IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3072 OF 2014

Mridula P. Sharma
w/o Pralhad Sharma
C-27, Sadanand Park Gorai Road,
Opp: 19 Old MHB Colony,
Borivali (West),
Mumbai 400 091. ...Petitioner.

versus

1. State Bank of India,
State Bank Bhavan, P.B. No.12,
Madame Cama Road,
Mumbai-400 021,
represented by its
Chairman & Managing Director.

2. The Authorized Officer,
State Bank of India,
SAR Branch, 6th Floor,
The International,
Maharshi Karve Marg,
Churchgate, Mumbai-400 020.

3. Rajtex India Private Limited
5A, 121 Mittal Industrial Estate
Marol, A.K. Road,
Andheri (East),
Mumbai 400 059.

4. The Governor
Reserve Bank of India,
Central Office Building,
Shahid Bhagat Singh Road,
Mumbai 400 001.

5. Union of India,
represented by its Secretary,
Department of Financial Services (Banking),
Jeevan Deep Building,
Parliament Street,
New Delhi 110 001.

6. Senior Inspector of Police,
Old MHB Police Station,
New Link Road, Borivali (W),
Mumbai 400 091.

7. Chief Metropolitan Magistrate
Esplanade, Mumbai 400 001.

8. Assistant Registrar,
Borivali Centre of Courts,
Mumbai 400 001.

9. The Commissioner of Police,
Greater Mumbai, Crawford Market,
Mumbai.

10. Hon'ble Presiding Officer,
DRT I Mumbai,
5th Floor, Scindia House,
N.M. Marg, Ballard Estate,
Mumbai 400 038.

11. Hon'ble Presiding Officer,
DRT II Mumbai,
5th Floor, Scindia House,
N.M. Marg, Ballard Estate,
Mumbai 400 038.

12. Hon'ble Presiding Officer,
DRT III Mumbai,
5th Floor, Scindia House,
N.M. Marg, Ballard Estate,
Mumbai 400 038.

13. Hon'ble Chairman,
DRAT, Mumbai,
5th Floor, Scindia House,
N.M. Marg, Ballard Estate,
Mumbai 400 038. ..Respondents.

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Mr. Mathews J. Nedumpara for the Petitioner.
Mr. Lalitkumar Jain for Respondent No.2.

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CORAM : NARESH H. PATIL &
A.S. GADKARI, JJ.

Order reserved on : 10th February, 2015.
Order pronounced on : 10th March 2015.

P.C. (PER A.S. GADKARI, J.) :

1. The Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, inter alia praying, amongst other, for the following reliefs :

> “(g) issue a writ of certiorari or a certiorarified prohibition or any other appropriate writ or order quashing and setting aside the notice dated 18.09.2014 (Exhibit “A”) Published on 18.09.2014 in Free Press Journal, as null and void, being in violation of the principles of natural justice;
>
> (h) issue a writ of prohibition or any other appropriate writ or order restraining and prohibiting the Respondents its agents, servants and privies from in any manner interfering with the peaceful

possession and enjoyment of the properties of the applicant which the Respondent bank falsely claim to be secured assets at its hands and in particular proceeding any further under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and purportedly under Section 13(4) of the said Act or under section 14 of the SARFAESI Act, 2002;"

"(j) issue an appropriate writ, order or direction, restraining Respondent No.13 from passing an order or proceeding under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 without affording the Petitioner due opportunity of hearing, which includes an opportunity to plead his case and adduce evidence against the plea of the Respondent Bank;"

"(l) issue an appropriate writ, order or direction, directing Respondent Bank to state on affidavit the manner in which the notices under Sections 13(2) of the SARFAESI Act was served, and if he swears to have served so, to produce the proof of such service;"

"(r) issue a writ of prohibition or any other appropriate writ or order restraining and prohibiting the Respondents in favour of the petitioner restraining the Defendant Banks, its officers, men and privies from in any manner taking recourse to Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 during the pendency of the instant suit;”

