

RESERVED ON 20TH AUGUST 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT APPEAL NO.1761 OF 2025 (GM-RES)

BETWEEN:

1. SRI ASHOK KUMAR
S/O LATE SUMERMAL,
AGED ABOUT 73 YEARS,
 2. SRI. PRAVEEN KUMAR
S/O SRI ASHOK KUMAR,
AGED ABOUT 46 YEARS,
 3. SRI. ARVIND KUMAR
S/O SRI. ASHOK KUMAR,
AGED ABOUT 43 YEARS
 4. SRI. SANTOSH KUMAR
S/O SRI. ASHOK KUMAR,
AGED ABOUT 41 YEARS,
- ALL ARE RESIDING AT NO.209,
A.K. JAIN PARIVAR PALACE,
V.V.PURAM, BANGALORE.

...APPELLANTS

(BY SRI. P.D. SURANA, ADVOCATE)

AND:

1. THE HOUSING & URBAN
DEVELOPMENT CORPORATION LTD.,

Digitally
signed by C
K LATHA
Location:
High Court
of Karnataka

BANGALORE REGIONAL OFFICER,
UNIT NO.703-704, 7TH FLOOR,
NORTH BLOCK, MANIPAL CENTRE,
DICKENSON ROAD,
BANGALORE-560042.
REPRESENTED BY ITS
AUTHORIZED OFFICER

2. SRI. MAHESH KUMAR,
S/O LATE CHIKKANNA,
AGED ABOUT 51 YEARS,
NO.205, E-1, 1ST FLOOR, 14TH MAIN,
SUBRAMANYA NAGAR,
BANGALORE.
3. RECOVERY OFFICER-1
DEBTS RECOVERY TRIBUNAL-1,
BENGALURU
JEVAN MANGAL BUILDING,
2ND FLOOR, RESIDENCY ROAD,
BENGALURU-560 025.

...RESPONDENTS

(BY SRI. S.P. SHANKAR, SENIOR COUNSEL FOR
SRI. VARADARAJ HAVALDAR A/W
SRI. VIGNESH SHETTY, ADVOCATES FOR R-1;
R3 SERVED)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET-ASIDE THE IMPUGNED COMMON ORDER DATED 17.07.2025 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN W.P.NO.9465/2015 C/W W.P.NO.50267/2019 AND FURTHER DIRECT THAT ANY SALE MADE BY THE 1ST RESPONDENT IN PURSUANCE OF THE OBTAINING OF THE AWARD IN O.A.NO.119/2011 ON THE FILE OF THE DEBT RECOVERY TRIBUNAL, BENGALURU, WILL NOT AFFECT THE RIGHTS OF THE APPELLANTS OVER THE SCHEDULE PROPERTIES.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

(PER: HON'BLE MRS. JUSTICE K.S. HEMALEKHA)

1. Impugning the common order dated 17.07.2025 passed in Writ Petition No. 9465/2015 [GM-RES] and Writ Petition No. 50267/2019 [GM-DRT] [**the impugned order**], whereby the writ petitions filed by the appellants came to be dismissed, while reserving liberty to the appellants to avail such remedies as may be available to them in law, including placing their claim of a charge before the Recovery Officer, the appellants have preferred the present intra-court appeal.

2. In Writ Petition No. 9465/2015, the appellants had sought a writ of prohibition restraining the Housing and Urban Development Corporation Limited [**HUDCO**] (respondent No.1) from selling the schedule properties pursuant to the sale notice dated 22.02.2015. In Writ Petition No. 50267/2019, they had sought a similar prohibitory direction restraining respondent Nos.1 and 3 from selling the schedule properties pursuant to the proceedings No. DCP/13243 in O.A No. 119/2011 pending before respondent No.3, pursuant to the sale proclamation dated 17.09.2019.

BRIEF FACTS

3. The appellants entered into an agreement of sale dated 11.04.2005 with respondent No. 2, Sri Mahesh Kumar, for purchase of the schedule properties for a consideration of ₹ 2.25 Crores. As the sale deed was not executed, the appellants initiated arbitration proceedings and filed A.A No. 41/2007 under Section 9 of the Arbitration and Conciliation Act, 1996 [**A&C Act**]. By the order dated 23.08.2007, the Civil Court restrained the respondents therein from alienating the schedule properties and directed both the parties to maintain *status quo* till the conclusion of the arbitral proceedings.

