

Court No. - 22

Case :- MATTERS UNDER ARTICLE 227 No. - 1501 of 2023

Petitioner :- Shipra Hotels Limited, Dehradun Thru. Authorized Representative And 2 Others

Respondent :- Debt Recovery Tribunal, Lko. Thru. Presiding Officer And 4 Others

Counsel for Petitioner :- Prashant Kumar, Mohammad Hamza Beg, Sarvesh Kumar Tiwari, Sudeep Kumar

Counsel for Respondent :- C.S.C., Manu Dixit, Suneet Kumar Sharma

Hon'ble Manish Mathur, J.

Short counter affidavit filed by opposite party No.2 is taken on record.

Heard learned counsel for petitioners, Mr. N.K. Seth learned Senior Counsel assisted by Mr. Suneet Kumar Sharma and Mr. Ashish Chaturvedi learned counsel on behalf of opposite party No.2, Mr. Manu Dixit learned counsel for opposite party No.3 whose power is taken on record and learned State Counsel for opposite parties 4 and 5. Notice to opposite party No.1, being merely proforma in nature is dispensed with.

Petition under Article 227 of Constitution of India has been filed against order dated 16th March, 2023 passed by Debt Recovery Tribunal in S.A. No. 906 of 2022 filed under Section 17 of the SARFAESI Act, 2002 by the petitioner. Further prayer seeking a direction to the opposite parties to maintain status quo over the assured assets as on 15th March, 2023 and not to take any coercive measures against petitioner with regard to secured asset has also been made.

Learned counsel for petitioners submits that pursuant to alleged default in repayment of loan, proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) were drawn and order under Section 13(4) of the SARFAESI Act was passed on 04.01.2022. It is submitted that subsequently order under Section 14 of the SARFAESI Act was issued on 30.05.2022, which was challenged before this Court in Writ - C No.22594 of 2022 which was dismissed by means of judgment and order dated 25.11.2022 and Special Leave Petition (Civil) bearing Diary No.40574 of 2022 thereagainst was dismissed as withdrawn.

It is submitted that prior thereto, application under Section 17 of the Act was filed on 17.12.2022 and was registered as Securitization Application 906 of 2022 along with application for condonation of delay and interim relief.

It is submitted that the application for condonation of delay was partly allowed by the DRT vide order dated 01.03.2023 holding that the Securitization Application was well within limitation from the date of notice dated 14.12.2022 and therefore the applicant was held to be entitled to raise objections which were 45 days prior to 17.12.2022. The case was thereafter listed for 03.03.2023 for hearing on interim relief regarding possession.

Subsequently in view of pendency of interim relief application in the securitization application and due to steps being taken by the opposite parties with regard to secured asset, the petitioner filed petition No. 1197 of 2023 before this Court which was disposed of by means of order dated 3rd March, 2023 observing that since an amendment to challenge notice dated 10th February, 2023 (subsequent auction notice) was pending consideration and the case was listed before the Debt Recovery Tribunal on 6th March, 2023, it was observed that there was no occasion for any further protection to be provided to petitioners, which was required to be considered by the Debt Recovery Tribunal itself on 6th March, 2023 along with other applications.

Learned counsel for petitioners submits that in pursuance of aforesaid directions, the impugned order has been passed dismissing the S.A. holding it to be infructuous since no relief survive against the sale notice dated 12th December, 2022 and possession notice dated 14th December, 2022. The order also indicates that since the S.A. pertaining to main cause of action has already been rendered infructuous, there was no occasion to consider the amendment application. By means of impugned order, liberty has been granted to challenge sale by filing a fresh S.A. as per law.

Learned counsel appearing on behalf of opposite parties have raised a preliminary objection regarding maintainability of present petition on the ground of availability of alternative remedy of appeal before the Debt Recovery Appellate Tribunal under Section 18 of the Act of 2002 with submission that since the S.A. itself has been dismissed and appeal against any order passed by the Debt Recovery Tribunal are appellable, the present petition though maintainable may not be entertained. Learned counsel has cited judgments rendered by Hon'ble Supreme Court in the cases of **United Bank of India versus Satyawati Tandon and others reported in (2010) 8 SCC 110, Kotak Mahindra Bank Limited versus Dilip Bhosale reported in 2022 SCC OnLine SC 847, Phoenix ARC (P) Ltd. versus Vishwabharati Vidya Mandir reported in (2022) 5 SCC 345 and Varimadugu Obi Reddy versus B Sreenivasulu and others reported in (2023) 2 SCC 168.**

With regard to preliminary objection, learned counsel for petitioner submits that by means of earlier order dated 1st March, 2023, the Debt Recovery Tribunal has clearly held that S.A. was well within limitation from the date of notice dated 14th December, 2022 and as such the applicants were held entitled to raise objection and argue on issues which came within 45 days prior to 17th December, 2022 i.e. date of filing of S.A. It is also submitted that the Debt Recovery Tribunal in its order has also held that the delay condonation application would be considered at the time of filing arguments but the same has not been considered at all. It is submitted that while passing the impugned order, the Debt Recovery Tribunal has also ignored the prayers No.1,7 and 11 which also gave a distinct cause of action to petitioner for maintainability of S.A. Learned counsel has cited judgments rendered by Hon'ble Supreme Court in the cases of **Godrej Sara Lee Ltd. versus Excise and Taxation Authority and others reported in 2023 SCC OnLine SC 95, Union of India and others versus Debts Recovery Tribunal Bar Association and another reported in (2013) 2 Supreme Court Cases 574 and Authorised Officer, Indian Overseas Bank and another versus Ashok Saw Mill reported in (2009) 8 Supreme Court Cases 366** to submit that in such circumstances where there is no disputed question of fact involved, a petition under Article 227 of Constitution would be maintainable.

