Aggrieved, learned counsel for the petitioners raised three points before us –

(A) The Tribunal was not competent to impose any condition while granting interim relief.

(B) Even if the Tribunal was competent to impose any condition, the Tribunal erred in imposing onerous condition in the order dated 22.6.2022.

(C) As per the scheme of the Securitisation Act, once the application under Section 17 of the said Act is filed, status quo should be automatically maintained by the Bank.

5. To bolster the said submission, Shri Hyder, learned counsel for the petitioners urged that this petition is maintainable in view of a Full Bench decision of this Court reported in AIR (2004) M.P. 01. (M/s Kowa Spinning Ltd and others etc. vs. Debt Recovery Tribunal and others). This court came to hold that despite availability of alternative remedy, the petition before this Court is tenable.

6. The onerous condition can not sustain judicial scrutiny is the next submission in support of which reliance is placed on the judgment of this Court reported in (2014) 2 M.P.L.J. 379 (R.R. Floors Mills Pvt. Ltd. Vs. State Bank of India). For the same purpose, the judgment of Supreme Court reported in AIR 2002 SC 2082 (Vijay Kumar Madan and others vs. R. N. Gupta Technical Education Society and others) and another judgment of this court reported in (2014) 1 M.P.L.J. 520 (Alok Saboo Vs. State Bank of India) was relied upon.

7. During the course of hearing, learned counsel for the petitioners placed reliance on certain interim orders passed by this Court wherein the protection was granted to the petitioners therein. For this purpose, the interim order dated 17.8.2022 passed in W.P. No.18238/2022 (M/S Ganpat Pannalal And Others Vs The State Bank Of India) is relied upon.

8. The order dated 15.9.2020 of this Court in M.P. 2027/2020 (Prakash Singh and others vs Indiabulls Housing Finance Ltd.) is relied upon to show that when an amendment was allowed subject to certain onerous conditions, this Court interfered with the same.

9. In support of the contention that there should be an automatic stay once the application under Section 17 is filed by the borrower, learned counsel for the petitioners relied on the language employed in sub-section (2) and (3) of Section 17 of the Securitisation Act. It is submitted that unless the Tribunal gives its conclusion as mandated in said sub-section (2) and (3) of the Act, the secured creditor has no authority, jurisdiction and competence to proceed against the borrower. In order to place reliance on interpretation of statutes namely Section 17(2) & (3) aforesaid, judgment of Supreme Court reported in *Ramchandra Keshav Adke v. Govind Joti Chavare*, (1975) 1 SCC 559 was pressed into service.

10. In nutshell, it is urged that the condition imposed by the Tribunal is onerous in nature and, therefore despite availability of alternative remedy, this petition may be entertained.

11. Shri Hyder learned counsel for the petitioners further submits that there are five properties which were subject matter of proceedings under Section 14 of the Securitisation Act. Out of those five properties, one property is the residential accommodation of the petitioners. The petitioners gave their offer to the Bank in review petition but the Tribunal has not paid any heed to the said offer. At least, the petitioners residential accommodation may be protected till the next date of hearing i.e. 29th of September 2022.

12. Sounding a contra note, Shri Kishore Shrivastava, learned Senior counsel for the Bank submits that the petitioners has an efficacious statutory alternative remedy to prefer an appeal against the impugned order. Thus, in view of judgments (2001) 6 SCC 569 (*Punjab National Bank Vs. O.C. Krishnan and Others*), (2010) 8 SCC 110 (*United Bank of India VS. Satyawati Tondon and others*), (2018) 3 SCC 85 (*Authorized Officer, State Bank of Travancore and another VS. Mathew K.C.*), (2022) 3 MPLJ 305 (*Devendra Kumar Rai Vs. State Bank of India Through Asst. General Manager and others*), this petition is not entertainable.

13. Learned Senior counsel for the Bank further submits that this petition is not entertainable because there is no jurisdictional error in the decision making and in passing of both the impugned orders by the Tribunal.

14. By placing reliance on the judgments of the Supreme Court and two judgments of Madras High Court, viz. (2004) 4 SCC 311 (*Mardia Chemicals Ltd Vs. Union of India*), (2007) SCC Online Mad 1332, (*Ramco Super Leather Ltd. Vs UCO bank and another*) and (*M/s. Laxmi Shankar Mills Vs. The Authorised Officer*) 2008-2- L.W. 381, learned Senior counsel urged that it cannot be said that Tribunal did not have jurisdiction to grant stay or while granting stay, impose necessary conditions for the same. In absence of any jurisdictional error, this petition cannot be entertained.

