***HON'BLE SRI JUSTICE RAVI NATH TILHARI**
AND
***HON'BLE SRI JUSTICE V. SRINIVAS**

+WRIT PETITION No.28791 OF 2023

%02.11.2023

Ome Sri Rama Modern Raw &
Boiled Rice Mill,
D. No.4/189, Bandar Road,
Pamarru – 521 157,
Krishna District,
Represented by its Proprietor,
Pinisetti Srinivasa Rao.

……Petitioner

And:

$1. The Indian Overseas Bank,
Asset Recovery
Management Branch,
#48-14-111,
Sri Nitya Complex,
Visakhapatnam – 530 013,
Rep by its Authorized Officer
and others.

….Respondents.

!Counsel for the petitioner : Sri K. Ramesh Babu

^Counsel for the respondents : Sri Hanumantha Rao Bachina, learned counsel for the respondent Nos.1 and 2 and Sri Ancha Pandu Ranga Rao, learned counsel for the respondent No.3.

<Gist:

>Head Note:

? Cases referred:

1. 2023 SCC Online SC 314
2. (2014) 1 SCC 603

HIGH COURT OF ANDHRA PRADESH

WRIT PETITION No. 28791 of 2023

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DATE OF JUDGMENT PRONOUNCED: 02.11.2023.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE V. SRINIVAS

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

V. SRINIVAS, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE V. SRINIVAS

WRIT PETITION No.28791 OF 2023

JUDGMENT:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri K. Ramesh Babu, learned counsel for the petitioner and Sri Hanumantha Rao Bachina, learned counsel for the respondent Nos.1 and 2 and Sri Ancha Pandu Ranga Rao, learned counsel for the respondent No.3.

2. The petitioner is challenging the order dated 21.10.2023 passed in S.A.No.367 of 2023 by the Debts Recovery Tribunal (in short, DRT), Visakhapatnam.

3. The S.A.No.367 of 2023 was filed by the petitioner against the measure taken under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, the Act 2002).

4. The said S.A has been dismissed by DRT after contest.

5. An objection has been raised by the learned counsels for the respondents that the petitioner has got equally efficacious statutory alternative remedy of appeal under Section 18 of the SARFAESI Act, 2002.

6. Learned counsel for the petitioner submits that though the statutory remedy is available to the petitioner, but still the writ petition can be maintained against the order of the DRT. He submits that the petitioner's specific plea taken before the DRT that the valuation of the property put to auction was not correctly made and the same was under-valued. In that regard the reports submitted by the petitioner were also not considered by the DRT.

7. Learned counsel for the petitioner further submits that to maintain the appeal, the petitioner will have to comply with the requirement of making the pre-deposit as provided by Section 18. Consequently the petitioner has approached under Article 226 of the Constitution of India.

8. He placed reliance in the cases of ***Union of India and others vs. Parashotam Dass***[1] and ***Commissioner of Income Tax and others vs. Chhabil Dass Agarwal***[2].

9. We have considered the aforesaid submissions and perused the material on record.

10. Section 18 of the SARFAESI Act reads as under:-

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[1] 2023 SCC Online SC 314
[2] (2014) 1 SCC 603

> "**18. Appeal to Appellate Tribunal**.—
>
> (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.
>
> [Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]
>
> [Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]
>
> (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

11. Admittedly the petitioner has got the statutory alternative remedy to challenge the impugned order, under Section 18 of the SARFAESI Act before the Appellate Tribunal.

12. In ***Parashotam Dass (supra)***, upon which learned counsel for the petitioner placed reliance, the Hon'ble Apex Court reiterated that the power of the High Court under Article

226 of the Constitution is not inhibited and superintendence and control under Article 227 of the Constitution are somewhat distinct from the powers of judicial review under Article 226 of the Constitution.

13. Paras 25, 26 of ***Parashotam Dass (supra)***, reads as under:-

> "**25.** While we agree with the aforesaid principle, we are unable to appreciate the observations in the case of Major General Shri Kant Sharma, which sought to put an embargo on the exercise of jurisdiction under Article 226 of the Constitution, diluting a very significant provision of the Constitution which also forms the part of basic structure. The principles of basic structure have withstood the test of time and are emphasized in many judicial pronouncements as an ultimate test. This is not something that can be doubted. That being the position, the self-restraint of the High Court under Article 226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal.
>
> **26.** On the legislature introducing the concept of "Tribunalisation" (one may say that this concept has seen many question marks vis-a-vis different tribunals, though it has also produced some successes), the same was tested in L. Chandra

> Kumar case before a Bench of seven Judges of this Court. Thus, while upholding the principles of "Tribunalisation" under Article 323A or Article 323B, the Bench was unequivocally of the view that decisions of Tribunals would be subject to the jurisdiction of the High Court under Article 226 of the Constitution, and would not be restricted by the 42nd Constitutional Amendment which introduced the aforesaid two Articles. In our view, this should have put the matter to rest, and no Bench of less than seven Judges could have doubted the proposition. The need for the observations in the five-Judges' Bench in Rojer Mathew case qua the Armed Forces Tribunal really arose because of the observations made in Major General Shri Kant Sharma. Thus, it is, reiterated and clarified that the power of the High Court under Article 226 of the Constitution is not inhibited, and superintendence and control under (supra) (supra) (supra) Article 227 of the Constitution are somewhat distinct from the powers of judicial review under Article 226 of the Constitution."

