(2020) 07 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition (M/S)) No. 585 Of 2020, Special Appeal No. 110 Of 2020

Vijaya Pandey APPELLANT

Vs

UCO Bank Ltd. And Others RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Securities Interest Act, 2002 — Section 14, 14(1)
Constitution Of India, 1950 — Article 226

Citation : (2020) 07 UK CK 0011

Hon'ble Judges : Ramesh Ranganathan, CJ;R.C. Khulbe, J

Bench : Division Bench

Advocate : Rajendra Dobhal, Shubhang Dobhal, Vijaya Pandey, Chetan Joshi

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Rajendra Dobhal, learned counsel for the appellant-Bank, Ms. Vijaya Pandey, respondent-writ petitioner-in-person, and Sri Chetan Joshi

who appeared as Amicus Curiae before the learned Single Judge.

2. This appeal is preferred against the interlocutory order passed by the learned Single Judge in Writ Petition (M/S) No. 585 of 2020 dated 12.12.2019,

whereby the learned Single Judge had directed that, till the next date of listing, the effect and operation of the impugned order dated 12.12.2019,

passed by the District Magistrate, Dehradun, shall remain stayed.

3. In the order under appeal, the learned Single Judge noted that the District Magistrate had passed an order under Section 14(1) of the SARFAESI

Act; the respondent-writ petitioner had approached the Debt Recovery Tribunal, Dehradun; the Tribunal had, by its order dated 12.07.2019, set aside

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the order dated 29.12.2018 passed by the District Magistrate under Section 14 of the Act, and had directed him to take a decision in the matter afresh,

after following principles of natural justice, and after giving due hearing to the parties; it was contended, on behalf of the respondent-writ petitioner,

that the District Magistrate had passed another order dated 25.11.2019 whereby he had stayed his earlier order dated 29.12.2018, which was set aside

by the Debt Recovery Tribunal; and the District Magistrate had passed another order under Section 14 of the SARFAESI Act, on 12.12.2019 without

hearing the petitioner.

4. The Debt Recovery Tribunal had, in its order dated 12.07.2019, observed that the District Magistrate had not issued any notice to the respondent-

writ petitioner before passing the order under Section 14 of the SARFAESI Act; the Bank had, itself, admitted that the statutory requirement of

service of prior notice of hearing to the applicant was not complied with by the District Magistrate; a Division Bench of Allahabad High Court in

Kumkum Tentiwal vs. State of U.P. and others (order in Writ â??Câ?? No. 38578 of 2018 dated 11.12.2018) had held that, since the order passed

under Section 14 of the SARFAESI Act is a coercive measure, the officer is bound to observe principles of natural justice while passing the order

under Section 14 of the SARFAESI Act; in the present case, the order dated 29.12.2018 was passed by the District Magistrate without affording an

opportunity to the applicant of being heard, and was in violation of principles of natural justice; and, therefore, the order dated 29.12.2018 passed by

the District Magistrate was not sustainable and was liable to be quashed.

5. The Debt Recovery Tribunal had, therefore, directed both parties to appear before the District Magistrate on 26.08.2019, and had granted liberty to

the respondent-writ petitioner to file objections she desired to file against the application filed under Section 14 of the SARFAESI Act; and the District

Magistrate was directed to hear and decide the matter afresh on such objections being filed. Thereafter, the respondent-writ petitioner filed her

objections before the District Magistrate on 23.11.2019. Pursuant thereto, the District Magistrate, by proceedings dated 25.11.2019, granted stay of his

earlier order dated 29.12.2018, which order had already been set aside by the Tribunal. However, by subsequent proceedings dated 12.12.2019, the

District Magistrate, taking note of the contentions of the Bank, vacated his earlier

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order dated 25.11.2019.

6. The order of the Debt Recovery Tribunal dated 12.07.2019 required the District Magistrate, on the respondent-writ petitioner filing her objections,

to hear and decide the matter afresh after following principles of natural justice, and giving due hearing to the parties. The said order of the Debt

Recovery Tribunal has attained finality and is, therefore, binding inter-parties. The District Magistrate was obliged, in terms of the said order, to hear

and decide the matter afresh after giving due hearing to the parties. The least which principles of natural justice require is for the objections of the

respondent-writ petitioner to be considered, and dealt with by the District Magistrate in the order he is required to pass afresh. The order, impugned in

the writ petition, does not disclose any such consideration by the District Magistrate.

7. Relying on the judgment of the Supreme Court, in Authorized Officer, State Bank of Travancore and another vs. Mathew K.C.: (2018) 3 SCC 85,

Sri Rajendra Dobhal, learned Senior Counsel appearing for the Bank, would contend that the petitioner has an effective and efficacious alternative

remedy of approaching the Debt Recovery Tribunal; and, instead, the extra-ordinary jurisdiction of this Court has been invoked by the respondent-writ

petitioner complaining that the order of the Debt Recovery Tribunal has not been complied with by the District Magistrate.

8. While it is no doubt true that the respondent-writ petitioner could have again approached the Debt Recovery Tribunal, it is not as if this Court is

disabled, in proceedings under Article 226 of the Constitution of India, from entertaining the writ petition. The discretionary jurisdiction, under Article

226 of the Constitution, can be exercised by the Court, despite the existence of an alternative remedy, among others, in cases where the order,

impugned in the writ petition, is in violation of principles of natural justice. (Whirlpool Corporation vs. Registrar of Trademarks, Mumbai : AIR 1999

SC 22).

9. We are satisfied that the order, impugned in the writ petition, must be set aside on this score. The District Magistrate shall, in compliance with the

order of the Debt Recovery Tribunal, pass an order afresh, after dealing with the objections raised by the respondent-writ petitioner, in accordance

with law.

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10. Since the appellant-Bank is entitled to recover the amount due to it from the respondent-writ petitioner in accordance with law, the District

Magistrate shall consider the respondent-writ petitionerâ??s objections and pass an order afresh with utmost expedition and, in any event, within one

month from the date of production of a certified copy of this order.

11. Needless to state that the District Magistrate shall pass an order on merits uninfluenced by any observation made either in the order now passed

by us, or by the learned Single Judge in the order under appeal.

12. Both the Writ Petition and the Special Appeal are, accordingly, disposed of. No costs.

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