SC tells courts not to interfere in NPA recovery actions – analysis of SC Ruling United Bank of India vs. Satyawati Tondon

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The Apex Court provided the secured creditors some relief with its recent pronouncement in the case of *United Bank of India vs. Satyawati Tondon,* Allahabad High Court (judgment dated: 26th July, 2010) where it held that all the alternatives available to the borrower must be exhausted before the High Courts can interfere with the debt recovery proceedings.

In the past several of the High Courts have ignored the Supreme Court's views by entertaining applications under Article 226 of the Constitution causing delay in the proceedings, defeating the purpose of providing for an alternative remedy under the very legislation itself.

The Supreme Court has interfered with the decision of the High Court and said that –

> "*While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance….. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters.*"

In *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others* (1985) 1 SCC 260 it was held that

> "*Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill- suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of*

the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. …."

In *City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala and others* (2009) 1 SCC 168, the Court highlighted the parameters which are required to be kept in view by the High Court while exercising jurisdiction under Article 226 of the Constitution. It says the Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
(b) the petition reveals all material facts;
(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
(d) person invoking the jurisdiction is guilty of unexplained delay and laches;
(e) ex facie barred by any laws of limitation;
(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

In several such cases the Supreme Court has held that the High Courts should not neglect the availability of statutory remedies and must take great caution, care and circumspection before exercising discretion in addressing such matters.

In the present case as well the Hon'ble High Court of Allahabad had stayed the recovery proceedings initiated by the United Bank of India on the plea of the guarantor of a loan. United Bank of India had provided for a term loan facility of Rs. 22,50,000/- to Pawan Color Lab and the guarantor, Satyawati Tondon had provided for the guarantee of repayment of the loan by mortgage of the property. The account became non performing and while the bank proceeded to take action against the borrower u/s 13 (2) and 13 (4) of the SARFAESI Act, the guarantor, faced with imminent threat of losing the mortgaged property, filed a writ petition with the Hon'ble High Court, praying for restraining the bank to take any coercive action. In response to this the bank directed the borrower to pursue remedial action available u/s 17 of the SARFAESI Act. The High Court did not pay heed to the bank's plea and passed an impugned order restraining the bank from taking action u/s 13(4) of the Act. The High Court held that the bank should have exhausted all the means of recovery against the borrower before proceeding against the guarantor and that mere notice u/s 13(2) is not enough.

DRT Act and SARFAESI are special legislations that were enacted to offload the burden of the existing regular courts and to ensure that there is no unwarranted stumbling block in the recovery of debt proceedings by the banks and the financial institutions, as the delay in resolution would affect the financial health of these institutions and the economy as a whole. The legislation provided for standalone powers to the secured creditors to enforce security interests and carry out recovery proceedings without the intervention of the courts. However a lot of borrowers in the

past have been approaching the High Courts with frivolous cases, dissecting the course of action prescribed by law in an attempt to impede the recovery procedure, leaving the secured creditors in tumultuous situation. The Supreme Court’s judgment in the present case is a welcomed pronouncement.