“(u) grant an order of perpetual mandatory and/or prohibitory injunction in favour of the Petitioner and against the Respondents restraining them, their agents, servants and privies from in any manner interfering with the peaceful possession and enjoyment of the properties of the Petitioner / Plaintiff, namely, Flat No.C-27, Sadanand Park, Gorai Road, Opp: 19 Old MHB Colony, Borivali (West), Mumbai 400 091, which the Respondent Bank falsely claims to be secured assets at its hands and in particular proceeding any further pursuant to the notice purportedly under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the letter/ Notice purportedly under Section 13(4) of the said Act demanding possession of the alleged secured asset from the Petitioner and the ex-parte order dated 7.7.2014 passed by the learned Chief Metropolitan Magistrate, Mumbai, under Section 14 of the said Act (a copy of which is yet to be secured);

(v) To grant an order of ad-interim mandatory and/or prohibitory injunction in favour of the Petitioner and against the Respondents restraining the Respondents, its agents, servants and privies from in any manner interfering with the peaceful possession and enjoyment of the properties of the Petitioners/ Plaintiffs which the Respondent bank falsely claim to be secured assets at its hands and in particular proceeding any further pursuant to the notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Notice / proceeding purportedly under Section 13(4), and also proceedings under section 14 of the said Act culminating in the imminent threat of auction on 20th day of October, 2014 at 02.00 PM (Exhibit-A) and apprehension of dispossession as null and void, being in violation of the principles of natural justice pending the hearing and final disposal of the above Writ Petition;

(w) grant such further and other reliefs in the nature and circumstances of the case may require."

2. Apart from the aforesaid prayers, other prayers as mentioned in the prayer clause which is an unnumbered paragraph are also sought. However, in our considered view dealing with the other prayers at this stage is not necessary for

the decision of the present Writ Petition.

3. From plain reading of the aforesaid prayers it clearly appears that the Petitioner has purportedly challenged a notice issued by the Respondent No.1 bank under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') and e-auction sale notice dated 18th September, 2014 (Exhibit-A) published on 18th September, 2014 in Fress Press Journal. The learned counsel appearing for the Petitioner during the course of his arguments also conceded to the said fact that though he has raised various other aspects of the matter with respect to the other prayers mentioned in the Petition, the basic and main gravamen in the present Petition is the notice under Section 13(2) of the SARFAESI Act and the subsequent e-auction notice dated 18th September, 2014 published in Free Press Journal.

4. The learned counsel appearing for the Respondent No.1 bank apart from raising a preliminary objection about the maintainability of the present Petition under Article 226 of the

Constitution of India thereby questioning the aforesaid facts has further raised the following objections :

i) That the Petition has been filed by the wife of the original borrower and the Petitioner is in no way concerned with the proceedings initiated by the bank against the firm and the original borrower who is the husband of the Petitioner;

ii) The proceedings initiated against the husband of the Petitioner by the Respondent No.1 bank has reached finality and only with a view to protract the litigation the original borrower has put up the present Petitioner as a dilatory tactic;

iii) That the Petitioner has also approached the Debts Recovery Tribunal, Mumbai by way of filing an application under the provisions of the SARFAESI Act thereby questioning the action initiated by the Respondent No.1 bank;

iv) That the Presiding Officers of the Debts Recovery Tribunal-I, II and III have passed a resolution on 19th May, 2014 that taking into consideration the situation which was created by the advocate for the Petitioner herein and his junior colleagues, the said Presiding Officers had decided, not to take up the matters in which the said advocates are engaged. The said resolution is annexed at page No.41 of the present Petition;

v) That the proceedings initiated by the Petitioner herein have already been transferred to the Debts Recovery Tribunal, Pune and the Debts Recovery Tribunal, Pune has numbered the said application as SA/156/2014. He further submitted that the Debts Recovery Tribunal, Pune has already issued a notice to the Petitioner herein who is applicant before the said Tribunal. In support of his contention he produced a photocopy of the Roznama of SA/156/2014 wherein the Petitioner is the applicant. He also contended that as the Petitioner did not remain present on earlier occasion, the Debts Recovery Tribunal, Pune has issued a notice to her in December 2014, making it returnable on 1st January, 2015;

vi) That the Petitioner has also approached the Civil Court for the same or similar reliefs and the Civil Court is seized of the matter;

vii) The last contention of the advocate for the Respondent No.1 is that firstly, the invocation of jurisdiction of this Court under Article 226 of the Constitution of India by the

Petitioner is unwarranted as she has substantive efficacious alternate remedy at her disposal and that the Petitioner has already availed of the said substantive alternate efficacious remedy by way of filing an application before the Debts Recovery Tribunal and/ or invoking the jurisdiction of Civil Court for redressal of her grievance. Secondly, though the Petitioner has approached the Civil Court as stated above, the Civil Court has no jurisdiction to entertain the proceedings initiated by the Respondent No.1 under the SARFAESI Act.