4. Even prior to the institution of the said proceedings, the agreement of sale had been cancelled by a deed of cancellation dated 23.09.2005 (Ex. P5 before the Arbitral Tribunal). The dispute was nevertheless referred to arbitration and the Arbitral Tribunal in Arbitration Case No. 11/2020 (Arbitral Tribunal) on 13.3.2012 ultimately passed an award directing respondent No.2 to pay appellants ₹ One Crore with interest at 10% per annum, while schedule properties were stated to stand charged towards the award amount.

5. Meanwhile, respondent No. 2 and another partner formed M/S Avva Developers, and the schedule properties were brought into the partnership. HUDCO thereafter sanctioned a loan to the partnership and, by deposit of title deeds dated 30.11.2007 created a mortgage over the schedule properties in its favour. The appellants contend that the mortgage was created in violation of the order dated 23.08.2007. HUDCO disputes this, contending that it was not a party to A. A. No.41/2007 and that the properties had already become partnership property.

6. On default in payment of the loan, HUDCO initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [**SARFAESI Act**] and also obtained a recovery certificate in O.A No.119/2011 before the Debts Recovery Tribunal [**DRT**]. Possession and sale notices were thereafter issued in respect of the mortgage properties. The appellants consequently filed Writ Petition No. 9465/2015 challenging the proposed sale pursuant to the sale notice dated 22.02.2015 and Writ Petition No. 50267/2019 challenging the subsequent recovery proceedings and sale proclamation dated 17.09.2019.

7. By the common order dated 17.07.2025, the learned Single Judge dismissed both writ petitions, holding that the appellants had appropriate statutory remedies under Section 17 of the SARFAESI Act and Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 [**RDB Act**] and that the writ petition could not be invoked to interfere with the statutory recovery proceedings. Liberty was reserved to the appellants to avail such remedies.

Submissions of the appellants

8. The learned counsel for the appellants would contend that the Civil Court in A.A No.41/2007 had restrained alienation of the schedule properties and directed to maintain the *status quo*. According to them, the subsequent mortgage created in favour of HUDCO was in violation of the said order and therefore could not confer enforceable rights on HUDCO. It is submitted that the rights claimed by HUDCO could not override the appellants' prior rights i.e. through agreement of sale dated 11.04.2005. Though the arbitrator rejected specific performance, the appellants rely upon the monetary award of ₹ One Crore with 10% interest per annum and contend that the properties were charged towards satisfaction of the award. The said award came to be assailed in Com.A.S.No. 42/2012, which was partly allowed by judgment dated 14.06.2021

setting aside the award of interest at 10% per annum, and that COMAP No.418/2022 preferred against the said judgment is pending on the file of this Court. They therefore claim that their interest in the schedule properties required protection before permitting their sale. The learned Single Judge ought to have protected their rights rather than relegating them to the recovery officer.

SUBMISSIONS OF HUDCO

9. Sri S.P.Shankar, learned Senior Counsel appearing for HUDCO, would contend that the measures under the SARFAESI Act could be challenged only before the DRT under Section 17 of the SARFAESI Act, while the action of recovery officer under the RDB Act could be challenged under Section 30 of the RDB Act. Hence, it is submitted that entertaining of writ petition was rightly declined. It is submitted that according to the deed of cancellation dated 23.09.2005, under which the agreement of sale dated 11.04.2005 was cancelled, the appellants had no subsisting right, title or interest in the properties and this aspect was considered by the Tribunal, wherein the specific performance sought by the appellants was rejected. As regards the appellants' contention that the mortgage in favour of HUDCO was created in violation of the

order of the Civil Court, it is submitted that Miscellaneous No. 1082/2010 filed by the appellants alleging violation of the injunction was dismissed and the Civil Court found that there was no sufficient evidence of violation of the order.

10. The learned Senior Counsel points out that pursuant to the order passed in the writ petition granting liberty, the appellants have approached the DRT in S.A. No. 182/2026 under Section 17 of the SARFAESI Act and the DRT has dismissed the application on 21.04.2026. It is pointed out that the final order passed in O.A No.119/2011 on 18.08.2015 and the recovery certificate issued in pursuance thereof have attained finality, and that the measures taken under the SARFAESI Act, assailed by the appellants in S.A No.182/2026 have also been upheld.

