

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 35 of 2022

Date of Decision: 16.02.2023

Asset Reconstruction Company
(India) Limited (ARCIL)

Vs. J.U.D. Cements Ltd. & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s):

Mr. G.N. Sahewalla, Sr. Adv. with
Ms. P. Agrawal, Adv.
Mr. D. Das, Adv.
Mr. V. Shriram, Adv.
Mr. P. Lyngdoh, Adv.

For the Respondent(s)

: Mr. K. Paul, Sr. Adv. with
Mr. S. Panthi, Adv.

JUDGMENT AND ORDER

1. The instant Revision Petition under Article 227 of the Constitution of India, has been filed assailing the impugned order dated 28.01.2022, passed by the Assistant to the Deputy Commissioner, East

Jaintia Hills in Misc. Case No. 1 of 2022, in T.S. No. 1 of 2022, as also the impugned order dated 17.08.2022, whereby the petitioner has been directed to maintain status quo till disposal of the suit.

2. The case in brief is that, the petitioner an Asset Reconstruction Company, is holding security interest over the respondent No. 1 company's assets, such as the cement plant, land, mining leases, corporate guarantees, etc., on account of the respondent No. 1, being declared a Non-Performing Asset (NPA) by the original lender banks in December, 2013. In connection with restructuring of the loans availed by the respondent No. 1, multiple agreements had been entered into for the same, but however, on account of repeated defaults by the respondent No. 1 on its payment obligations, the petitioner issued a revocation notice dated 15.12.2021, calling upon it to pay the entire outstanding amount of Rs.695,28,65,735/- as on 15.12.2021. Thereafter, on 03.01.2022, the petitioner published an Expression of Interest (EOI), for acquisition of strategic equity stake and/or assignment of debt exposure of the petitioner in the respondent No. 1 company.

3. The respondent No. 1 and 2, then filed the Title Suit No. 1 of 2022, along with Misc. Case No. 1 of 2022, against the petitioner under Order 39 Rule 1 of the CPC, seeking a permanent injunction of the

revocation notice dated 15.12.2021 and the Expression of Interest (EOI) published on 03.01.2022. The learned Court below, then vide order dated 28.01.2022, passed an ex parte interim order, directing the parties to maintain status quo, to which the petitioner had preferred an application under Order 39 Rule 4 of the CPC, to set aside the order dated 28.01.2022. The said application however, came to be rejected, and by order dated 17.08.2022, the learned Trial Court, made the injunction order passed on 28.01.2022, absolute till disposal of T.S. No. 1 of 2022. Hence the instant Revision Application.

4. Mr. G.N. Sahewalla, learned Senior counsel assisted by Ms. P. Agrawal, learned counsel for the petitioner, while alluding to the facts, submits that, the respondent No. 1 had availed loans from a consortium of eight banks, who were the original lenders and the said loans were secured by way of a first charge on the assets of the respondent. In 2018, the learned Senior counsel submits, the original lenders assigned all rights title and interest in relation to the loans availed by the respondent along with the assets known collectively as security interest, to the petitioner in two phases, and pursuant to the request of respondent No. 1, the total debt was initially restructured as per terms of the sanction letter dated 01.03.2018, and thereafter in terms of letter dated

10.04.2018. The learned Senior counsel then submits that, the respondent No. 1, then agreed to – (i) convert INR 17.36 Crores of the debt into equity shares of Respondent No. 1 as per the Investment Agreement dated 14.11.2018 (“Investment Agreement”) and (ii) pledge 51.87% equity shares with the Petitioner in terms of the Share Pledge Agreement dated 29.11.2019.