14. Learned counsel for the petitioner placed reliance on this judgment ***Parashotam Dass (supra)*** to submit that the writ petition against the order of the DRT, it being a Tribunal, is maintainable.

15. The proposition that the power of judicial review under Article 226 is part of the basic structure of the Constitution and the orders of the Tribunal are also amenable to judicial review under Article 226 of the Constitution is not in dispute and is well settled. In ***L. Chandra Kumar v. Union of India & Others***, the Constitution Bench unequivocally held that the power of judicial review under Article 226 is part of the basic structure of the Constitution and all the decisions of a Tribunal, which are constituted under Article 323A or 323B of the Constitution, would be subject to the High Court's writ jurisdiction under Article 226 of the Constitution.

16. However, the question is not of lack of jurisdiction in the High Court under Article 226 against the order of the Tribunal, but one of exercise of the jurisdiction. The order of the Tribunal, in the present case of DRT, is amenable to the writ jurisdiction of this Court, which is not inhibited, but in what cases the power of judicial review is to be invoked, lies within the discretion of this Court, to be exercised on the settled principles of law on the point of entertainability of the writ petition considering the facts and circumstances of each case. It is well settled that the restrictions imposed in the exercise of the writ jurisdiction are self imposed. There are also well recognized exceptions to the rule of exhaustion of alternative

remedy. If the case falls under any of those exceptions, well settled; 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, then notwithstanding the existence of equally efficacious alternative remedy, the writ jurisdiction is normally exercised.

17. In ***Chhabil Dass Agarwal (supra)***, the Hon'ble Apex Court held that while it can be said that the Court has recognized 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 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.

18. Para 15 and 16 of ***Chhabil Dass Agarwal (supra)***, are reproduced as under:-

> "**15.** Thus, while it can be said that this Court has recognized 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, Titagarh Paper Mills case 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.
>
> **16.** In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

19. In ***M/s. Radha Krishna Industries vs. the State of Himachal Pradesh***[3], the Hon'ble Apex Court, on maintainability of the writ petition summarized the principles of law, which are reproduced as under in Paras 27 and 28:-

> "**27.** The principles of law which emerge are that:-
>
> **27.1.** The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.
>
> **27.2.** The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.
>
> **27.3.** Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.
>
> **27.4.** An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.
>
> **27.5.** When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under

[3] (2021) 6 SCC 771

> Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.
>
> **27.6.** In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.
>
> **28.** These principles have been consistently upheld by this Court in Chand Ratan v. Pandit Durga Prasad [(2003) 5 SCC 399], Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706] and Rajasthan SEB v. Union of India [(2008) 5 SCC 632] among other decisions."

20. In the present case, the Act 2002, provides complete machinery on its subject and for obtaining relief in respect of the measures taken as also the orders passed the remedy is provided by the statute. The petitioner cannot be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

21. Learned counsel for the petitioner has not been able to submit in which category of the exceptions the petitioner's case falls, so as to entertain the writ petition and not to relegate the petitioner to the statutory alternative remedy of appeal.

22. The contention of the petitioner's counsel with respect to the non-consideration of the petitioner's plea on the point of alleged under valuation, is not such a plea or ground that cannot be taken in appeal. So, even if that ground be available, though we are not so observing, the petitioner can take such a plea or ground in the appeal.

23. So far as the pre-deposit is concerned in view of Section 18, the same is a statutory condition. The amount of pre-deposit can be reduced also by the Appellate Tribunal. The same cannot be a ground to bypass the statutory alternative remedy. The petitioner, in view of the submission advanced, appears to have approached under Article 226 of the Constitution of India, to escape the liability of deposit of statutory amount under Section 18 of the SARFAESI Act, for no disclosed reasons.

24. Consequently, we are not inclined to entertain the writ petition in view of availability of efficacious statutory alternative remedy of appeal.

25. The Writ Petition is dismissed only on the aforesaid ground.

26. It is open to the petitioner to avail the alternative statutory remedy as per law, if so advised.

27. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

V. SRINIVAS, J

Date: 02.11.2023

Note:-
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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
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WRIT PETITION No.28791 OF 2023
(per Hon'ble Sri Justice Ravi Nath Tilhari)

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