SEQUENCE OF EVENTS

11. The appellants' assertion is that the mortgage created in favour of HUDCO on 30.11.2007 was subsequent to and in violation of the interim order dated 23.08.2007 passed in A.A No. 41/2007. The sequence of events, however, assumes importance in examining the nature of right which the appellants themselves possessed at the relevant point of time.

12. As already noticed, the appellants entered into the agreement of sale dated 11.04.2005, which came to be cancelled under the deed of cancellation dated 23.09.2005. It is thereafter that the appellants instituted A.A.No. 41/2007 under Section 9 of the A&C Act. By order dated 23.08.2007, the Civil Court directed to maintain *status quo* and restrained alienation of the schedule properties pending arbitral proceedings. At this stage however, it is relevant to note that according to the material placed by HUDCO, M/S Avva Developers were constituted on 01.04.2007 and the schedule properties were brought into the partnership.

13. Thereafter, on 30.11.2007, the partners of Avva Developers created a mortgage in favour of HUDCO by deposit of title deeds as security for the loan availed by the partnership. The appellants contend that the mortgage was created in breach of the order dated 23.08.2007. HUDCO, on the other hand, points out that it was not a party to A.A No.41/2007, that the properties had already been brought into the partnership and therefore, the injunction could not be invoked against HUDCO so as to invalidate or restrain enforcement of its mortgage.

REASONS AND CONCLUSIONS

14. The appellants' claim originated from an agreement of sale dated 11.04.2005 (Ex.P1 before the Arbitral Tribunal). Significantly, the said agreement of sale was subsequently cancelled under Ex.P5 dated 23.09.2005. Before the Arbitral Tribunal, the appellants sought to contend that Ex.P5 had been brought about by misrepresentation. The Tribunal, however, rejected the said contention and found that Ex. P5 had been executed by appellants themselves, thereby validly cancelling Ex.P1. Consequently, the claim of specific performance was answered in the negative. However, the appellants were awarded a sum of ₹ One Crore with interest at 10% per annum. The operative portion of the said order reads thus:

"29) **Point (m):** In the result I make the following:

ORDER

- (a) The Respondent to pay to the Claimants Rs.1.00 crore together with interest at 10% per annum from 11.4.2005 upto the date of award and at 15% per annum from the date of award till the date of payment;
- (b) The two items of immoveable properties involved in the dispute described in the schedule hereunder stand attached till all the payments under this Award to the Claimants by the Respondent;
- (c) The properties involved in the dispute are charged for payment of all the amounts due to the claimants by the Respondent;

- (d) The Respondent to pay to the Claimants a sum of Rs.2,15,000/- as the cost incurred as Arbitrator Fee;
- (e) The Respondent to pay the amount within 4 months from the date of receipt of copy of the order;
- (f) Advocate's fee is fixed at Rs.30,000/- which shall be payable to the Claimants by the Respondent;
- (g) The proceedings are hereby terminated under Section 32 of the Arbitration and Conciliation Act."

15. The allegation that the interim order had been violated was carried before the Civil Court in Miscellaneous No. 1082/2010 which came to be dismissed by order dated 23.07.2021. HUDCO relies upon the said order to contend that the alleged breach of injunction was not established.

16. More importantly, the arbitral proceedings culminated in an award dated 13.03.2012. The Arbitral Tribunal, having rejected specific performance, confined the appellants' relief to a monetary award, holding that the appellants cannot on the strength of Ex.P1 assert an independent right to obtain title to the property. Significantly, the security in favour of HUDCO, founded upon deposit of the title deeds dated 30.11.2007, prior to the charge created under the arbitral award dated 13.03.2012. HUDCO had instituted O.A No. 119/2011 before DRT for recovery of its dues. The DRT passed its final order on 18.08.2015 allowing HUDCO's

claim and permitting recovery against mortgaged properties, pursuant to which a recovery certificate came to be issued. Challenging the same, the appellants preferred the Writ Petition Nos.9465/2015 and 50267/2019. The learned Single Judge declined to interfere with the statutory proceedings granting liberty to the appellants to avail such remedies. We find no reason to take a different view. The appellants' substantive claim under the agreement of sale had already been adjudicated in arbitration, with specific performance having been expressly rejected. What survived was the monetary claim under the award. Equally, the appellants' contention that the mortgage created by deposit of title deeds on 30.11.2007 was in violation of the interim order stands concluded against them, the proceedings initiated in Misc.No.1082/2010 alleging violation of that order having failed.

