



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA
ON THE 30th OF AUGUST, 2024
WRIT PETITION No. 19972 of 2024
VISHAL MAHESHWARI AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Pankaj Soni, learned counsel for the petitioners.

Reserved on	:	18.07.2024
Pronounced on	:	30.08.2024

ORDER

Per: Justice Sushrut Arvind Dharmadhikari

This writ petition under Article 226 of the Constitution of India has been filed by the petitioners being aggrieved by the order dated 01.07.2024 passed by the Additional District Magistrate, District Rajgarh in Case No. 0641/B-121/2024-25 whereby direction has been issued for taking over the



possession of the subject property belonging to the petitioners.

2. Brief facts of the case are that petitioners approached respondent No.3/Bank for availing housing loan of Rs. 1,15,00,000/- by way of equitable mortgage of property bearing Plot No. 30, situated at Ward No. 5, Village Kurawar and Plot No. 825, Ward No. 05, Pargana Block, Tehsil – Narsingarh, District Rajgarh (MP). The petitioners serviced the interest to the respondent/bank. After sometime, due to financial distress, the account of the petitioners was declared as Non Performing Asset (NPA) account. Respondent No.3/bank invoked the actions under the realm of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [referred to as 'SARFAESI Act' hereinafter]. Subsequently, respondent No.3/Bank filed an application under Section 14 of the SARFAESI Act and the ADM, Rajgarh/respondent No.1 passed the impugned order dated 01.07.2024 to take physical possession of the subject property. The Naib Tehsildar/respondent No.2 proceeded for delivery of physical possession of the subject property to the respondent No.3/Bank. The said action of the respondents have been challenged by the petitioners before the Learned Debt Recovery Tribunal, Jabalpur by filing Securitisation Application No.193/2022 under Section 17(1) of the SARFAESI Act.



However, the said application has not been finally decided yet. Hence, the instant petition has been filed.

3. Learned counsel for the petitioners submits that S.A.No. 193/2022 under Section 17 of the SARFAESI Act is pending before the DRT since last two years. He further submits that inspite of availing remedy under SARFAESI Act and approaching DRT, petitioner is left remedyless. Hence, it is prayed that the petition may be allowed by setting aside the order impugned.

4. Heard, learned counsel for the petitioner and perused the record.

5. In series of cases, this Court is of the consistent view that the writ petitions cannot be entertained when there is an efficacious statutory remedy of appeal available to petitioner. The Apex Court in case of *M/s South Indian Bank Ltd. & Ors. vs. Naveen Mathew Philip & Anr. Etc. Etc., 2023 SCC Online SC 435* has reiterated the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters when an effective and efficacious alternative forum has been constituted through the statute. The Apex Court even went on to say that *we are also constrained to take judicial notice of the fact that certain High Courts continue to interfere in such matters, leading to a*



regular supply of cases before this Court. One such High Court is that of Punjab & Haryana.

6. In paragraph 14 of the judgment in case of ***South Indian Bank Ltd. & Ors. (supra)***, the Apex Court has held as under :

"14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel.....

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16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative."

7. The Apex Court, in case of ***State Bank of Travancore vs. Mathew K.C., (2018) 3 SCC 85***, has held as under :

"5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loathe to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory



remedies are available, except in cases falling within the well defined exceptions as observed in Commissioner of **Income Tax and Others vs. Chhabil Dass Agarwal, 2014 (1) SCC 603**, as follows:

"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 vs. Supt. of Taxes, AIR 1964 SC 1419, Titaghur Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433** 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."

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8. The statement of objects and reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, (hereinafter referred to as 'the DRT Act') with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order.

9. Even prior to the SARFAESI Act, considering the alternate remedy available under the DRT Act it was held in **Punjab National Bank vs. O.C. Krishnan and others, (2001) 6 SCC 569**, that :-

"6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing



a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

8. Admittedly, petitioners have already availed the statutory remedy under Section 17 of the SARFAESI Act. Therefore, in the light of the aforesaid pronouncements of the Apex Court and in view of the fact that the Securitization Application No.193/2022 is already pending before the learned DRT, Jabalpur and no parallel proceedings for the redressal of the same grievance can be continued, this Court is not inclined to entertain the writ petition.

9. Accordingly, the present petition being bereft of merit and substance is hereby dismissed.

No order as to cost.

(S.A.DHARMADHIKARI)
JUDGE

(DUPPALA VENKATA RAMANA)
JUDGE