
(2015) 06 SHI CK 0068
In the High Court Of Himachal Pradesh
Case No : CWP No. 2783 of 2015-I

SPS Steels Rolling Mills Ltd.	Vs	APPELLANT
State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(4), 17, 25, 26

Citation : (2015) 06 SHI CK 0068

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Naresh K. Sood, Senior Advocate and Ajay Vaidya, for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan, Romesh Verma, Additional Advocate Generals, J.K. Verma and Vikram Thakur, Deputy Advocate Generals, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mansoor Ahmad Mir, C.J.—The writ petitioner, on the grounds taken in the memo of the writ petition, has sought the following reliefs amongst others:

"a) Issue a Writ of and in the nature of certiorari calling upon the concerned respondent and each of them to forthwith certify and transmit to this Hon'ble Court all records of the case culminating in the order dated 07.02.2015 passed by the Respondent No. 2 so that upon consideration thereof, the same may be quashed and conscionable justice be rendered to the Petitioners;

b) Issue a Writ of and in the nature of certiorari declaring that the notices dated 18.06.2014, 02.09.2014 (Ann. P-10), 03.12.2014 (Ann. P-11), 06.12.2014 (Ann. P-12) and 05.05.2015 (Ann. P-17) (including all actions taken pursuant thereto) issued by the Respondent No. 3 are void ab initio and non-est in law and consequently quash the same,

c) Issue a Writ of and in the nature of a mandamus directing the Respondent No.

3 to forthwith restore physical possession of the Plot No. 1, Phase No. II, Industrial Area Gwalhai, District Bilaspur, Himachal Pradesh back to the Petitioners along with all fixtures, fittings, plant and machinery,

d) Direct the Respondents not to take any coercive measures against the properties of the Petitioners including inter alia the properties which are the subject matter of the notices dated 03.12.2014 (Ann. P-11), 06.12.2014 (Ann. P-12) and 05.05.2015 (Ann. P-17) issued."

2. The writ petition came up for admission before this Court on 28.05.2015. Learned counsel for the writ petitioner was asked to justify the maintainability of the writ petition.

3. Mr. Ajay Vaidya, learned counsel for the writ petitioner, stated at the Bar that during the pendency of the writ petition, reliefs (a), (b) and (c) sought by the writ petitioner have become infructuous and the writ petition survives only so far it relates to relief (d). His statement is taken on record.

4. The question is - whether the writ petition is maintainable and whether this Court has jurisdiction to pass appropriate orders while keeping in view relief (d) sought by the writ petitioner?

5. It appears that action has been drawn against the writ petitioner in terms of Section 13(4) of The Securitisation and Reconstruction of Financial Assets and Enforcements of Security Interest Act, 2002 (for short "SARFAESI Act"). SARFAESI Act is a self-contained mechanism and the aggrieved party has to invoke the remedies provided by the SARFAESI Act. The writ petitioner has remedy of appeal as per the mandate of Section 17 of the SARFAESI Act. It is apt to reproduce relevant portion of Section 17 of the SARFAESI Act herein:

"17. Right to appeal. - (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, 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 measures had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation. - For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.

..... "