17. The SARFAESI Act and the RDB Act contain overriding provisions. Section 35 of the SARFAESI Act reads as thus :

"35. The provisions of this Act to override other laws.-The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

18. Section 34 of the RDB Act reads as thus :

"34. Act to have overriding effect.-(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made there under shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

19. A conjoint reading of Section 35 of the SARFAESI Act and Section 34 of the RDB Act makes it evident that the provisions of respective enactments have been accorded overriding effect over anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law. The non-obstante clause, however, operate to the extent of inconsistency and do not, by themselves, extinguish every right or interest otherwise created in respect of the secured asset.

20. In considering the nature of priority of such competing interests, it is relevant to consider the provisions of the Transfer of Property Act, 1882 [**T.P Act**]. Section 48 reads as under :

"48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immoveable property, and

such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."

21. A plain reading of the above provision embodies the principle that where rights in or over the same immovable property are created at different times and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferee, be subject to the rights previously created.

22. Section 58 (f) reads as under :

"58(f) Mortgage by deposit of title-deeds.—Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

23. The above provision recognizes a mortgage by deposit of title deeds, where documents of title to immovable property are delivered to a creditor or his agent with the intention of creating a security thereon.

24. Section 100 reads as under :

"100. Charges. - Where immovable property of one person is by an act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the later

person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.”

25. The above provision deals with a charge where immovable property is, by act of parties or by operation of law, made security for payment of money and the transaction does not amount to a mortgage, though the provisions applicable to a simple mortgage are, so far as may be made applicable to such charge.

26. These provisions assume significance in the facts of the present case. The security interest in favour of HUDCO was created by deposit of title deeds on 30.11.2007, whereas the charge claimed by the appellants came to be created subsequently by the Arbitral Tribunal under the award dated 13.03.2012 for securing payment of the monetary amount awarded in their favour. The contention of the appellants that creation of the security interest in favour of HUDCO was in violation of the interim order dated 23.08.2007 had also been considered in the miscellaneous proceedings and negated, and the said determination has attained finality.

27. In ICICI Bank Ltd. v. SIDCO Leathers Ltd. and Others¹

the Supreme Court while considering competing security interests, held with reference to Section 48 of the T.P Act that the first charge holder would have priority over the second charge holder and that, where both debts are sought to be realised from the same property, the prior charge is required to be satisfied first. The Supreme Court held at para Nos. 40, 41 and 42 as under :

"40. Punjab National Bank granted loan to the 1st Respondent herein knowing fully well that, over the assets of the mortgagor, the Appellant held the first charge. It in no uncertain terms stated that the charges created by reason of the loan agreement entered into by and between itself and the 1st Respondent was subservient to the charges of the appellant as also the Respondent Nos. 3 and 4. The admission of the PNB in this behalf is absolutely clear and explicit. Even in the suit filed by it for recovery of the mortgage money as against the 1st Respondent, it not only in no uncertain terms stated that the Appellant and Respondent Nos. 3 and 4 herein were the first charge holders in respect of movable and immovable properties of the 1st Respondent, but its prayers in regard thereto were also limited, as would appear from prayer (f) made in the suit.

41. While enacting a statute, the Parliament cannot be presumed to have taken away a right in property. Right to property is a constitutional right. Right to recover the money lent by enforcing a mortgage would also be a right to enforce an interest in the property. The provisions of the Transfer of Property Act provide for different types of charges. In terms of Section 48 of the Transfer of Property Act claim of the first charge holder shall prevail over the claim of the second charge holder and in a given case where the debts due to both, the first charge holder and the second charge holder, are to be realized from the property belonging to the mortgagor, the first charge holder will

¹ (2006) 10 SCC 452

have to be repaid first. There is no dispute as regards the said legal position.

42. Such a valuable right, having regard to the legal position as obtaining in common law as also under the provisions of the Transfer of Property Act, must be deemed to have been known to the Parliament. Thus, while enacting the Companies Act, the Parliament cannot be held to have intended to deprive the first charge holder of the said right. Such a valuable right, therefore, must be held to have been kept preserved. [See Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. vs. Management & Ors. (1973) 1 SCC 813]"

28. The Supreme Court in **ICICI Bank Limited** has also emphasized that operation of a non-obstante clause has to be understood in the light of the legislative policy and cannot go beyond the extent Parliament intended.