5. The learned Senior counsel further submits that, since the respondent No. 1 did not honour its payment obligations, the petitioner and the respondent No. 1, entered into a Restructuring Agreement dated 03.10.2019 (“Restructuring Agreement”) to consolidate the terms of restructuring, and specifically incorporated the previous terms of restructuring under letters dated 01.03.2018 and 10.04.2018. However, he submits inspite, of multiple rounds of restructuring, the respondent No. 1, defaulted in its payment obligations, but as a final opportunity at the request of the respondent No. 1, the repayment schedule under the Restructuring Agreement, was further modified in terms of a communication by email dated 14.06.2022. The respondent No. 1, he submits, even to the modified restructuring defaulted, to which the petitioner had no recourse, but to issue a revocation letter dated 15.12.2021, to the respondent No. 1, revoking the restructuring proposal and reinstating all the liabilities of respondent No. 1, which

aggregated to Rs.695.28/- crores, as on 15.12.2021 (Revocation Notice).

6. The learned Senior counsel submits that, it was at this juncture that, an invitation for Expression of Interest (EOI) dated 03.01.2022, was published, inviting bids for sale of its equity stake and assignment of its debts in respondent No. 1, under Section 5 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), to which the respondent No. 1 and 2 filed the Title Suit before the Court of Assistant Deputy Commissioner, East Jaintia Hills, to restrain the petitioner from taking any steps consequent to the Revocation Notice and Expression of Interest (EOI).

7. The learned Senior counsel submits that, the petitioner has come by way of Article 227, as the orders passed by the Lower Court, are erroneous and beyond its jurisdiction. It is submitted that, by an express agreement entered into by the parties, for restructuring as per clause 10 thereof, all disputes had been made subject to the jurisdiction of Courts and Tribunals of Mumbai and Guwahati, and that the respondent No. 1 at clause 10.1.3 of the agreement, had agreed to not challenge this jurisdiction. In support of his submissions, the learned Senior counsel has cited the following two decisions;

- i) *Swastik Gases Private Limited vs. Indian Oil Corporation Limited (2013) 9 SCC 32*
- ii) *Brahmani River Pellets Limited vs. Kamachi Industries Limited (2020) 5 SCC 462.*

8. It is further submitted, that by reading the Restructuring Agreement, Investment Agreement and Share Pledge Agreement, it was a clear intention of the petitioner and the respondent No. 1, to confer jurisdiction only on the Courts of Guwahati or Mumbai, since all contracts entered into between the parties provided for jurisdiction of the Courts of Guwahati and Mumbai. As such, he submits, in view of the agreement of the parties on jurisdiction and exclusion of jurisdiction of other Courts, there is no occasion for this Court to send the matter back to the Civil Court to decide jurisdiction.

9. The learned Senior counsel has contended that, the impugned order are also ex facie in violation of Section 41(b) of the Specific Relief Act, 1963, and deserve to be set aside, inasmuch as, this Section prohibits any Court from granting injunction, which restrains any person from instituting or prosecuting any proceeding in a Court not subordinate to that, from which injunction is sought. The injunction order, he submits by directing the petitioner to maintain status quo, has effectively nullified the right of the petitioner to revoke the

restructuring, inspite of the default by respondent No. 1, and has also the effect of restraining the petitioner from exercising its legal rights to initiate and prosecute proceedings for recovery of the outstanding debts before the Debt Recovery Tribunal under the Recovery of Debts Act, 1993 and before the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016. It is also further asserted by the learned Senior counsel that, the impugned orders are in violation of the public policy of India, as they have prevented the petitioner, from taking any steps for recovery/resolution of the outstanding debts owed to it by the respondent No. 1, whose account has already been declared as a Non-Performing Asset. In this context, the judgment of ***Board of Control for Cricket in India vs. Cricket Association of Bihar & Ors.*** (2015) 3 SCC 251, has been cited.

10. It has also been urged that, the jurisdiction of the Civil Courts is ousted by the operation of Section 34 of the SARFAESI Act, which he submits, provides that, Civil Courts do not have jurisdiction in respect of any action taken, or to be taken by a secured creditor under this Act, and the impugned orders have in effect even prohibited the petitioner from taking steps under Section 13 of this Act, which therefore, is a clear violation of Section 34. With regard to, the point of Section 34 of the SARFAESI Act, being applicable to future situations,

the learned Senior counsel has placed reliance on the case of *Mardia Chemicals Ltd. & Ors. vs. Union of India & Ors. (2004) 4 SCC 311*.

