



IN THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extraordinary Jurisdiction)

WP (C) No. 18 of 2018

1. M/s Bluefern Ventures (P) Ltd.,
Registered Office: Ethenpa Villa,
Damthang Road, Namchi-737126,
South Sikkim.
2. Shri Tshering Pintso Bhutia,
Aged about 70 years,
Son of Late Namgay Bhutia,
Ethenpa Villa,
Damthang Road, Namchi-737126
South Sikkim.
3. Smt. Ongmu Bhutia,
Aged about 60 years,
Wife of Shri Tshering Pintso Bhutia,
Ethenpa Villa,
Damthang Road, Namchi-737126
South Sikkim.

... Petitioners

Versus

1. Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance,
Department of Financial Services,
Jeevan Deep Building,
10, Sansad Marg, New Delhi.
2. State of Sikkim,
Through the Secretary-cum-State Relief Commissioner,
Land Revenue & Disaster Management Department,
Government of Sikkim, Gangtok, Sikkim.
3. The Branch Manager,
Dena Bank, Gangtok Branch,
Nam Nang Road, Below Assembly House,
Gangtok-737101, Sikkim.
4. The Authorised Officer/Chief Manager,
Dena Bank, Zonal Office, Kolkata,
"Avani Heights", 1st Floor,
59 A, Chowringhee Road,
Kolkata-700020.

... Respondents



**BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.**

For the Petitioners : Mr. Jorgay Namka and Mr. Simeon Subba,
Advocates.

For the Respondent No. 1 : None.

For the Respondent No. 2 : Mr. Santosh Kumar Chettri, Assistant Government
Advocate Sikkim.

For the Respondent Nos.
3 & 4. : Mr. Sudesh Joshi, Advocate.

Date of hearing : 27.11.2019

Date of judgment : 27.11.2019

JUDGMENT (ORAL)

(Arup Kumar Goswami, CJ)

Heard Mr. Jorgay Namka, learned counsel appearing for the petitioners. Also heard Mr. Sudesh Joshi, learned counsel appearing for respondent nos.3 and 4 as well as Mr. S.K. Chettri, learned Assistant Government Advocate, Sikkim appearing for respondent no.2. None appears for Union of India, respondent no.1.

2. By filing this petition under Article 226 of the Constitution of India, the petitioners pray for setting aside a notice dated 18.01.2017 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"), a notice dated 19.12.2017 issued under Section 13(4) of SARFAESI Act and a possession notice dated 16.01.2018 issued by the Authorised Officer under Section 13(12) of SARFAESI Act read with Rule 9 of Security Interest (Enforcement) Rules, 2002, for short, the Rules. Prayers are also made for a direction to respondent no.1 to set up a Debt Recovery Tribunal (DRT) at Gangtok, Sikkim and in the interim, to assign the DRT, Siliguri to deal with the cases pertaining to the State of Sikkim as well as for a probe against



the Branch Manager, respondent no.3, for making the loan accounts of the petitioners as Non Performing Assets (NPA).

3. It is averred in the petition that notice under Section 13 (2) was not served upon the petitioners and they came to learn about the aforesaid notice in the month of December 2017 when petitioner no.2 was served with the notice under Section 13(4) of the SARFAESI Act.

4. Perusal of the averments made in the writ petition goes to show that symbolic possession of land and building, as indicated in the possession notice, had been taken over.

5. It is contended by Mr. Namka that issuance of notice dated 18.01.2017 under Section 13(2) is not maintainable in view of Section 31(j) of the SARFAESI Act, as the amount due from the petitioners is less than 20% of the principal amount and the interest thereon. Therefore, availability of alternative remedy under Section 17 of the SARFAESI Act against the notice under Section 13(4) shall not come in the way of entertaining this petition under Article 226 of the Constitution of India. It is submitted by Mr. Namka that provision of Rule 8(1) of the Rules was also not followed.