29. Applying the principle of priority to the present facts, concededly, mortgage/security interest created in favour of HUDCO was on 30.11.2007, being anterior in point of time, would have priority over the charge subsequently created in favour of the appellants on 13.03.2012.

30. In the case of **Central Bank of India and Another vs Prabha Jain and Others**², the plaintiff had sought a declaration that the sale deed executed by her brother-in-law in favour of defendant No. 3 and the subsequent mortgage deed executed by defendant No. 3 in favour of Central Bank of India were void,

² (2025) 4 SCC 38

together with relief of possession. The bank sought rejection of the plaint under Order VII Rule 11 CPC on the ground that the Civil Court's jurisdiction was barred by Section 34 of the SARFAESI Act. The Supreme Court examined the true scope of Section 34 and held that exclusion of Civil Court's jurisdiction extends only to matters in which the DRT or the DRAT are empowered to determine under the SARFAESI Act. The Supreme Court held that the SARFAESI Act is intended to provide a mechanism for speedy recovery of secured debts and it does not confer upon the DRT, the jurisdiction to adjudicate questions concerning the validity of antecedent documents or independent questions of title. Such matters remain within the jurisdiction of the Civil Court under Section 9 of the CPC. The appellants are not before this Court seeking any substantial relief or declaration that the mortgage created in favour of HUDCO is void or that the title documents themselves are void. The relief sought is essentially to restrain HUDCO from proceeding with the sale of the schedule properties and to restrain the recovery officer from proceeding with the sale pursuant to the recovery certificate.

31. The Supreme Court in **Central Bank of India** (supra) while considering the unamended Section 17 (3) of the SARFAESI Act

held that the DRT's power was to restore the possession in the circumstances contemplated by the provision and did not extend to handing over possession to a person who is neither the borrower nor a person claiming under or through the borrower and who had never been dispossessed by the secured creditor. The Supreme Court also reiterated that even where one of the reliefs in a suit is found to be barred, the plaint cannot be rejected partially under Order VII Rule 11 CPC if another relief survives. The broader proposition from **Central Bank of India** is undoubtedly that exclusion of Civil Court's jurisdiction under Section 34 cannot be readily inferred and operates only in respect of matters in which the DRT or the DRAT is empowered to determine under the SARFAESI Act, and held at paras 32 and 33 as under :

“32. In *Robust Hotels (P) Ltd. v. EIH Ltd.* [(2017) 1 SCC 622], this Court held that Section 34 bars the jurisdiction of the civil court for : (i) suits or proceedings relating to matters that the Debts Recovery Tribunal or the Appellate Tribunal can decide under this Act, and (ii) no injunction may be granted by any court or authorities regarding actions under this Act or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Therefore, the bar of jurisdiction of the civil court has to correlate to the abovementioned conditions. This finding is central to the matter : the bar of jurisdiction correlates with the conditions mentioned in Section 34.

33. The relevant paragraphs are : (*Robust Hotels case* [(2017) 1 SCC 622], SCC pp. 633-34, paras 31-33)

“31. The scope and ambit of Section 34 of the SARFAESI Act, 2002 have been considered by this

Court in several cases. It is sufficient to refer to the judgment of this Court in *Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corpn.* [(2009) 8 SCC 646]. This Court held that the jurisdiction of the civil court is plenary in nature, unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits.

32. Following was laid down in paras 110-111 :
(*Nahar Industrial case* [(2009) 8 SCC 646], SCC p. 697)

‘110. It must be remembered that the jurisdiction of a civil court is plenary in nature. Unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits.

111. In *Dhulabhai v. State of M.P.* [1968 SCC OnLine SC 40] , this Court opined : (SCC OnLine SC)

“... The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

* * *

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.” ’

33. A perusal of Section 34 indicates that there is express bar of jurisdiction of the civil court to the following effect:

‘(i) Any suit or proceeding in respect of any matter in which the Debts Recovery Tribunal or Appellate Tribunal is empowered by or under this Act to determine.

(ii) Further, 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.’

Thus the bar of jurisdiction of civil court has to correlate to the abovementioned conditions. For the purposes of this case, we are of the view that this Court need not express any opinion as to whether suits filed by ElH were barred by Section 34 or not, since the issues are yet to be decided on merits and the appeal by Robust Hotels has been filed only against an interim order.”

