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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI  
&  
HON'BLE SHRI JUSTICE PRANAY VERMA  
ON THE 5<sup>th</sup> OF OCTOBER, 2023  
MISC. PETITION No. 3786 of 2023**

**BETWEEN:-**

1. KABEER REALITY PVT. LTD. THROUGH ITS DIRECTOR MRS. FARHAT MALIK, 1 AND 2 KIBE COMPOUND, INDORE (MADHYA PRADESH)
2. SMT. FARHAT MALIK W/O SHRI MURTAZA MALIK, HOUSE NO. 30 SAFI NAGAR, INDORE (MADHYA PRADESH)
3. SMT. SALMA MALIK W/O LATE SHRI SIRAJUDDIN MALIK, HOUSE NO. 30, SAFI NAGAR, INDORE (MADHYA PRADESH)
4. MURTUZA MALIK S/O LATE SHRI SIRAJUDDIN MALIK, AGED 30 YEARS, HOUSE NO. 30, SAFI NAGAR, INDORE (MADHYA PRADESH)

.....PETITIONERS

*(SHRI SATISH AGRAWAL, COUNSEL FOR THE PETITIONERS).*

**AND**

1. LIC HOUSING FINANCE LIMITED THROUGH ITS AUTHORISED OFFICER, 9/1-A SOUTH TUKOGANJ, UV HOUSE INDORE 452001 (MADHYA PRADESH)
2. PUNJAB NATIONAL BANK THROUGH ITS AUTHORISED OFFICER, SITLAMATA BAZAR, INDORE (MADHYA PRADESH)

.....RESPONDENTS

*(SHRI ANAND SINGH BAHRAWAT, COUNSEL FOR RESPONDENT NO.1).*

*(SHRI SHRIKRISHNA SHARMA, COUNSEL FOR RESPONDENT NO.2).*

.....  
*This petition coming on for admission this day, Justice Sushrut Arvind*

*Dharmadhikari passed the following:*

**ORDER**

Heard finally with the consent of the parties.

In this petition under Article 226/227 of the Constitution of India, the petitioners have called in question the legality, validity and propriety of the order dated 26.06.2023 passed by the learned Presiding Officer, Debts Recovery Tribunal (DRT), Jabalpur in S.A.No. 512/2023 whereby the application filed by the petitioners under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act) has not been decided and certain onerous conditions of deposit has been ordered.

2. The brief facts of the case are that the petitioner No.1 M/s Kabear Reality Pvt. Ltd. (KRPL) is a private limited company incorporated under the provisions of the Companies Act, 1956. The petitioner company had leased out the property in question. The said property is on rent/lease prior to creation of mortgage. As the dues were not paid by the petitioners, therefore, their account was declared 'NPA' (Non Performing Assets) and notice under Section 13(2) of the SARFAESI Act, 2002 was issued to the petitioners. Thereafter, notice under Section 13(4) of the SARFAESI Act, 2002 was also issued to the petitioners. After taking symbolic possession, proceedings under Section 14 of the SARFAESI Act, 2002 was initiated by the respondents before the District Magistrate, Indore. Being aggrieved, the petitioner had approached the DRT, Jabalpur by filing an application under Section 17 of the SARFAESI Act, 2002 which was registered as S.A.No. 512/2023 and is pending. The petitioners raised several grounds before the DRT, Jabalpur of which the main grounds are as under :

(1) Whether the bank/financial institution can file application under Section 14 of the SARFAESI Act, 2002 without disclosing the details of tenants, particularly when tenancy is within the express knowledge of the bank/financial institution?

(2) Whether the District Magistrate can pass an order under Section 14 of the SARFAESI Act, 2002 without issuing notice to the tenant in terms of the law laid down by the Apex Court in case of *Harshad Govardhan Sondagar vs. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1* ?

3. The learned DRT vide impugned order dated 26.06.2023 did not at all consider the aforesaid question and came to the conclusion that the questions raised can only be decided at the time of final hearing, however, without granting any interim relief to the petitioner, certain conditions have been laid down for depositing the sum of Rs. 2 Crores within three months in six equal installments.

4. Being aggrieved by the aforesaid order dated 26.06.2023, the present petition has been filed.

5. The respondents, by filing preliminary reply, have submitted that the present writ petition is liable to be dismissed on the ground of alternative remedy under Section 18 of the SARFAESI Act, 2002 of filing an appeal before the Debt Recovery Appellate Tribunal (DRAT), Allahabad.

6. Learned counsel for the respondent had relied on the judgment of the Apex Court in case of *Chief Manager & Authorised Officer vs. The District Magistrate and Ors. 2018 SCC Online MP 519*.

7. In the present case, the petitioners have already availed the alternative remedy by approaching the DRT, Jabalpur under Section 17 of the SARFAESI Act, 2002, which is pending. Since, the DRT without considering the deciding the issues raised by the petitioners, have straight away directed to deposit Rs. 2 Crores, in such a situation availability of alternative remedy

cannot be a ground for relegating the petitioner to the remedy of appeal.