Learned counsel appearing on behalf of opposite parties have refuted submissions advanced with submission that aspect of limitation has already been considered by the Debt Recovery Tribunal in its order dated 1st March, 2023 specifically holding that S.A. would be maintainable only with regard to cause of action arising 45 days prior to 17th December, 2022. It is as such submitted that cause of action arising prior thereto would be deemed to have been held beyond period of limitation. It is also submitted that aforesaid order dated 1st March, 2023 has not been challenged by the petitioners, which therefore has attained finality.

It is admitted that S.A. was filed under Section 17 of the Act of 2022 challenging proceedings initiated by bank under Section 13(4) of SARFAESI Act, 2002 with regard to secured asset, order dated 30th May, 2022 under Section 14 of the Act, sale notice dated 12th December, 2022, possession notice dated 4th January, 2022, demand notice dated 28th July, 2021 under section 13(2) of the Act of 2002 issued by the respondent No.1 to the S.A., demand notices in pursuance thereof with further prayer for restructuring/regularizing account of applicant companies and to restrain the respondents to take any consequent action in terms of the impugned orders and notices.

With regard to preliminary objection, it is evident that Section 18 of the Act of 2022 clearly provides that any person aggrieved by any order made by the Debt Recovery Tribunal under Section 17 has a remedy of preferring an appeal along with such fee as may be prescribed to the appellate tribunal within a period of 30 days from the date of receipt of the order of Debt Recovery Tribunal.

Although learned counsel for petitioner does not dispute the aforesaid proposition but submits that in view of judgments rendered by Hon'ble Supreme Court in the cases referred herein above, action taken by the secured creditor and the transactions entered into by virtue of section 13(4) of the Act, the jurisdiction of Debt Recovery Tribunal to deal with post section 30(4) proceedings of the Act would be maintainable. Learned counsel has also adverted to the judgment in the case of Godrej Sara Lee Ltd. and Union of India and others (supra) to submit the circumstances under which the Supreme Court has held a petition under Article 226 or under 227 of Constitution to be maintainable even after availability of alternative remedy.

Upon consideration of submissions advanced by learned counsel for parties and upon applicability of judgments cited by both the sides, it is evident that S.A. has been filed with regard to reliefs as indicated herein above. By means of impugned order, the aforesaid S.A. has been rejected primarily on the ground that person who had sworn the affidavit filed in support of S.A. was not authorized to do so and also on the aspect of the S.A. being barred by limitation with regard to some of the reliefs and having become infructuous with regard to surviving reliefs. Liberty was also granted to applicants to challenge sale by filing fresh S.A. as per law.

Hon'ble Supreme Court in the aforesaid judgments cited by learned counsel for both the parties does not hold a proposition that a petition under Article 227 of Constitution of India would not be maintainable against orders passed by Debt Recovery Tribunal. On the contrary, Hon'ble Supreme Court in the case of Union of India and others (supra) has clearly held that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to their jurisdiction including functioning of D.R.Ts. and D.R.A.Ts. In the case of Godrej Sara Lee Ltd. (supra), it has been held that a petition under Article 227 of Constitution would be maintainable where the controversy is a purely legal one and does not involve disputed questions of fact but only questions of law and has also held that normally a writ petition should not be entertained where an effective and efficacious alternative remedy is available and that writ petition ought not to be

entertained in a routine manner.

Considering the aforesaid judgments, it is evident that although a petition under Article 227 of Constitution of India would ordinarily be maintainable against an order passed by Debt Recovery Tribunal but its entertainability would be dependent on whether it raises a pure of question of law or mixed questions of fact and law.

In the present case, it is evident that S.A. has been rejected not only on the grounds of improper authorization, which may be a curable defect but also on the grounds that part cause of action raised in the S.A. has become time barred with rest becoming infructuous. In the considered opinion of this Court, the aforesaid factors of rejection would not fall within parameters of a pure question of law and would definitely involve mixed questions of fact and law particularly with regard to significance of earlier orders passed by Debt Recovery Tribunal pertaining to condonation of delay not having been challenged by petitioner.

In view of aforesaid and the fact that petitioner has an alternative and equally efficacious remedy of filing an appeal before the Debt Recovery Appellate Tribunal, the petition is dismissed granting aforesaid liberty.

Order Date :- 28.3.2023

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