

Writ Petition No.20527/2016**21.12.2016**

Shri Mohammad Wajid Hyder, learned counsel for petitioners.

Heard on admission.

Petitioners by way of present petition seeks direction to the Debts Recovery Tribunal, Jabalpur to decide the interim relief at the earliest and till then the respondent-Bank be restrained not to dispossess the petitioners.

Evident it is from the pleadings that the petitioners were proceeded against under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act of 2002') whereagainst the petitioners filed an Appeal under Section 17 of the Act of 2002 registered as Second Appeal No.308/2016 before Debts Recovery Tribunal, Jabalpur. Along with the application the petitioners also filed an application for grant of interim relief. The said application is pending consideration. It is during pendency thereof the petitioners are seeking direction to decide the application expeditiously and in the meantime restrain the respondents from taking possession of the property.

Since the petitioners have already availed the statutory remedy of Appeal under Section 17 of the Act of 2002 and the

same being in consonance with the law laid down by the Supreme Court in Union Bank of India vs. Satyawati Tondon (2010) 8 SCC 110 and Standard Chartered Bank vs. V.Nobel Kumar and others (2013) 9 SCC 620 this Court refrains from entertaining an application for stay in the interregnum as it is not a case of the petitioners that the Tribunal is deliberately delaying the consideration of application for interim relief.

In view whereof, no indulgence is caused. Petitioners, however, would be at liberty to file appropriate application before the Debts Recovery Tribunal, Jabalpur for an early hearing of the application for interim relief. It is, however, for the Debts Recovery Tribunal to consider the same in the given fact situation in accordance with law.

The petitioners, at this stage, have relied upon the orders passed in W.P.No.207/2016 (Arvind Sahu & another vs. Collector, Betul & ors.) ; W.P.No.4636/2016 (M/s Technical Cool Service Centre vs. Bank of Maharashtra & ors.) and W.P.No.7674/2016 (Smt.Asif Jahan Siddiqui & another vs. Bank of India & ors.) to impress upon that the High Court has been indulgence in granting the interim relief.

In wake of the submission made on behalf of the petitioners, this Court is reminded of the observation by the Supreme Court in Satyawati Tondon (supra); wherein, it is held :

“42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression ‘any person’ used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

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 legislation enacted by Parliament and State Legislatures for recovery of such dues are 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, 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.”

In view whereof, this Court is not inclined to grant interim relief as prayed for by the petitioners.

Petition is disposed of finally in above terms.

(SANJAY YADAV)
JUDGE

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