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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 PRAKASH CHANDRA GUPTA
ON THE 31st OF JANUARY, 2023
WRIT PETITION No. 2493 of 2023**

BETWEEN:-

1. M/S PMS REAL ESTATE PVT. LTD. THROUGH DIRECTOR MAYURESH PINGALE 63 MISHRA NAGAR ANNAPURNA ROAD, DISTRICT INDORE (MADHYA PRADESH)
2. MAYURESH PINGALE S/O SHRI SURESH PINGALE OCCUPATION: BUSINESSMAN 63, MISHRA NAGAR, ANNAPURNA ROAD, INDORE (MADHYA PRADESH)

.....PETITIONER

(SHRI PRAMOD C. NAIR, LEARNED COUNSEL FOR THE PETITIONERS)

AND

1. AUTHORIZED OFFICER CUM CHIEF MANAGER PNJAB NATIONAL BANK SANWER ROAD. BRANCH SANWER ROAD. DISTRICT INDORE (MADHYA PRADESH)
2. CIRCLE HEAD, CIRCLE OFFICE PUNJAB NATIONAL BANK, SAPNA SANGEETA ROAD, INDORE (MADHYA PRADESH)
3. M/S. RAMESH KUMAR VISHWAKARMA A PROPRIETORSHIP FIRM, A PROPRIETORSHIP FIRM THROUGH ITS PROPRIETOR CENTRAL BANK OF INDIA 109, VILAS NAGAR, 14/4, NEEMUCH (MADHYA PRADESH)
4. SHRI RAMESH KUMAR VISHWAKARMA HOUSE NO. 616, MAHALAXMI NAGAR, SECTOR-A WARD NO. 36, VILLAGE PIPLIYA KUMAR, DISTRICT INDORE (MADHYA PRADESH)

5. SMT. BHUMIKA VISHWAKARMA, W/O SHRI RAMESH VISHWAKARMA 109 VILAS NAGAR, 14/4, NEEMUCH AND HOUSE NO. 616, MAHALAXMI NAGAR, SECTOR-A, WARD NO. 36, VILLAGE PIPLIYA KUMAR, DISTRICT INDORE (MADHYA PRADESH)
6. SHRI RAMESH KUMAR VISHWAKARMA S/O SHRIRAM VISHWAKARMA OCCUPATION: BUSINESSMAN 109 VILAS NAGAR, 14/4, NEEMUCH AND HOUSE NO. 616, MAHALAXMI NAGAR, SECTOR-A, WARD NO. 36, VILLAGE PIPLIYA KUMAR, DISTRICT INDORE (MADHYA PRADESH)
7. MADHYA PRADESH MATSYA MAHASANGH SAHAKARI, MARYADIT, BHADBHADA MATSYA BEEJ PRAKSHETRA, BHADBHADA ROAD, BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(SHRI GAURAV CHHABRA, LEARNED COUNSEL FOR THE RESPONDENT
[CAVEAT].

This petition coming on for admission. this day, JUSTICE SUSHRUT ARVIND DHARMADHIKARI passed the following:

ORDER

Heard on the question of admission and interim relief.

In this petition under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs :

(i) *To cancel the impugned Sale Notice dated 16.12.2022 Annexure P/11 as was issued on the basis of illegal demand notice dated 01.01.2018 and illegal possession notice 08.03.2018 as has been held by the order dated 09.02.2021 Annexure P/7 and which still hold good.*

(ii) *this Hon'ble Court may kindly be pleased to issue an appropriate Writ/order or direction to the respondent bank to cancel the illegal E-Auction conducted on 20.01.2023 if any bid has been received;*

(iii) *a direction may be given to investigate in the matter as the documents itself depicts that the respondent bank officials has committed fraud with public money;*

(iv) any other direction which this Hon'ble Court deem fit and proper in the peculiar circumstances of the case may also be issue;

(v) any other order/direction a may be deemed proper may also be passed in favour of the petitioners.

At the outset, learned counsel for the respondent/caveator submitted that this writ petition is not maintainable in as much as the petitioners have already availed the remedy of appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002(in short "The SARFAESI ACT") alongwith application for grant of interim relief. Two parallel proceedings cannot go on. Moreover, the auction has already been conducted on 20/01/2023 and the process has been finalised. In such a situation, the petitioners cannot seek a relief of stay on the ground that the case is not coming up for hearing before the Debt Recovery Tribunal(DRT). Hence, the petition deserves to dismissed.

The Apex Court in the case of **Hindustan Coco-cola Beverage Private Limited Vs. Union of India & others [2014(15) SCC 44]** has held that when the statute provides for statutory appeal, the said remedy is to be availed by the litigating parties.

In **Hameed Kunju Vs. Nizam reported in 2017 (8) SCC 611**, the Apex Court has held that any petition under Article 227 of the Constitution of India should be dismissed in *limine* when there is statutory provisions of appeal.

In the instant case, it is not in dispute that the petitioners have already availed an efficacious alternative remedy of appeal under Section 17 of the SARFAESI Act, therefore, we do not find it proper to entertain this petition.

Accordingly, the writ petition is dismissed.

(S. A. DHARMADHIKARI)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

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