6. The Apex Court in a series of judgments in the cases titled as United Bank of

India Vs. Satyawati Tondon and Others, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010) 9 UJ 4395 : (2010) AIRSCW 7049 : (2010) AIRSCW 5267 ; Union Bank of India and Another Vs. Panchanan Subudhi ; Indian Bank versus M/s. Blue Jaggers Estate Ltd. and Ors. reported in 2010 AIR SCW 4751 ; Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, (2010) 1 BC 698 : (2011) 101 CLA 146 : (2011) 162 CompCas 337 : (2011) 2 CompLJ 1 : (2011) 3 JT 159 : (2011) 2 RCR(Civil) 676 : (2011) 2 SCALE 233 : (2011) 2 SCC 782 : (2011) 106 SCL 1 : (2011) 2 SCR 602 : (2011) AIRSCW 1194 : (2011) AIRSCW 5913 : (2011) 1 Supreme 655 ; Standard Chartered Bank Vs. V. Noble Kumar and Others, (2013) 117 CLA 18 : (2013) 180 CompCas 137 : (2013) 4 CompLJ 417 : (2013) 6 CTC 683 : (2013) 10 SCALE 540 : (2013) 9 SCC 620 ; J. Rajiv Subramaniyan and Another Vs. Pandiyas and Others, AIR 2014 SC 1710 : (2014) AIRSCW 1850 : (2014) 5 JT 144 : (2014) 3 SCALE 646 : (2014) 5 SCC 651 ; and Keshavlal Khemchand and Sons Pvt. Ltd. Vs. Union of India (UOI) (2015) 4 AD 17 : AIR 2015 SC 1168 : (2015) 1 BC 511 : (2015) 124 CLA 362 : (2015) 190 CompCas 452 : (2015) 1 CompLJ 536 : (2015) 1 SCALE 709 : (2015) 4 SCC 770 : (2015) 2 SCJ 141 , has discussed the issue and held that the writ petition is not maintainable.

7. This Court in CWP No. 4779 of 2014, titled as M/s. Indian Technomac Company Ltd. versus State of H.P. and ors. decided on 04.08.2014, held that when an alternate remedy is available, writ petition is not maintainable. The said judgment of this Court has been upheld by the Apex Court on 22.08.2014 in SLP (C) No. 22626-22641 of 2014.

8. The Apex Court in a latest judgment in the case titled as Union of India (UOI) and Others Vs. Shri Kant Sharma and Others(2015) 3 AD 431 : (2015) LabIC 2184 : (2015) 3 SCALE 546 : (2015) 3 SCJ 689 : (2015) 2 SCT 519 , held that when an alternate efficacious remedy is available to the writ petitioner, he should not be allowed to give a slip to law.

9. The Apex Court in the case titled as Sadashiv Prasad Singh versus Harender Singh and others, reported in Sadashiv Prasad Singh Vs. Harendar Singh and Others, AIR 2014 SC 1078 : (2014) AIRSCW 1083 : (2014) 1 JT 481 : (2014) 1 SCALE 230 , held that the writ petition is not maintainable when a remedy of appeal is available to the writ petitioner. It is apt to reproduce para 23.3 of the judgment herein:

"23.3. Thirdly, a remedy of appeal was available to Harender Singh in respect of the order of the Recovery Officer assailed by him before the High Court under Section 30, which is being extracted herein to assail the order dated 5-5-2008:

"30. Appeal against the order of Recovery Officer. - (1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt on an appeal under subsection (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)."

The High Court ought not to have interfered with in the matter agitated by Harender Singh in exercise of its writ jurisdiction. In fact, the learned Single Judge rightfully dismissed the writ petition filed by Harender Singh."

10. Learned counsel for the writ petitioner has placed reliance on the judgment rendered by the Apex Court in a case titled as KSL & Industries Ltd. Vs. Arihant Threads Ltd., (2014) 4 BC 596 : (2014) 123 CLA 198 : (2015) 1 CompLJ 241 : (2014) 10 SCJ 361 , is not applicable in the facts and circumstances of this case.

11. Having said so, the writ petition is not maintainable.

12. However, learned counsel for the writ petitioner submitted that reference is pending before respondent No. 3, mention of which has been made in para 5 (iv) and (xix) of the writ petition, but the authority was not functioning for the reason that Chairman was not selected/appointed. Further stated that now the Chairman has taken over and respondent No. 3 be directed to determine the said reference/application within time frame and till then, some interim direction be granted to the writ petitioner in view of relief (d).

13. In the given circumstances, we deem it proper to direct respondent No. 3 to decide the reference/application within four weeks. The writ petitioner is at liberty to apply for interim relief before the said authority.

14. The writ petition is disposed of accordingly alongwith all pending applications.