The learned Senior counsel concludes his submissions, by praying that the impugned orders be set aside to enable the petitioner to exercise its legal and statutory rights to initiate proceedings before the competent jurisdictional courts and tribunals as per the Restructuring Agreement and applicable law for recovery, resolution in respect of the admitted outstanding debt of nearly Rs.700 crores, owed by respondent No. 1.

11. Mr. K. Paul, learned Senior counsel assisted by Mr. S. Panthi, learned counsel for the respondent has firstly submitted that, the order impugned being appealable, revisionary jurisdiction under Article 227 of the Constitution of India, cannot be invoked. He further submits that, the petitioner had submitted to the jurisdiction of the Lower Court by filing written statement, issues and even an application under Order 39 Rule 4 of the CPC, but no challenge was made as to the maintainability of the title suit before the Trial Court under Order 7 Rule 11 CPC, which should have been made in the first instance. He submits even in the instant Revision Application, only the impugned orders, that is, orders dated 28.01.2022 and 17.08.2022, have been assailed and there is no challenge to the principal proceedings. As such, he contends, the

Revision Application under Article 227 of the Constitution, is not maintainable. The following decisions have been cited by the learned Senior counsel;

- i) ***A. Venkatasubbiah Naidu vs. S. Chellappan & Ors.***
(2000) 7 SCC 695
- ii) ***Kanaiyalal Lalchand Sachdev & Ors. vs. State of Maharashtra & Ors.*** ***(2011) 2 SCC 782***
- iii) ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. vs. Tuticorin Educational Society & Ors.***
(2019) 9 SCC 538.

12. Learned Senior counsel then submits that, the issue of territorial jurisdiction is a mixed question of law and fact, and cannot be challenged in a summary proceeding under revisionary jurisdiction before this Court, as evidence has to be led to establish this claim and further that, the instant petition has been filed only to avoid the issue of limitation. The learned Senior counsel has raised technical objections about the affidavit in support of the instant Revision being defective, and also that, the pleadings have not been verified. Learned Senior counsel has placed reliance on the case of ***Madhav Rao vs. Khunru Balappa & Ors.*** reported in ***(2004) 11 SCC 161***, to support his argument on the issue of territorial jurisdiction.

13. Coming to the crux of the matter, the learned Senior counsel submits that, the Investment Agreement which was executed on 14.11.2018, provides for dispute resolution by way of arbitration with the venue at Guwahati, as per clause 24.1 and 24.2. He submits that, it was provided in this Investment Agreement, that the Courts of Guwahati, Assam shall have non-exclusive jurisdiction over the arbitration proceedings. The learned Senior counsel then submits that on 03.10.2019, the Restructuring Agreement was executed followed by the Share Pledge Agreement on 29.11.2019, which however on the letter dated 15.12.2021, issued by the petitioner, the said restructuring stood cancelled and revoked with immediate effect. It is contended that, by the cancellation, the situation reverted back to the first agreement dated 14.11.2018, and its terms was thus binding on the parties, and the subsequent terms contained in the Restructuring Agreement dated 03.10.2019, became null and void. He therefore asserts, as this agreement, that is the Investment Agreement, provides at clause 24.2, that nothing shall preclude a party from seeking interim equitable or injunctive relief, the filing of the suit by the respondent shall not be a waiver of the right of the parties to pursue any other remedy or relief through arbitration. He therefore submits, the Revision Application not being maintainable, the same is liable to be dismissed.

14. Mr. G.N. Sahewalla, learned Senior counsel for the petitioner in reply to this argument, has submitted that, the Investment Agreement is not the primary document but, also a restructuring document which is clear from the recitals contained therein at clause E and F. He submits that, it is grossly incorrect to state that, the revocation of the Restructuring Agreement would make the Investment Agreement, the primary document that will hold the field, and further submits that, as per clause 7.4 of the Restructuring Agreement dated 03.10.2019, it has been clearly provided that even if the Restructuring Agreement is revoked, the respondent No. 1 is required to continue honouring its obligations under the Restructuring and Investment Agreements, which includes the obligations to not challenge the jurisdiction of the Courts and Tribunals of Mumbai and Guwahati. He further contends that it is a settled position of law, that words like ‘exclusive’ and ‘non-exclusive’ while conferring jurisdiction are of no significance and what is relevant is the intention of the parties. On this aspect, he has again cited the judgment of *Swastik Gases Private Limited vs. Indian Oil Corporation Limited (supra)*.

