

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 19590 of 2015**

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GUJARAT STATE FINANCIAL CORPORATION LTD  
 Versus  
 INDIA SME ASSETS RECONSTRUCTION COMPANY LIMITED & 8 other(s)

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Appearance:

MR AS ASTHAVADI(3698) for the Petitioner(s) No. 1

for the Respondent(s) No. 3,4,5,6,7

MR RD DAVE(264) for the Respondent(s) No. 8

RULE SERVED for the Respondent(s) No. 1,9

RULE SERVED BY DS for the Respondent(s) No. 2

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**CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

**Date : 01/07/2022**

**ORAL ORDER**

1. By way of this writ-application under Article 226 of the Constitution of India the writ-applicant herein has prayed for the following reliefs :-

*(A) YOUR LORDSHIPS may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned order at Annexure-A dated 27.06.2014 qua direction No.2 passed by Ld. Presiding Officer, D.R.T. - II, Ahmedabad in O.A. No. 136 of 2003 in the interest of justice;*

*(B) Pending admission, hearing and final disposal of this petition, YOUR LORDSHIPS may be pleased to stay the implementation, execution and operation of the impugned order at Annexure-A dated 27.06.2014 qua direction No . 2 passed by Ld. Presiding Officer, D.R.T. - II, Ahmedabad in*

*O.A. No. 136 of 2003 in the interest of justice;*

*(C) Such other and further relief or relieves as may be deem fit, just and proper, in the facts and circumstances of the case;*

2. It appears that the writ-applicant is a loanee of M/s.Jalan Forging Ltd., (in liquidation). The writ-applicant extended financial assistance of Rs.48 lacs to the said company in liquidation in the year 1992. The company in liquidation has not paid the dues of the writ-applicant regularly. Consequently the respondent No.1 preferred O.A. No.136 of 2003 on 26.5.2003. Originally Bank of Baroda had extended financial assistance to the company in liquidation as stated by the respondent No.1. The debt has been assigned by the Bank of Baroda to the respondent No.1. Originally O.A. No.136 of 2003 was preferred by the Bank of Baroda, however subsequently the respondent No.1 was substituted as the applicant in the instant application in place of Bank of Baroda.

3. It is the case of the original applicant before the DRT that it had sanctioned various working credit facilities in the year 1992 for an aggregate amount of Rs.340 lacs to the company in liquidation. It is further averred by the respondent in the O.A. that the respondents Nos.2 to 4 in their personal capacity had provided a corporate guarantee and have executed the letters of encashment of debts in favour of the

original applicant. That the company in liquidation failed to repay the dues. Further the company in liquidation also approached BIFR and AAIFR for revival of the unit, whereby the Bank of Baroda – original applicant was operating agency. However, it was not viable to revive the unit and, therefore, it was decided by the BIFR/AAIFR that the company should be wound up. Ultimately the said orders were forwarded to the High Court of Gujarat and the company in liquidation had been directed to be wound up by order dated 6.3.2006 in Company Petition No.01 2003.

4. It is submitted that the application of the original applicant – respondent No.1 herein had been allowed by the Presiding Officer, DRT-II, Ahmedabad by impugned order dated 27.6.2014.

5. Being aggrieved by the aforesaid order passed by the Presiding Officer, DRT-II, the writ-applicant herein approached this Court on the ground that the DRT-II while passing the impugned order has granted more than what was prayed for by the original applicant – respondent No.1 herein.

6. Mr. A. S. Asthavadi, the learned advocate appearing for the writ-applicant submitted that the property in question has been sold by the Official Liquidator and the claim of the writ-applicant as the secured creditor having first charge over the property is pending with the office of the Official Liquidator.

7. Mr. Asthavadi, the learned advocate submitted that the impugned order would cause irreparable loss to the writ-applicant in view of the fact that the claim of the writ-applicant is still pending before the Official Liquidator and by the impugned order dated 27.06.2014 there is direction by the DRT-II in para-2 which are as under :-

*“ORDER*

*(2) In case of failure to deposit the above amount within the stipulated period, the same shall be recovered from sale of property as mentioned in the Schedule annexed with @.A. The Applicant Company shall have first charge over the property over which the second charge is created by way mortgage with Gujarat State Financial Corporation which is all piece and parcel of freehold land situated at Mouje Village Kanjari, bearing survey no. 2348, taluka Halol Dist: Panchmahal.”*

8. Mr. Asthavadi, the learned advocate submitted that there is no prayer of the applicant Company whereby it is prayed to the learned Presiding Officer, DRT-II to hold that the original applicant has first charge over the property of the Company in liquidation.

9. Mr. Asthavadi, the learned advocate has relied on the order in favour of M/s. Ajar Enterprise of an amount of Rs.4.25 crores and the sale is confirmed by order dated 18.3.2008 in the OLR No.37 of 2008 which is duly produced at Annexure-E. Mr. Asthavadi, the learned advocate has

restricted his prayer to the aforesaid ground. The other grounds are not pressed by the writ-applicant.

