

(2024) 11 UK CK 0066
In the Uttarakhand High Court
Case No : Writ Petition (M/B) No. 99 Of 2024

Yugal Kishore

APPELLANT

Vs

State Bank Of India & Others

RESPONDENT

Date of Decision : 13-11-2024

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 18
Limitation Act, 1963 — Section 14
Constitution Of India, 1950 — Article 226

Citation : (2024) 11 UK CK 0066

Hon'ble Judges : Manoj Kumar Tiwari, J; Vivek Bharti Sharma, J

Bench : Division Bench

Advocate : Siddhartha Sah, Ashish Joshi, Priyanka Agrawal, Abhishek Khare

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1) Since the order passed by the Debts Recovery Tribunal can be challenged under Section 18 of the SARFAESI Act, 2002, before the Debts Recovery Appellate Tribunal, therefore, this Court is not inclined to entertain this writ petition.

2) Hon'ble Supreme Court in the case of United Bank of India Vs Satyawati Tondon, (2010) 8 SCC 110, followed by Celir LLP Vs Bafna Motors (Mumbai) Private Ltd. and others, (2024) 2 SCC 1, has repeatedly held that High Court should not entertain a writ petition where the petitioner has an effective remedy before the Debts Recovery Tribunal.

3) Paragraphs 97 and 98 of the judgment rendered by the Hon'ble Supreme Court in Celir LLP (Supra) are extracted below for ready reference :

"97. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy

is available to the aggrieved person under the provisions of the SARFAESI Act. This Court in *Satyawati Tondon* (supra) made the following observations:

"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 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.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

xxx xxx xxx

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 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, care and circumspection."

98. In *Commissioner of Income Tax & Ors. v. Chhabil Dass Agarwal* reported in (2014) 1 SCC 603, this Court in para 15 made the following observations:

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419], Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

4) In view of proposition of law laid down by Hon'ble Supreme Court in aforementioned cases, this Court is of the view that the petitioner has an effective statutory remedy under the provisions of DRT Act and the SARFAESI Act for redressal of his grievances. Therefore, when a statutory forum is created by law for redressal of grievances, this Court does not find any reason to entertain the present writ petition.

5) The writ petition, accordingly, fails and is, hereby, dismissed.

6) Since petitioner had spent considerable time in pursuing remedy before a wrong forum, therefore, he shall be at liberty to claim benefit of Section 14 of the Limitation Act, and his application for condonation of delay shall be considered liberally.

7) Learned counsel for the petitioner submits that the petitioner will approach the Debt Recovery Appellate Tribunal within ten days.

8) It is, therefore, directed that for a period of ten days, status quo, as on today qua the secured asset shall be maintained by the parties.