6. By relying upon the judgments of the Hon'ble Supreme Court in the cases of (i) **United Bank of India vs. Satyawati Tondon and Ors.**, reported in **(2010) 8 SCC 110**, (ii) **Authorised Officer, State Bank of Travancore & Anr. Vs. Mathew K.C.**, reported in **(2018) 3 SCC 85** and (iii) **Agarwal Tracom Private Ltd. vs. Punjab National Bank & Ors.**, reported in **(2018) 1 SCC 626**, Mr. Joshi has submitted that in view of alternative statutory remedy available to the petitioners, this Court may not exercise its jurisdiction under Article 226 of the Constitution of India. It is submitted by him that the account of the petitioners was rightly declared to be NPA. He contends that the argument of Mr. Namka that the notice under Section 13(2) is not maintainable



in view of Section 31(j) is wholly fallacious as the Statement of Account demonstrates that amount due from the petitioners is far in excess of 20% of principal amount and interest thereon. In any view of the matter, if petitioners have any grievance with the same or any action taken by the Bank under the SARFAESI Act, they may avail remedy in accordance with law under Section 17 of the SARFAESI Act, he submits.

7. Mr. Joshi also submits that the DRT set up at Siliguri has jurisdiction to entertain applications under Section 17 of the SARFAESI Act pertaining to the State of Sikkim. This submission is disputed by Mr. Namka.

8. The notice under Section 13(2) was issued by respondent no.4 in respect of two loans taken by M/s Bluefern Ventures (P) Ltd., petitioner no. 1, which are indicated as TL-1 and TL-2. Sanctioned amount in respect of TL-1 was Rs.1033.00 lakhs (Rupees Ten crores thirty three lakhs) and sanctioned amount in respect of TL-2 was Rs.1861.00 lakhs (Rupees eighteen crores sixty one lakhs). Outstanding in respect of TL-1 and TL-2 was shown as Rs.9,02,56,238.00 and Rs.19,02,96,114.31, respectively, totaling Rs.28,05,52,352.31.

9. In ***Satyawati Tondon*** (supra), the Hon'ble Supreme Court at paragraphs 28, 43 and 55 observed as follows:

“**28.** This Court in *Mardia case* [(2004) 4 SCC 311] then held that the borrower can challenge the action taken under Section 13(4) by filing an application under Section 17 of the SARFAESI Act and a civil suit can be filed within the narrow scope and on the limited grounds on which they are permissible in the matters relating to an English mortgage enforceable without intervention of the court. In para 81 of the judgment, the Court observed as under: (SCC p. 362)



"81. In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debts Recovery Tribunal. *The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would subserve the public interest.*"

(emphasis supplied)

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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.

x x x

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.”

10. A perusal of above judgment goes to show that an effective remedy is available to an aggrieved person before the DRT and that the SARFAESI Act is a code unto itself. The Hon’ble Supreme Court also sounded a note of caution that High Courts should exercise their discretion to exercise jurisdiction under Article 226 of the Constitution of India in matters relating to right of banks and other financial institutions to recover their dues with greater caution, care and circumspection.

11. In **Authorized Officer, State Bank of Travancore** (supra), the Hon’ble Supreme Court reiterated the judgment of **Satyawati Tondon** (supra) and had disapproved the approach of the High Court in entertaining the writ petition. The Hon’ble Supreme Court further held that 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 Ors. vs. Chhabil Dass Agarwal**, reported in **(2014) 1 SCC 603**.



12. In paragraph 15 of the ***Chhabil Dass Agarwal*** (supra), the Hon'ble Supreme Court observed 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 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.”

13. In ***Agarwal Tracom*** (supra), the Hon'ble Supreme Court held that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower.

14. On due consideration, I find that no case is made out for exercise of power under Article 226 of the Constitution of India, as the case presented by the petitioners do not come within the exceptions carved out which alone



enable the Court to exercise discretionary power under Article 226 of the Constitution of India despite availability of statutory alternative remedy.

15. Accordingly, this writ petition is disposed of, granting liberty to the petitioners to approach the jurisdictional DRT for redressal of their grievances, if so advised. If any such approach is made by the petitioners within a period of 45 days from today, the jurisdictional DRT will decide the same on its merit without raising the question of limitation. It is made clear that this Court has expressed no opinion on merits and all contentions are left open to be decided by the DRT.

16. Before parting with the records, this Court further observes that this Court has not gone into the question as to whether a direction is to be given to the authorities for setting up of a DRT at Gangtok, Sikkim, inasmuch as such a prayer is made collaterally to the challenges made to the notices under Section 13(2), 13(4) of the SARFAESI Act and the possession notice dated 16.01.2018, which are the fundamental assailments in this petition.

17. No costs.

Chief Justice

Approved for reporting : Yes
Internet: Yes

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