8. In case of *M/s Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.*, 2023 LiveLaw (SC) 70, the Apex Court has held that, dismissal of a writ petition by a high Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper. Mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition 'not maintainable'.

9. The Supreme Court in case of *Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal*, (2014) 1 SCC 603 has held as under :

"Thus, while it can be said that this Court has recognized 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 vs. Supt. of Taxes*, AIR 1964 SC 1419 case, *Titagarh Paper Mills Co. Ltd., vs. State of Orissa*, (1983) 2 SCC 433 case 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."

10. Having heard the parties with regard to question of alternative remedy, the fact that the violation of principles of natural justice has been raised as also the fact that without giving any finding, the DRT has directed the petitioners to deposit the sum of Rs. 2 Crores, since the petitioner has been able to carve out an exception, we are of the opinion that the prayer for dismissal of the petition on the ground of available of alternative remedy cannot

be exceeded to at this stage. Therefore, the objection raised by the respondents is hereby rejected.

11. So far as questions No. 1 and 2 framed hereinabove is concerned, the Apex Court in the case of *Harshad Govardhan Sondagar (supra)*, the Apex Court has laid down the procedures to be followed by the secured creditor i.e. respondents herein to obtain possession from lessee of the borrower, which reads as under :

"28. A reading of sub- rules (1) and (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002 would show that the possession notice will have to be affixed on the outer door or at the conspicuous place of the property and also published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer. At this stage, the lessee of an immovable property will have notice of the secured creditor making efforts to take possession of the secured assets of the borrower. When, therefore, a lessee becomes aware of the possession being taken by the secured creditor, in respect of the secured asset in respect of which he is the lessee, from the possession notice which is delivered, affixed or published in sub- rule (1) and sub- rule (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002, he may either surrender possession or resist the attempt of the secured creditor to take the possession of the secured asset by producing before the authorised officer proof that he was inducted as a lessee prior to the creation of the mortgage or that he was a lessee under the mortgagor in accordance with the provisions of Section 65A of the Transfer of Property Act and that the lease does not stand determined in accordance with Section 111 of the Transfer of Property Act. If the lessee surrenders possession, the lease even if valid gets determined in accordance with clause (f) of Section 111 of the Transfer of Property Act, but if he resists the attempt of the secured creditor to take possession, the authorised officer cannot evict the lessee by force but has to file an application before the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the SARFAESI Act and state in the affidavit accompanying the application, the name and address of the person claiming to be the lessee. When such an application is filed, the Chief Metropolitan Magistrate or the District Magistrate will have to give a notice and give an opportunity of hearing to the person claiming to be the lessee as well as to the secured creditor, consistent with the principles of natural justice, and then take a decision. If the Chief Metropolitan Magistrate or District Magistrate is satisfied that there is a valid lease created before the mortgage or there is a valid lease created after the mortgage in accordance with the requirements of Section 65A of the Transfer of Property Act and that the lease has not been determined in accordance with the provisions of Section 111 of the Transfer of Property Act, he cannot pass an order for delivering possession of the secured asset to the secured creditor. But in case he comes to the conclusion that there is in fact no valid lease

made either before creation of the mortgage or after creation of the mortgage satisfying the requirements of Section 65A of the Transfer of Property Act or that even though there was a valid lease, the lease stands determined in accordance with Section 111 of the Transfer of Property Act, he can pass an order for delivering possession of the secured asset to the secured creditor."

12. In case of *Vishal N.Kalsaria vs. Bank of India & Ors., (2016) 3 SCC 762*, it has been held that the lessee is required to be noticed prior to issuing order under Section 14 of the SARFAESI Act, 2002. The secured creditor is required to disclose the tenancy before the District Magistrate.

13. It is not in dispute that the District Magistrate while entertaining the application under Section 14 of the SARFAESI Act did not issue notice to the lessee which is mandatory as per *Harshad Govardhan Sondagar (supra)*. Admittedly, the respondents did not disclose the details of tenancy which was within the express knowledge of the bank/financial institution while filing the application under Section 14 of the SARFAESI Act, 2002. Moreover, when the petitioners approached the DRT availing the alternative remedy, the DRT also did not consider the same and came to the conclusion that these objections would be decided at the time of final hearing. The DRT without even considering the grievance raised in the application, directed the petitioners to deposit a sum of Rs. 2 Crores which is absolutely contrary to the law. It is also not in dispute that the learned DRT can pass conditional orders but in the instant case, the interim relief itself was not considered, therefore, passing conditional orders cannot be countenanced.

14. As a consequence, the order impugned dated 26.06.2023 is hereby set aside. The learned DRT, Jabalpur is directed to decide the prayer of interim relief made in case S.A.No. 512/2023 in the light of the law laid down by the Apex Court in case of *Harshad Govardhan Sondagar (supra)*, as expeditiously as possible in accordance with law.

15. With the aforesaid, the petition stands disposed of.

No order as to cost.

**(S. A. DHARMADHIKARI)**  
**JUDGE**

**(PRANAY VERMA)**  
**JUDGE**

*vidya*