15. I have heard learned counsel for the parties. Shorn of other details, it is clear that the proceedings, arose from the publication of the Expression of Interest (EOI) on 03.01.2022, on the revocation of the

restructuring proposal, and the re-instatement of all the liabilities of the respondent No. 1, which aggregated to nearly 700 crores. By the said EOI, bids were invited for sale of equity stake and assignment of debts under Section 5 of the SARFAESI Act, and the respondent to defeat the same, had then filed the Title Suit to restrain the petitioner from taking any further steps in furtherance of the EOI, which was granted by the Trial Court initially on 28.01.2022 and made absolute on 17.08.2022. From the records, it appears that, the petitioner herein, contested the suit and had filed a written statement and also the suggested issues. As noted earlier, challenge has been made to the proceedings and the orders passed by the Lower Court on the following grounds, that is, lack of jurisdiction, the bar created by Section 34 of the SARFAESI Act, and Section 41(b) of The Specific Relief Act, 1963.

16. On the point of jurisdiction, as per the Restructuring Agreement dated October 3, 2019, it is noted that, at clause 10 specifically clause 10.1 (10.1.1 and 10.1.2), the parties had agreed that, all disputes will be subject to the jurisdiction of the Courts and Tribunals at Mumbai and Guwahati. The said clauses for the sake of convenience, are reproduced hereinbelow;

“10.1 Governing Law and Jurisdiction

10.1.1. This Agreement shall be governed, construed and interpreted in accordance with the laws of India and the Borrower agrees that courts and tribunals of Mumbai, Maharashtra and Guwahati, Assam shall have the jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings (together referred to as “Proceedings”) arising out of or in connection with this Agreement may be brought in such courts or the tribunals and the Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.

10.1.2. The Borrower irrevocably waives any objection now or in future, to decide of the venue of any Proceedings in the courts and tribunals at Mumbai, Maharashtra and/or Guwahati, Assam and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts and tribunals at Guwahati, India shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment, a

certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by Applicable Law”.

17. A plain reading of the above noted clauses, in the view of this Court, has clearly expressed the intention of the parties, that in any dispute to the agreement, the Courts at Mumbai and Guwahati, Assam would have jurisdiction. On this aspect, the judgment cited by the petitioner that is, ***Swastik Gases Private Limited (supra)*** has a distinct bearing on this point. Paragraphs – 31, 32, 33 and 37, wherein this point has been discussed are reproduced hereinbelow;

“31. In the instant case, the appellant does not dispute that part of cause of action has arisen in Kolkata. What appellant says is that part of cause of action has also arisen in Jaipur and, therefore, the Chief Justice of the Rajasthan High Court or the designate Judge has jurisdiction to consider the application made by the appellant for the appointment of an arbitrator under Section 11. Having regard to Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code, there remains no doubt that the Chief Justice or the designate Judge of the Rajasthan High Court has jurisdiction in the matter. The question is, whether parties by virtue of Clause 18 of the agreement have agreed to exclude the jurisdiction

of the courts at Jaipur or, in other words, whether in view of Clause 18 of the agreement, the jurisdiction of Chief Justice of the Rajasthan High Court has been excluded?

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement – is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like clause 18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an

inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

33. The above view finds support from the decisions of this Court in Hakam Singh, A.B.C. Laminart, R.S.D.V. Finance, Angile Insulations, Shriram City, Hanil Era Textiles and Balaji Coke.

37. In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like “only”, “exclusively”, “alone” and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject-matter of the proceedings vested, by agreement, only in the Courts in Kolkata”.