15. It is further argued that in para-3 of this petition where petitioners were required to state whether they have exhausted the alternative remedies, they have only assigned one reason for by- passing the Appellate Tribunal i.e. the

Bench of DRAT, Allahabad is not functional because learned Chairperson is on leave till 14.09.2022. This cannot be a reason to by-pass a statutory remedy.

16. Neither in the review application filed before the Tribunal nor in the present writ petition, petitioners have pleaded that the condition so imposed by impugned orders is 'onerous' in nature. In absence of any pleadings, the oral arguments cannot be entertained.

17. The petitioners were required to establish as to how impugned condition is onerous. The petitioners have no right to call that condition as onerous for the simple reason that when they gave an offer for one time settlement vide application dated 21.03.2022, the petitioners pleaded that 'with my own resources, I cannot mobilize more than Rs.3.30 lakhs as such, I am offering the amount as my final offer'. The same was the pleading in the review application before the Tribunal. The petitioners could have given an offer of Rs.3.50 crores only when they have the arrangement to pay that much of amount. If for one time settlement they were ready and willing to pay the said amount, what prevented them to fulfill the condition imposed by the Tribunal which is for a lesser amount of Rs.1.50 crores. Thus, the petitioners have shown an artificial crisis which cannot be accepted.

18. The further argument of learned Senior counsel is that the condition imposed by the Tribunal in the impugned order cannot be treated to be onerous. The said condition was not imposed for the purpose of entertaining the basic application filed under Section 17 of the Act.

19. The condition was imposed only for the purpose of interim protection and Tribunal is competent to do so in the light of judgment of Supreme Court in *Mardia Chemicals* (supra) and said two judgments of Full Bench and Single Bench of Madras High Court following the same ratio decidendi.

20. Lastly, it is argued by Shri Shrivastava, that the whole attempt of petitioners is to delay the proceedings. On 25.08.2022 before the Tribunal, the petitioners prayed for an adjournment on the ground that present petition is pending.

21. The Bank has a statutory right to proceed against the petitioners. The said right of the petitioners cannot be curtailed.

22. The parties confined their arguments to the extent indicated above.

23. We have heard the parties at length and perused the record.

Maintainability and Entertainability :-

24. In our considered opinion, the words 'maintainability' and 'entertainability' have different meaning and connotation in law. The Full Bench Judgment of this Court in *M/s Kowa Spinning Ltd.* (supra) does not deal with the question of maintainability. In our opinion, this is settled in law that writ petition is maintainable before this Court despite availability of statutory alternative remedy on certain conditions, such as :-

- (i) Order impugned is passed by an authority having no jurisdiction.
- (ii) The Principles of natural justice are grossly violated.
- (iii) Constitutionality of the enabling provision itself is called in question etc.

[see Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others, (1998) 8SCC 1]

25. However, every petition which is maintainable cannot be entertained by short-circuiting the statutory alternative remedy. Thus, the words 'maintainability' and 'entertainability' are used for different purposes. We are inclined to hold that present petition is maintainable but deem it proper to deal with the aspect whether it is entertainable.

26. The Full Bench in Kowa Spinning Ltd. (supra) opined as under :-

"36. We have referred to the aforesaid decisions only to indicate that there are no inflexible rules for exercise of discretion by High Court while issuing the prerogative writ of certiorari. It would depend upon the facts of each case. As has been held in the case of Indian Hume Pipe Co. Ltd. (AIR 1977 SC 1132) (supra), there is no impropriety involves a pure question of law.

In the case of Champalal Binani (AIR 1970 SC 645) (supra), the Supreme Court expressed the view that where the order is on the face of it erroneous and raises question of jurisdiction, the High Court can indubitably entertain the writ petition. Thus, it is graphically clear that there is no bar for entertaining a writ petition under Articles 226 and 227 of the Constitution of India where an alternative remedy has not been taken resort to. It is a self-imposed restraint and restriction by the Court itself. While exercising such power under the Constitution the Court is required to keep in view certain factors. As has been noticed when an order is passed without jurisdiction or when principles of natural justice are violated or when the vires of an Act is challenged, or where enforcement of any of the fundamental right is sought or where a pure question of law arises or where a strong case has been made out the Court may exercise the discretion. It is further noted that the Apex Court has also observed that the grounds are not exhaustive. No strait-jacket formula can be laid down. It will depend upon the facts of each case."

(Emphasis supplied)

27. A minute reading of this verdict of Full Bench makes it clear that the writ proceeding was held to be maintainable depending upon the facts of each case. The petition can be maintained despite availability of alternative remedy when the order is erroneous and raises question of jurisdiction. In the same judgment, it was held that High Court has imposed restraint and restriction on itself. In this view of the matter, in our view the basic question is whether the impugned order passed by the Tribunal imposing the condition can be said to be without jurisdiction ?

