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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 17th February, 2025**

% **LPA 114/2025, CM APPLs. 9292/2025, 9293/2025, 9294/2025 & 9295/2025**

BABITA VISHNOI & ANR.Appellants

Through: Mr. Rakesh Kumar, Adv. with
Mr.Pawan Kumar and Mr. Satish
Kumar, Advs.

versus

BANK OF BARODARespondent

Through: Mr. Arun Aggarwal, Adv. with
Mr.Shivam Saini and Mr. Satyadev
Prakash, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

DEVENDRA KUMAR UPADHYAYA, CJ. (ORAL)

1. Heard learned counsel for the parties and perused the records available before us in this Letters Patent Appeal (hereinafter referred to as 'LPA').

2. This appeal questions the order dated 01.10.2024 passed by the learned Single Judge in W.P. (C) No. 13798/2024, whereby the writ petition has been dismissed on the ground that the appellants/petitioners has got the statutory remedy available to them by way of invoking Section 18 of the



Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘SARFAESI Act’) and filing an appeal before the Debt Recovery Appellate Tribunal (hereinafter referred to as ‘DRAT’).

3. Learned counsel for the appellants/petitioners has submitted that for filing an appeal, the appellants/petitioners will be required to make certain deposit in terms of the requirement of the second proviso mandated under Section 18 of the SARFAESI Act and has thus stated that such commercial incapacity should not come in the way of the appellants/petitioners to invoke the writ jurisdiction of this Court for redressal of their grievances.

4. The appellants/petitioners by filing the writ petition before learned Single Judge had sought a prayer for quashing the order dated 05.06.2024 passed by the Debt Recovery Tribunal (hereafter referred to as ‘DRT’), whereby the application seeking a prayer for restraining the respondent/bank from auctioning the property was rejected. It is not in dispute that against the said order passed by the DRT, the appellate remedy is available under Section 18 of the SARFAESI Act.

5. It is true that there is no bar for this Court to entertain a writ petition, however, in case of availability of efficacious and alternative statutory remedy, this Court can interfere in a petition filed under Article 226 of the Constitution of India in very rare cases. The SARFAESI Act is a code, scheme of which provides for various statutory remedies available to the parties at various stages of the proceedings drawn and conducted under the said Act.



6. Merely, because the appellants/petitioners will be required to deposit certain amount to avail the remedy of the appeal under Section 18 of the SARFAESI Act, it cannot be said that this Court would necessarily invoke the jurisdiction under Article 226 of the Constitution of India.

7. The Hon'ble Supreme Court in various pronouncements has deprecated the practice of entertaining the writ petitions in such matters. Regarding this aspect, we may have a reference to a judgment of Hon'ble Supreme Court in the case of ***PHR Invent Educational Society v. UCO Bank and others, (2024) 6 SCC 579***, wherein it has clearly been held that the High Court would ordinarily not entertain a petition under Article 226 of the Constitution of India, if an effective remedy is available to the aggrieved person. Paragraphs 23, 24, 25, 26, 27 and 28 of the said judgment are reproduced herein below:

“23. It could thus be seen that, this Court has clearly held 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. It has been held 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. The Court clearly observed that, 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. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution.



24. *The view taken by this Court has been followed in Agarwal Tracom (P) Ltd. v. Punjab National Bank [Agarwal Tracom (P) Ltd. v. Punjab National Bank, (2018) 1 SCC 626 : (2018) 1 SCC (Civ) 425 : 2017 INSC 1146] .*

25. *In State Bank of Travancore v. Mathew K.C. [State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41 : 2018 INSC 71] , this Court was considering an appeal against an interim order passed by the High Court in a writ petition under Article 226 of the Constitution staying further proceedings at the stage of Section 13(4) of the SARFAESI Act. After considering various judgments rendered by this Court, the Court observed thus : (SCC p. 94, para 16)*

“16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.”

26. *The same position was again reiterated by this Court in Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir [Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345 : (2022) 3 SCC (Civ) 153 : 2022 INSC 44] .*

27. *Again, in Varimadugu Obi Reddy v. B. Sreenivasulu [Varimadugu Obi Reddy v. B. Sreenivasulu, (2023) 2 SCC 168 : (2023) 1 SCC (Civ) 58 : 2022 INSC 1207] , after referring to earlier judgments, this Court observed thus : (SCC pp. 181-82, para 34)*

“34. The order of the Tribunal dated 1-8-2019 was an appealable order under Section 18 of the SARFAESI Act, 2002 and in the ordinary course of business, the borrowers/person aggrieved was supposed to avail the statutory remedy of appeal which the law provides under Section 18 of the SARFAESI Act, 2002. In the absence of efficacious alternative remedy being availed, there was no reasonable justification tendered by the respondent borrowers in approaching the High Court and filing writ application assailing order of the Tribunal dated 1-8-2019 under its jurisdiction under Article 226 of the Constitution



without exhausting the statutory right of appeal available at its command.”

28. It could thus be seen that this Court has strongly deprecated the practice of entertaining writ petitions in such matters.”

8. In view of the aforesaid, we are not inclined to entertain this LPA, which is hereby dismissed along with pending applications.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA , J

FEBRUARY 17, 2025

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