18. Though arguments has been put forward by the respondents that, with the revocation of the Restructuring Agreement dated 03.10.2019, the original Investment Agreement dated 14.11.2018, would be revived, and further that at clause 24.2 thereof, it was

provided that, no party was precluded from seeking equitable or injunctive relief, or both and that, the pursuit of this relief would also not stand as a bar to seeking resolution through arbitration, this contention is of no relevance, inasmuch as, 'Restructuring Documents' as defined in the Restructuring Agreement has also included the 'Investment Agreement'. As such therefore, the Restructuring Agreement having taken into its fold, the Investment Agreement, it cannot be held that with the revocation of the Restructuring Agreement, the Investment Agreement dated 14.11.2018, would hold sway. Further, on the ouster of jurisdiction, sufficient materials are available as to the exclusive jurisdiction of the Courts at Mumbai and Guwahati over the dispute. The judgment placed by the respondents that is, ***Madhav Rao vs. Khunru Balappa & Ors.(supra)***, is of no assistance to them, as it concerns a case where only bald statements were made on the lack of jurisdiction and no materials were placed to substantiate the same.

19. On the same point however, this Court cannot ignore the fact that, the petitioner did not take the point of lack of jurisdiction in the first instance, but rather, put it up as a suggested issue and also took part in proceedings before the Trial Court, and on the injunction being made absolute, have come before this Court. This however, in the view of this

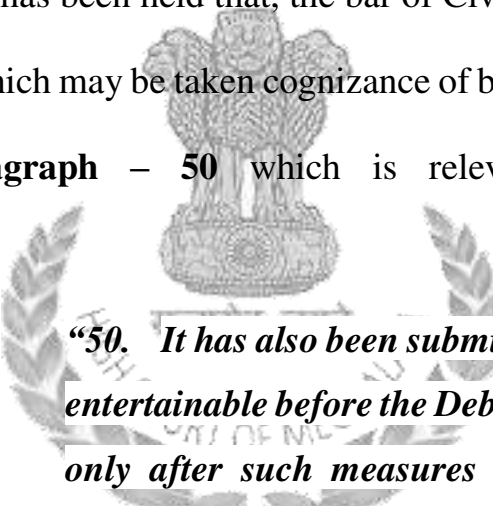
Court, cannot be a factor that will prevent the aspect of lack of jurisdiction of the Trial Court being considered.

20. This Court will now examine, as to whether the suit was also barred under Section 34 of the SARFAESI Act, which has laid down as follows;

“34. Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)”.

21. Section 34 as noted above, has cast a bar on Civil Courts in entertaining any suit of proceeding in respect of any matter, which a Debts Recovery Tribunal is empowered to take up, and more importantly, in respect of any action taken or to be taken in pursuance of powers conferred by SARFAESI Act or Recovery of Debts Act, 1993.

22. Section 13 of the SARFAESI Act, speaks of enforcement of security interest, where a borrower who is under a liability to a secured creditor under security arrangement makes a default in repayment as provided in Section 13(2), or fails to discharge his liability in full within the period specified, which is provided in Section 13(4). The decision of *Mardia Chemicals Ltd. & Ors. vs. Union of India & Ors. (supra)*, in the considered view of this Court, will be applicable to the instant case, wherein it has been held that, the bar of Civil Court applies to all such matters, which may be taken cognizance of by the Debts Recovery Tribunal. **Paragraph – 50** which is relevant, is reproduced hereinbelow;



“50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debt Recovery Tribunal or the appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr. Salve one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find

that this contention as advanced by Shri Salve is not correct. A full reading of section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13".

[Emphasis supplied]

23. The proceedings therefore, in view of the specific bar imposed by Section 34 of the SARFAESI Act, will no doubt be not maintainable

in law, as the non-discharge of liabilities to the secured creditor will surely come within the purview of a dispute that should go before the Debts Recovery Tribunal. The impugned orders in this regard, having in effect restrained the petitioner from seeking relief under a special act, are hit by Section 34.

