Before Jaswant Singh & Jasgurpreet Singh Puri,JJ.

M/S. HAMDARD ENGINEERING THROUGH ITS SOLE PROPRIETOR HARINDER SINGH, AMRITSAR—*Petitioner*

versus

CITY UNION BANK LIMITED, AMRITSAR AND ANOTHER—*Respondents*

CWP No.5010 of 2021

March 22, 2021

Constitution of India, 1950 – Art. 226 –Writ petition – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – S.13(2), (4) – Alternative remedy – Writ petition when maintainable - Challenge to the demand notice and possession notice on the ground of petitioner's readiness to settle the dispute by one-time settlement as it has a prospective buyer – On facts, possession stood taken by the Bank way back in 2019, and the petitioner-firm was declared a Non-Performing Asset (NPA) in 2018 – Held, by referring to law settled by the Hon'ble Supreme Court, that ordinarily the High Court would not entertain a petition under Article 226 of the Constitution if an effective remedy was available to the aggrieved person – It has not been shown by the petitioner as to why approaching the Debt Recovery Tribunal (DRT) is not an efficacious remedy – Or, such travesty of justice has been done to it which entails the petitioner to approach the High Court directly – Or, there is such an illegality in the procedure adopted by the Bank which would compel the Court to invoke the extra ordinary jurisdiction – Accordingly, the petition was dismissed.

Held that, the observations made therein were to the effect that the High Court would ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that, in all such cases, the High Court must insist that a person aggrieved must exhaust the remedies available under the relevant statute before availing the remedy under Article 226 of the Constitution.

(Para 5)

Further held that, in the present case, counsel for petitioner has not been able to show as to why approaching the Debt Recovery Tribunal is not an efficacious remedy; or such travesty of justice has

been done to it which entails petitioner to approach this court directly by superseding the statutory process; or there is such an illegality in the procedure adopted by the respondent-Bank which would compel us to invoke the extra-ordinary writ jurisdiction.

(Para 6)

Ashish Aggarwal, Advocate
for the petitioner.

JASWANT SINGH, J.

(1) Petitioner-Firm has filed the present writ petition seeking quashing of demand notice dated 03.07.2019 **(Annexure P-1)** issued under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act, 2002) alongwith possession notice dated 18.09.2019 **(Annexure P-2)** issued under Section 13(4) of the SARFAESI Act, 2002 on the ground that it is ready to settle the dispute by way of one time settlement as the petitioner- firm has a prospective buyer who has given its consent to purchase the property.

(2) We have heard learned counsel for petitioner and have perused the paper book. However, we are of the view that present petition is liable to be dismissed.

(3) Admittedly, the petitioner-firm is a defaulter of respondent-Bank and as on 03.07.2019 an amount of Rs.7,12,90,740/- is outstanding towards it as against a total loan of 7.05 crores taken by it at various points of time whose details have been reproduced at page 5 of the paper-book. It is further not in dispute that the petitioner-firm has been declared as a Non- Performing Asset (for short "NPA") on 30.09.2018 and not even a single penny has been paid by it thereafter. Consequently, the respondent-bank had initiated proceedings under various provisions of the SARFAESI Act, 2002 to recover the money, which was the only way with it to secure the lent amount. Once that it so, we do not see how the present petition is maintainable, as the petitioner-firm expects us to interfere in the due process of law adopted by the Bank at this stage when the possession has been taken way back on 18.09.2019 **(P-2)**. The petitioner-firm, at best, has an alternative efficacious remedy to approach the Tribunal under the provisions of SARFAESI Act, 2002 which we are informed have not been availed till date.

(4) The Hon'ble Supreme Court had occasion to consider the

issue of interference by High Courts in view of alternative remedy in ***Authorized Officer, State Bank of Travancore*** versus ***Mathew K.C.***[1]. The case arose out of the interim order passed by the Kerala High Court in a writ petition staying further proceedings at the stage of measures being taken under Section 13 (4) of the SARFAESI Act. The Supreme Court observed that the SARFAESI Act is a complete code in itself and the High Court ought not to have entertained the writ petition in view of the alternative remedies available there under. On facts, the Supreme Court found that the writ petition was not instituted *bona fide* but only to stall further action for recovery. There was no pleading as to why the remedy under Section 17 of the SARFAESI Act was not efficacious and no compelling reasons were cited for bypassing the same. Referring to case law on the subject, the Hon'ble Supreme Court concluded that the writ petition ought not to have been entertained and that the interim order was granted for the mere asking without assigning special reasons and without even allowing a hearing to the bank.

(5) Similar was the view taken by the Hon'ble Supreme Court a little earlier in November, 2017, in ***Agarwal Tracom Pvt. Ltd.*** versus ***Punjab National Bank***[2]. This case also arose out of proceedings initiated under the SARFAESI Act which culminated in the sale of the secured asset. The appellant before the Hon'ble Supreme Court was the auction purchaser who failed to pay the bid amount in terms of the sale conditions. The Delhi High Court had refused to entertain the writ petition filed by the appellant assailing forfeiture of its deposit holding that the proper remedy was to file a securitization application under Section 17 of the SARFAESI Act before the jurisdictional Tribunal. In appeal, the Hon'ble Supreme Court observed that the expression any of the measures referred to in Section 13 (4) taken by the secured creditor in Section 17(1) of the SARFAESI Act would include forfeiture of the deposit made by the auction purchaser. The Hon'ble Supreme Court, accordingly, concurred with the view taken by the Delhi High Court that the auction purchaser ought to have availed the statutory remedy. While holding so, the Hon'ble Supreme Court recalled that in ***United Bank of India*** versus ***Satyawati Tondon***[3], it had occasion to examine in detail the provisions of the SARFAESI Act and invocation of the extraordinary power of the High Court under Article 226 of the

[1] 2018 (3) SCC 85
[2] 2018 (1) SCC 626
[3] 2010 (8) SCC 110

Constitution to challenge the actions taken there under. The observations made therein were to the effect that the High Court would ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that, in all such cases, the High Court must insist that a person aggrieved must exhaust the remedies available under the relevant statute before availing the remedy under Article 226 of the Constitution.

(6) In the present case, counsel for petitioner has not been able to show as to why approaching the Debt Recovery Tribunal is not an efficacious remedy; or such travesty of justice has been done to it which entails petitioner to approach this court directly by superseding the statutory process; or there is such an illegality in the procedure adopted by the respondent-Bank which would compel us to invoke the extra-ordinary writ jurisdiction.

(7) In view of the above, finding no merit, present **petition** is hereby ordered to be **dismissed**.

Tribhuvan Dahiya