
(2019) 04 JH CK 0010
In the Jharkhand High Court
Case No : Writ Petition (c) No. 1378 Of 2019

Rohit Shekhar And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

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

Citation : (2019) 04 JH CK 0010

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Indrajit Sinha, Jayant Franklin Toppo

Final Decision : Dismissed

Judgement

1. This writ petition is filed under Article 226 of the Constitution of India wherein the order dated 25.01.2019 as contained under Annexure-5 in pursuance to the notice issued under Section 13(4) of the Securitisation and Reconstruction of Finance Assets and Endorsement of Security Act, 2002. The petitioner/borrower has been restrained not to deal with the property and any relief in the property as per subject to the charge of the Axis Bank Limited.
2. Admittedly the petitioner has invoked the jurisdiction conferred to this Court under Article 226 of the Constitution of India in questioning the action initiated by the respondent-Bank after issuance of notice has been issued under Section 13(4) of the SARFAESI Act, 2002.
3. It is held by the Hon'ble Apex Court in the case of United Bank of India Vrs. Satyawati Tondon reported in (2010) 8 SCC 110 , wherein it has been laid down that a proceeding if initiated under Section 13(4) of the SARFAESI Act, 2002 for which the remedy is available under Section 17 of the Act by approaching the Tribunal of alternative remedy under Section 18 before the appellate Tribunal of the legislation, on the basis of object and purpose of the legislation a writ

petition ought to have been entertained in view of the alternate statute remedy available and therefore it has been held at Paragraphs-43 and 55 which is being referred hereinbelow:-

"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 grater rigour in matters involving recovery of taxes, cess, fees, other type 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 Court 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, case and circumspection."

The aforesaid view has again been reiterated in the judgment rendered by the Hon'ble Apex Court in the case of Authorized Officer, State Bank of Travancore and Anr. Vrs. Mathew K.C. reported in (2018) 3 SCC 85, in view of such legal proposition since herein the petitioner has questioned the action initiated by the respondent-Bank after issuance of notice under Section 13(4) of the SARFAESI Act, 2002, therefore, is not inclined to entertain the writ petition.

4. Accordingly the writ petition fails and dismissed.

5. However it is open for the petitioner to avail the alternative remedy available under the statute.