24. On the point of the orders being violative of Section 41(b) of the Specific Relief Act, 1963, this Court finds force in the submissions of the learned Senior counsel for the petitioner that, a Court cannot grant an injunction restraining any person from instituting a proceeding in a Court of co-ordinate or superior jurisdiction. This submission is accepted, inasmuch as, by the impugned orders, the petitioner has been effectively restrained from instituting other proceedings before a special forum, which is not subordinate to the Lower Court, that is, the Debts Recovery Tribunal or before the Company Law Tribunal.

Section 41(b) reads as follows;

“41. Injunction when refused.- An injunction cannot be granted-

(a)

(b) to restrain any person from instituting or prosecuting any proceeding in a

court not subordinate to that from which the injunction is sought.”

25. The judgment of the Hon’ble Supreme Court in the case of *Cotton Corporation of India Limited vs. United Industrial Bank Limited & Ors.* reported in (1983) 4 SCC 625, is also relevant to be referred to on this point, of which extract of Paragraph – 7 and 9 is quoted hereinbelow;

“7. Part III of the Act

The Legislature manifestly expressed its mind by enacting Section 41 (b) in such clear and unambiguous language that an injunction cannot be granted to restrain any person, the language takes care of injunction acting in personam, from instituting or prosecuting any proceeding in a court not subordinate to that from which injunction is sought. Section 41(b) denies to the court the jurisdiction to grant an injunction restraining any person from instituting or prosecuting any proceeding in a court which is not subordinate to the court from which the injunction is sought. In other words, the court can still grant an injunction restraining a person from instituting or prosecuting any proceeding

in a court which is subordinate to the court from which the injunction is sought. As a necessary corollary, it would follow that the court is precluded from granting an injunction restraining any person from instituting or prosecuting any proceeding in a court of co-ordinate or superior jurisdiction. This change in language deliberately adopted by the Legislature after taking note of judicial vacillation has to be given full effect.

9. *Viewed from a slightly different angle, it would appear that the legal system in our country envisages obtaining of redressal of wrong or relief against unjust denial thereof by approaching the court set up for the purpose and invested with power both substantive and procedural to do justice that is to grant relief against invasion or violation of legally protected interests which are jurisprudentially called rights. If a person complaining of invasion or violation of his rights is enjoined from approaching the court set up to grant relief by an action brought by the opposite side against whom he has a claim and which he wanted to enforce through court, he would*

have first to defend the action establishing that he has a just claim and he cannot be restrained from approaching the court to obtain relief. A person having a legal right and complains of its violation or infringement, can approach the court and seek relief. When such person is enjoined from approaching the court, he has to vindicate the right and then when injunction is vacated, he has to approach the court for relief. In other words, he would have to go through the gamut over again: When defending against a claim of injunction the person vindicates the claim and right to enforce the same. If successful he does not get relief but a door to court which was bolted in his face is opened. Why should he be exposed to multiplicity of proceedings? In order to avoid such a situation the Legislature enacted Section 41(b) and statutorily provided that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought. Ordinarily a preventive relief by way of prohibitory injunction cannot be granted by a court with a view to restraining any

person from instituting or prosecuting any proceeding and this is subject to one exception enacted in larger public interest, namely, a superior court can injunct a person from instituting or prosecuting an action in a subordinate court with a view to regulating the proceeding before the subordinate courts. At any rate the court is precluded by a statutory provision from granting an injunction restraining a person from instituting or prosecuting a proceeding in a court of coordinate jurisdiction or superior jurisdiction. There is an unresolved controversy whether a court can grant an injunction against a person from instituting or prosecuting a proceeding before itself but that is not relevant in the present circumstances and we do not propose to enlarge the area of controversy.”

