

(2024) 04 MP CK 0014

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Petition No. 1680 Of 2024

M/S Pawan Oil Industries And
Others

APPELLANT

Vs

State Of Madhya Pradesh And
Others

RESPONDENT

Date of Decision: April 2, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 - Section 13(2), 14, 18

Hon'ble Judges: Sushrut Arvind Dharmadhikari, J; Gajendra Singh, J

Bench: Division Bench

Advocate: Abhinav Malhotra

Final Decision: Disposed Of

Judgement

Sushrut Arvind Dharmadhikari, J

1. This petition under Article 227 of the Constitution of India has been filed by the petitioners assailing the order dated 12.03.2024 passed by the Debt

Recovery Tribunal, Jabalpur (hereinafter referred to as DRT) in Second Appeal No. 519/2022 which was dismissed on the ground of limitation.

2. The brief facts of the case are that the petitioners no. 1 and 2 had applied for a loan in the year 2014 to the tune of Rs. 78 lakhs from the

respondent No.2/Bank under the Mukhya Mantri Yuwa Udyami Yojana at subsidized/concessional rate of interest to promote the MSME sector. The

scheme of said loan facility did not prescribe any co-lateral security to be offered for the loan. However, the lease deed of the subject property

bearing

Khasra No. 87/2 (new khasra no. 87/2/1 and 87/2/2), village Maijampur (Balsamund) Tehsil Kashawad, District Khargone admeasuring 1.620 hectare

was mortgaged against the said loan. On 28.07.2016, the respondent No.2/Bank classified petitioners' account as Non Performing Asset (NPA) and

served notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the

SARFAESI Act, 2002). In October 2021, the subject property was auctioned. Thereafter, the bank filed an application under Section 14 of the Act,

2002 before the Additional District Magistrate for assistance in delivery of the possession. Meanwhile, the petitioners approached this Court by way of

W.P.No. 3188/2022 which was disposed of with a direction to respondent no.1 to consider and decide the objections filed by the petitioners. The

respondent No. 1 vide order dated 13.05.2022 disposed of the objections raised by the petitioners. Being aggrieved, the petitioner approached the DRT

in Second Appeal No. 519/2022 which was dismissed vide the impugned order on the ground of limitation. Hence, this petition.

3. Learned counsel for the petitioners submits that the learned DRT has failed to appreciate the fact that the petitioners had glaring and stark merits

on the facts and law in their favour and as such, the appeal ought not to have been dismissed on the ground of non-condonation of delay. Therefore,

the order is liable to be set aside. He further submits that against the order impugned, the petitioners have filed the Securitization Appeal under Section

18 of the SARFAESI Act, 2002 before the DRAT Allahabad which is pending. Hence, it is prayed that till the DRAT takes up the interim application

for stay, the effect, operation and execution of the impugned order be stayed.

4. Heard on the question of admission and interim relief.

5. The Apex Court in case of A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506 held that

even where a party has approached the alternative forum, the Court should entertain a writ petition or not, a straitjacket formula cannot be formulated.

The Court may examine the facts and circumstances of the case and decide as to whether it was to entertain the petition or not. However, where the

petitioner has already approached the alternative forum for appropriate relief, it is not appropriate that the writ petition should be entertained. The rule

is based on public policy and motivating factor is that of existence of the parallel jurisdiction in another Court.

6. In case of Bombay Metropolitan Region Development Authority, Bombay v. Gokak Volkart Ltd., (1995) 1 SCC 642 , the Apex Court has held that

the writ was not maintainable wherein the petitioner had filed a writ petition during the pendency of the appeal before the Statutory Authority.

7. Thus, it is clear that a person may have a right to choose the forum for redressal of his grievance, but he/she cannot be permitted to choose two

forums in respect of the same subject-matter for the same relief. If parallel proceedings are allowed, they may give rise to forum hunting, wherein, a

party who filed a suit and was not able to get the interim relief abandons the remedy before the civil Court and approaches the remedy of filing the

writ petition, it will amount to abuse of the process of the Court by forum hunting.

8. In the light of the above enunciation of law, taking into consideration the fact that the impugned order is appealable and petitioners have admittedly

preferred an appeal which is pending consideration before DRAT, we find no reason to entertain this petition. Petitioners may avail remedy before the

DRAT and this Court has no manner of doubt that the DRAT will act in accordance with law.

9. With the aforesaid observation and without expressing any opinion on the merits of the case, the petition is disposed of.