(emphasis supplied)

32. The Supreme Court also held that Tribunal is a creature of statute and cannot go beyond the four corners of the SARFAESI Act and held at para No. 42 as under :

“Tribunal is a creature of statute and cannot go beyond the four corners of the SARFAESI Act

42. The Debts Recovery Tribunal is a creature of the RDB Act of 1993 and is empowered to exercise powers under that Act and the SARFAESI Act of 2002. The Tribunal is bound by the powers conferred to it by Parliament. Interestingly, when this Court in *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.* [(2014) 6 SCC 1] held that the tenant cannot approach the DRT because the re-possession can be only in favour of the borrower, Parliament stepped in and amended the SARFAESI Act. Sub-sections (3) and (4) of Section 17, respectively, are instructive to the level of examination that the DRT can undertake, and the same is limited to the validity of the measures under sub-section (4) of Section 13. Hence, the DRT is not permitted to examine the validity of

the earlier sale deed, whereafter the mortgage was executed in favour of the Bank."

33. We have no quarrel with the proposition of law. In the present case, the facts are materially different. The appellants had already invoked the arbitral proceedings in respect of their claim arising out of the agreement of sale. The said dispute was adjudicated by the Arbitral Tribunal, which, by its award dated 13.03.2012, rejected the claim for specific performance and directed payment of ₹ One Crore with interest, while providing for a charge over the properties to secure the award amount. The appellants thereafter challenged the award in Com.A.S.No. 42/2012 which was partly allowed on 14.06.2021, the appeal in COMAP No.418/2022 under Section 37 is stated to be pending.

34. The nature of reliefs sought in the Writ Petitions is as under :

" In W.P.No. 9465/2015

WHEREFORE, it is humbly prayed that this Hon'ble Court be pleased to issue a Writ of Prohibition prohibiting the 1st respondent from selling the schedule property in pursuance of the sale notice dated 22-02-2015 Copy of which is produced as Annexure-H, and to grant such other reliefs in the interest of justice.

In W.P.No. 50267/2019

WHEREFORE, it is humbly prayed that this Hon'ble Court be pleased to issue a Writ of Prohibition prohibiting the 1st and 3rd respondent from selling the schedule property in pursuance of the award made in O.A.No. 119/2011 on the file of Debt Recovery Tribunal, Bangalore and in proceedings No. DCP/13243 in O.A.No. 119/2021 on the

file of Third Respondent as per proclamation dated 17-09-2019 (Annexure-J), in the interest of justice. "

35. The appellants seek to prevent the very sale and recovery measures undertaken by HUDCO pursuant to the SARFAESI Act and recovery proceedings under the RDB Act. The appellants were specifically granted liberty by the learned Single Judge to avail statutory remedies available under the respective enactments. Pursuant thereto they approached the competent Tribunal under Section 17 of the SARFAESI Act. The appellants are not seeking declaration of title or adjudication of the validity of any antecedent transaction which the DRT is incapable of determining. The reliefs sought by the appellants is to interdict the statutory recovery and sale proceedings themselves for which SARFAESI Act provides a specific remedy under Section 17. The settled principle is reiterated that the DRT is a creature of statute in **Central Bank of India** (supra).

36. Having gone through the complete list of authorities relied upon by the appellants, we would say that the judgments are 'distinguishable'. We nevertheless proceed to examine the applicability and the propositions of law laid down therein with reference to the facts of the case and the reliefs sought in the present appeal.

37. Reliance on **Madhav Prasad Aggarwal vs Axis Bank Limited and Another**³ principally was in the context that a plaint cannot be rejected partially under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 [**CPC**] *qua* one defendant, while permitting the suit to proceed against the other defendants. The Supreme Court held that if the plaint survives against any of the defendants, it cannot be rejected only against one defendant under Order VII Rule 11(d) of CPC. The said decision in our view has no application to the controversy before us, since the question in the present facts is whether the appellants could invoke the writ jurisdiction to restrain measures taken pursuant to the SARFAESI Act and the RDB Act despite specific statutory remedies available to them.

38. The decision in **Robust Hotels (P) Ltd. V. EIH Ltd.**⁴ is to the effect that Section 34 bars the jurisdiction of Civil Courts only in respect of matters which the DRT/DRAT is empowered to determine and that exclusion of Civil Court's jurisdiction must be strictly construed. This proposition is well settled and cannot be disputed. The said decision does not assist the appellants on the relief actually sought in the present case.