Jurisdictional error :-

28. Learned counsel for the petitioners have taken pains to submit that the Tribunal did not have jurisdiction to impose such condition. For this purpose, they cited certain orders passed by this Court. However, in our opinion the curtains are finally drawn on this aspect by the Supreme Court in the case of Mardia Chemicals Ltd. (supra), the relevant paragraph of the same reads as under :-

"80(3). That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose."

(Emphasis supplied)

29. The ratio decidendi of this judgment was followed by the Division Bench of Madras High Court in the case of 2007 SCC OnLine Mad 1332, Ramco Super Leathers Ltd. & Ors. Vs UCO Bank & Anr. The same issue cropped up before the Full Bench of the Madras High Court in the case reported in 2008-2-L.W.381 (M/s Lakshmi Shankar Mills (P) Ltd., & others vs. The Authorised Officer/Chief Manager, Indian Bank & others). The Full Bench in para-22(i) opined as under :-

"22. In the light of the foregoing discussion, we summarise our findings as follows :-

(i) The right of the bank is not automatically suspended upon filing of an application under Section 17 of the Securitisation Act and the secured creditor can proceed to auction secured asset whether no stay is granted by the Tribunal."

(Emphasis supplied)

30. We are in respectful agreement with the above view taken by the Full Bench of Madras High Court. The finding given by the Full Bench in para-22(i) is the complete answer to the contention (C) of the learned counsel for the petitioners which is reduced in writing in para-4 of this order.

31. So far judgment of this Court in R-R Flours Mills Private Ltd and Alok Saboo (supra) of this Court and judgment of Supreme Court in Vijay Kumar Madan (supra) are concerned, suffice it to say that the said judgments were passed in different factual backdrop. The condition so imposed were relatable to a particular statutory provision of C.P.C. or otherwise. In that backdrop, the Courts held that the conditions are onerous. At the cost of repetition, the petitioners have not laid necessary foundation by means of pleadings in the writ petition assailing the condition by calling it 'onerous'. In our view, the pleadings are backbone/foundation of a petition. In absence of minimum essential pleadings, on the basis of oral submission alone, interference cannot be made. The Apex Court in Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd., (2013) 5 SCC 470 opined as under :-

"22. -----Furthermore, while granting such a

writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith."

(Emphasis supplied)

32. Apart from this, in our opinion the Tribunal had inherent power to grant interim relief. The Tribunal was also competent to impose necessary conditions while granting interim relief to secure the ends of justice. A conjoint reading of Section 17(7) of the Securitisation Act and Section 19(25) of Recovery of Debts and Bankruptcy Act, 1993, leaves no room for any doubt that the Tribunal was well within its jurisdiction while imposing a condition for depositing the amount. Thus, we are unable to persuade ourselves with the line of argument that Tribunal did not have jurisdiction at all to impose any condition.

33. The ancillary question is whether the condition so imposed by impugned order dated 22.06.2022 is 'onerous in nature'. In order to show that said condition is onerous, the minimum expectation from the petitioners was to plead with accuracy and precision that the said order is onerous and why it is termed as 'onerous' by the petitioners.

34. On a specific query from the Bench, Shri Wajid Hyder, learned counsel for the petitioners could not show any such pleading where with utmost clarity it is pleaded that condition was onerous. No reasons are also shown as to why the condition was treated to be either 'heavy' or 'onerous' condition. In absence of basic foundation/pleading in the review application, no fault can be found in the order of Tribunal rejecting the Review application.

35. We also find substance in the argument of learned Senior counsel for the Bank that the petitioners on the one hand gave offer of paying Rs.3.50 crores while giving one time settlement offer and while making pleadings in their Review Application, on the other hand, when it comes to fulfill a condition imposed by the Tribunal, they called the said condition as 'onerous'.

36. In this view of the matter, we are unable to hold that the orders impugned passed by the Tribunal are either without jurisdiction or suffer from any procedural impropriety and illegality. The scope of interference under Article 227 of the Constitution is limited. This Court cannot sit in appeal and consider the factual backdrop of the matter. Moreso, when main case of petitioners is pending before the Tribunal. The petition although is maintainable, is not entertainable for the reasons stated hereinabove. Thus, while declining interference in discretionary jurisdiction, we are only inclined to observe that it will be lawful for the Tribunal to take up S.A.No.500/2022 on the next date of hearing and make endeavour to decide the matter finally. The parties undertake to argue the matter finally on the next date of hearing.

37. With the aforesaid observation, this writ petition is disposed off.