[Emphasis supplied]

26. Coming to the maintainability of the instant Revision Application under Article 227 of the Constitution, it is correct that procedural appeal was available to the petitioner in assailing the impugned orders which has not been availed of, but rather interference

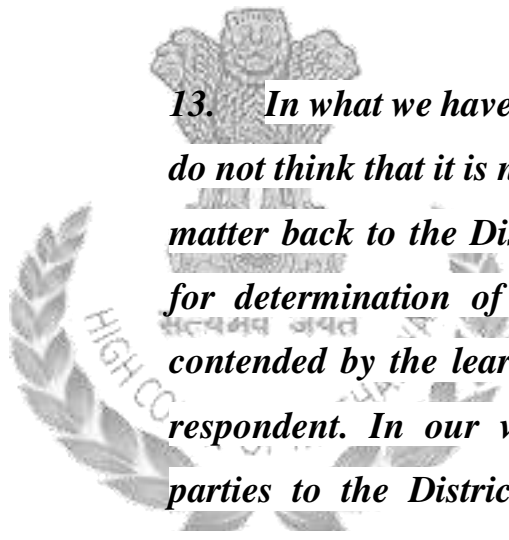
is sought, by praying for the invocation of the powers of superintendence by this Court. It is a common refrain that, in cases where alternative remedy is available in terms of the CPC, Courts are normally reluctant to exercise supervisory jurisdiction, but it is also true that depending upon the peculiar facts of a case, a remedy of appeal may not always be a bar in the exercise of such powers. The instant case to the mind of the Court, is such a case, wherein, the manner of involvement of public money is clearly against public policy, and a secured creditor is being thwarted from taking steps for recovery of outstanding debts from the respondent No. 1, whose account has already been declared a non-performing asset. Article 227 of the Constitution, vests in the High Court the power to interfere in cases of erroneous assumption of jurisdiction or acting beyond the jurisdiction conferred and to correct a patent error, procedural or otherwise.

27. Looking into the peculiar facts of the instant case as aforementioned, the judgments cited by the learned Senior counsel for the respondents on the restraint to exercise of powers under Article 227 of the Constitution, that is, ***Kanaiyalal Lalchand Sachdev & Ors. vs. State of Maharashtra & Ors. (supra)*** and ***Virudhunagar Hindu Nagardal Dharma Paribalna Sabal & Ors. vs. Tuticorin Educational***

Society & Ors. (supra), therefore will not be applicable, as the facts of these cases, rest on different circumstances.

28. Though the proceedings before the Trial Court, have not been specifically challenged by the petitioner, but looking into the totality of the facts and circumstances of the case, from the point of jurisdiction, operation of the SARFAESI Act, the Specific Relief Act, 1963, no useful purpose will be served by remanding the matter back to the Lower Court, to first decide on the point of jurisdiction. The bar to Civil Courts in such matters, which are to be governed under special laws and relief sought for available under the Debt Recovery and Insolvency Laws, are overwhelming factors that have weighed in the mind of this Court in coming to this finding. It may also be noted that, there can be no estoppel against law, and whatever actions that may have been taken, otherwise by the petitioner, in the proceedings before the Lower Court, cannot take away the right from it seeking relief under the relevant statutes. A judgment of the Hon'ble Supreme Court rendered in ***B.E. Simoese Von Staraburg Niedenthal & Anr. vs. Chhattisgarh Investment Limited*** reported in (2015) 12 SCC 225, at paragraph – 12 and 13 to show the futility of remand to decide on jurisdiction had held as follows;

“12. In light of the legal position expositied in Swastik Gases (P) Ltd. and Associated Contractors and having regard to Clause 13 of the agreement, as noted above, the jurisdiction of the District Judge, Raipur is ousted and, therefore, he cannot be said to have any jurisdiction in dealing with the matter. The only competent court of jurisdiction is the court at Goa.



13. In what we have discussed above, we do not think that it is necessary to send the matter back to the District Judge, Raipur for determination of the jurisdiction as contended by the learned counsel for the respondent. In our view, relegating the parties to the District Judge, Raipur to determine the question of jurisdiction will be unnecessary and futile exercise.”

29. In view of the foregoing circumstances, this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution, deems the instant case to be a fit case for interference, in view of the error of law apparent on record. As such, the impugned orders 28.01.2022 and 17.08.2022, are accordingly quashed and set aside, and the Learned

Lower Court in view of the specific bar in such matters is held to be without jurisdiction to try T.S. No. 1 of 2022, pending in its Court.

30. As ordered above, the instant Revision Application stands allowed.

31. No order as to costs.

Judge

Meghalaya
16.02.2023
"D.Thabah-PS"