In support of his contention he relied on two judgments of the Supreme Court in the case of **United Bank of India v. Satyawati Tondon and others** reported in **III (2010) BC 495 (SC)** and in the case of **Jagdish Singh v. Heeralal and others** reported in **2014(1) D.R.T.C. 1 (S.C.).**

5. At this stage, we may note here that, the learned counsel appearing for the Petitioner himself pointed out a resolution dated 19th May, 2014 passed by the Presiding Officers of the Debts Recovery Tribunal-I, II and III, Mumbai and submitted that, as the Debts Recovery Tribunal,

Mumbai has recused itself from entertaining his applications, he has no other remedy than to approach this Court under Article 226 of the Constitution of India. He further contended that though all his matters now stand transferred to Debts Recovery Tribunal, Pune, the same is not efficacious remedy for him.

6. In view of the admission by the Petitioner that she has filed an application / appropriate proceedings before the Debts Recovery Tribunal, Mumbai for redressal of her grievance and the same has now been transferred to Debts Recovery Tribunal, Pune, the said is not in dispute. Though it is contended that the Petitioner has not yet received the notice from Debts Recovery Tribunal, Pune about the said proceedings, the Roznama which has been produced on record clearly demonstrates that the Debts Recovery Tribunal, Pune has issued notice to the Petitioner herein and the applicant therein by its order passed in December 2014.

7. The Apex Court in the case of **United Bank of India v. Satyawati Tondon** (supra) in its paragraphs 16, 17, 18 and 27 held as under :

"16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos.1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs.50,000/- was paid by respondent No.1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No.1.

17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression `any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are

required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High

Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternate remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the

High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order."

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"27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

8. In view of the law laid down by the Apex Court in the case of **United Bank of India v. Satyawati Tondon** (supra) we hold that the present Petition filed under Article 226 of the Constitution of India by the Petitioner is not at all maintainable and the same is dismissed *in limine*.

9. As far as the contention of the learned counsel appearing for the Respondent No.1 bank with respect to the settled legal position that though the Petitioner has approached the Civil Court with same or similar reliefs is concerned, the Civil Court has no jurisdiction to entertain any suit or proceeding in respect of those matters wherein the provisions of the SARFAESI Act are invoked. The learned counsel appearing for the Petitioner has placed reliance on a judgment of the Apex Court in the case of **Jagdish Singh v. Heeralal and others** reported in **2014(1) D.R.T.C. 1 (S.C.)** wherein the Supreme Court in paragraphs 21, 22 and 23 has held as under :

> "21. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the SRFAESI Act.

22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the SRFAESI Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the SRFAESI Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall

under sub-section (4) of Section 13 of the SRFAESI Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the SRFAESI Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

23. We are of the view that the civil court jurisdiction is completely barred, so far as the “measure” taken by a secured creditor under sub-section (4) of Section 13 of the SRFAESI Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the “measures” taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystalised, before creating security interest in respect of the secured assets. In such circumstances, we are of the view that the High Court was in error in holding that only civil court has jurisdiction to examine as to whether the “measures” taken by the secured creditor under sub-section (4) of Section 13 of the SRFAESI Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High Court is set aside. There shall be no order as to costs.”

10. There cannot be any quarrel about the law laid down by the Apex Court in the case **Jagdish Singh v. Heeralal** (supra) where the jurisdiction of the Civil Court is completely barred so far as the measures taken by the secured creditor under Section 13 of the SARFAESI Act is concerned and therefore, by following the ratio laid down by the Apex Court in the said decision, we are of the prima facie opinion that the proceedings filed by the Petitioner before the Civil Court are not maintainable.

11. As held by us in paragraph No.8 above, we dismiss the present Petition on the sole ground that the present Petition is not maintainable under Article 226 of the Constitution of India in view of the law laid down by the Apex Court in the case of **United Bank of India v. Satyawati Tondon** (supra) and dismiss the present Petition.

Hence, the Petition is dismissed *in limine*.

(Naresh H. Patil, J.)

(A.S. Gadkari, J.)