10. Mr. R. D. Dave, the learned advocate appears for the respondent No.8. Mr. Dave, the learned advocate supported the submissions advanced by Mr. Asthavadi, the learned advocate appearing for the writ-applicant.

11. Service of rule though served to all the respondents, except respondent No.8 other respondents have not appeared.

12. Having gone through the order passed by the DRT-II dated 27.6.2014 in the O.A. No.136 of 2003 it appears that the DRT-II has granted the relief which was not prayed for by the original applicant – respondent No.2 herein. It is apposite to produce the prayers as prayed for by the respondent No.1 in the O.A. No.136 of 2003 which reads thus :-

*“A. The Hon'ble Tribunal may be pleased to grant/issue recovery Certificate in favour of applicant bank and against the respondent no. 1 to 4 directing them to pay jointly and severally a sum of Rs.7,74,34,618.00 being the due amount as stated in Para 5 along with the further current and running interest at the rate of 17% p.a. stated hereinabove on the due amount with quarterly rests on the above due amount from date of filing of this recovery application till the date of realization thereof.*

*B The Hon'ble Tribunal may be pleased to send the Recovery Certificate granted in terms of Para 6(a) to the Recovery Officer appointed under the recovery of Debts due to banks*



*and financial Institution Act, 1993 to recover the decretal dues as per decree Recovery Certificate granted by Hon'ble Tribunal out of the movable and Hypo. of goods/ Stocks and other movable properties as well as immovable properties belonging to the respondents including property mortgage with the applicant bank.*

*C. The Hon'ble Tribunal may be pleased to direct the Recovery officer to attach all movable properties such as Hypothecated stock/goods, plant and machineries etc. as per inventory report of Court Commissioner and other immovable properties belonging to the Respondents which are move particularly described in the schedule hereunder written dueing the pendency and final hearing and granting the Recovery Certificate and be further ordered to dispose off the said properties to recover the due amount towards the claim as per the Recovery Application.*

*D. The Hon'ble Tribunal may be pleased to award the cost of the present recovery application.*

*E. Any other of further relief/reliefs that may be deemed fit to this Hon'ble Tribunal in the present circumstances of the case in favour of the applicant and against the respondents.”*

13. The submissions advanced by Mr. Asthavadi, the learned advocate appearing for the writ-applicant requires consideration as can be seen from the above prayers there is no such prayer as prayed for by the respondent No.1 as granted by the DRT-II.

14. It appears that DRT-II has erred in granting the prayer which was not prayed for even by the respondent No.1. The impugned order is of 2014 and the writ-application is pending adjudication for more than seven years. At this stage, this Court is not inclined to relegate the writ-applicant to avail statutory remedy. The ratio as laid down in the case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 SCC 1**, paragraphs 14 to 22 reads thus :-

*“(14.) The power to issue prerogative writs under Art. 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warrant and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*

*(15.) Under Art. 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a*

*violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point put to cut down this circle of forensic Whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.*

*(16.) Rashid Ahmad V/s. Municipal Board, Kairana, AIR 1950 SC 163, laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K. S. Rashid & Son V/s. The Income-tax Investigation Commissioner, AIR 1954 SC 207, which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Art. 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Art. 226 could still be entertained in exceptional circumstances.*

*(17.) Specific and clear rule was laid down in State of Uttar Pradesh V/s. Mohd. Nooh, 1958 SCR 595 : AIR 1958 SC 86, as under :*

*"But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of*



*policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.*

*(18.) This proposition was considered by a Constitution Bench of this Court in A. V. Venkateswaran, Collector of Customs, Bombay V/s. Ramchand Sobhraj Wadhvani, AIR 1961 SC 1506 and was affirmed and followed in the following words (Para 10) :*

*"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case*

*which comes up before the Court."*

*(19.) Another constitution Bench decision in Calcutta Discount Co. Ltd. V/s. Income-tax Officer, Companies Distt. I, AIR 1961 SC 372 laid down :*

*"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment. The High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction u/s. 34, I.-T. Act."*

*(20.) Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Art. 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."*

In the facts and circumstances of the present case, this Court is inclined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, more particularly in view of the fact that it clearly transpires from the perusal of the prayers in the O.A. No.136 of 2003 and the order dated 27.6.2014 passed by the DRT-II that the DRT-II has granted the relief which was not prayed for in the above referred application by the applicant.

15. Accordingly this Court is inclined to modify the order dated 27.06.2014 qua direction No.2 passed by Ld. Presiding Officer, D.R.T. - II, Ahmedabad in O.A. No. 136 of 2003 whereby the DRT-II has directed thus :-

*“2) ... .. The Applicant Company shall have first charge over the property over which the second charge is created by way mortgage with Gujarat State Financial Corporation ... ..”*

The said direction in paragraph (2) is directed to be quashed and set aside. The rest of the order shall remain the same.

16. In view of above, the writ-application stands allowed. Rule is made absolute to the aforesaid extent.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)