³ (2019) 7 SCC 158

⁴ (2017) 1 SCC 622

39. **Comptroller and Auditor-General of India and Another vs K. S. Jagannathan**⁵ is relied upon to emphasize the width of the power under Article 226, including the power of the High Court, to issue appropriate direction, where a public authority has failed to exercise or improperly exercised its jurisdiction. The said proposition is not in dispute regarding the amplitude of Article 226. However, the existence of a jurisdiction and exercise of jurisdiction are two different matters. Article 226 confers wide discretionary powers. However, it does not obliterate a statutory remedy created by Parliament, particularly where the grievance directly concerns measures for which the Specialized Tribunal has been constituted.

40. Similarly, **Dwarka Nath vs Income Tax Officer, Kanpur and Another**⁶ is relied upon for the proposition that Article 226 is expressed in wide terms and is not confined to technical limitations of traditional English prerogative writs.

41. **Om Prakash Gupta vs Ranbir B. Goyal**⁷ is relied in relation to the doctrine of subsequent events and the power of the court to mould relief where subsequent events have materially altered the circumstances. The principle does not advance the

⁵ (1986) 2 SCC 679

⁶ (1965) 57 ITR 349

⁷ (2002) 2 SCC 256

appellants case. The subsequent statutory proceedings in the present matter do not merely constitute a factual development requiring moulding of relief. They demonstrate that the appellants actually availed the statutory remedy under Section 17 and the DRT considered and rejected their challenge.

42. **R.N. Gosain vs Yashpal Dhir**⁸ was on the principle of approbate and reprobate. The Supreme Court held that a party cannot accept the benefit of an order and thereafter challenge the very order under which the benefit was obtained. In fact, this authority is against the appellants as the appellants have already availed the liberty granted by the learned Single Judge and approached the DRT under Section 17. Having elected to pursue the statutory remedy and obtained an adjudication there under, they cannot simultaneously seek to bypass the consequence of that statutory adjudication by re-adjudicating the same grievance here.

43. In **National Insurance Co. Ltd. vs Mastan and Another**⁹. the proposition laid down was that two statutory enactments constitute separate and self-contained schemes and that the remedy under one enactment cannot automatically be imported

⁸ (1992) 4 SCC 683

⁹ (2006) 2 SCC 641

into another unless the statute so provides. There is no question of importing a remedy from one statutory scheme into another. The said decision is distinguishable. The SARFAESI Act itself provides the remedy under Section 17, while RDB Act provides its own mechanism in respect of recovery proceedings.

44. In **Transcore vs Union of India and Another**¹⁰, the Supreme Court held that the remedies under the two enactments namely the SARFAESI Act and the RDB Act, are cumulative and complementary, and that a secured creditor, which has already instituted the proceedings before the DRT, is not necessarily required to withdraw those proceedings before invoking SARFAESI Act. The two statutory mechanisms are directed towards the common object of recovery of debts. The said decision does not assist the appellants. Rather, it recognizes the complementary nature of two statutory mechanisms and reinforces the legislative scheme of recovery of secured debt.

45. In **Shipping Corporation of India Ltd. vs Machado Brothers and Others**¹¹, the Supreme Court observed at paragraph No.22 as under :

¹⁰ (2008) 1 SCC 125

¹¹ (2004) 11 SCC 168

"22. While examining this question we will have to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed of or kept alive. If so, can a defendant make an application under Section 151 CPC for dismissing the pending suit on the ground the said suit has lost its cause of action. This Court in the case of Pasupuleti Venkateswarlu vs. The Motor & General Traders (1975 1 SCC 770 at para 4) has held thus:

"4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equality justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

(emphasis ours)

46. The Supreme Court recognized the principle that the Court can take note of the subsequent events which have material bearing upon the relief claimed and where continuation of the proceedings have become unnecessary or infructuous, it is not required to permit litigation to continue merely because a cause of action may have existed at an earlier stage.

47. Pursuant to the liberty granted by the learned Single Judge, the appellants have availed the statutory remedy and now the appellants cannot fall back and say that the statutory remedy is not the appropriate remedy.

48. For the foregoing reasons, we find no error in the impugned order warranting interference in the present intra-court appeal. The appeal is accordingly dismissed.

49. The pending interlocutory applications stand disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

CKL