

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION NOS.10602 AND 17935 OF 2015

Between:

WRIT PETITION NO.10602 OF 2015:

-
Kotak Mahindra Bank Limited

.... Petitioner

Vs.

The Station House Officer, Madhapur P.S. Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.07.2015.

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN & HON'BLE
SRI JUSTICE S. RAVI KUMAR**

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|---|---|--------|
| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

-
+ **WRIT PETITION NOS.10602 AND 17935 OF 2015**

% Dated 28-07-2015

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WRIT PETITION NOS.10602 of 2015:

Kotak Mahindra Bank Limited

.... Petitioner

Vs.

\$ The Station House Officer, Madhapur P.S. Hyderabad and others.

.... Respondents

! Counsel for the Petitioner: Sri S. Niranjan Reddy

^ Counsel for respondents: Learned Government Pleader for Home appearing on behalf of the official respondents; and Sri D.V. Sitaram Murthy and Sri Vedula Venkata Ramana, Learned Senior Counsel appearing on behalf of DCHL.

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> HEAD NOTE:

? Citations:

- 1) (2004) 13 SCC 610
- 2) (2003) 8 SCC 648
- 3) (2012) 3 SCC 522
- 4) AIR 1997 AP 179
- 5) (2014) 2 SCC 62
- 6) (1871) 3 PC 465
- 7) (1971) 1 MLJ 220
- 8) AIR 1985 SC 39
- 9) AIR 1953 SC 136
- 10) AIR 1966 SC 948
- 11) (1922) 49 IA 359 = AIR 1922 PC 269
- 12) (2007) 14 SCC 165
- 13) (2006) 1 SCC 613
- 14) (2004) 7 SCC 261
- 15) (2000) 10 SCC 285
- 16) (2006) 5 SCC 399
- 17) AIR 1982 AP 394
- 18) AIR 1971 AP 53
- 19) (2006) 4 SCC 501
- 20) (1968) 1 ALL ER 763
- 21) (1969) 2 Mad LJ 1
- 22) (2007) 12 SCC 201
- 23) 2010 (2) ALD 41 (DB)
- 24) AIR 1997 SC 1125
- 25) AIR 1954 SC 207
- 26) AIR 1952 SC 12
- 27) AIR 1962 SC 1044
- 28) (1999) 4 SCC 526
- 29) (2005) 3 ALD 233 (LB)
- 30) AIR 1954 SC 440
- 31) 2002 (1) ALD 200 (FB)
- 32) AIR 1988 A.P. 144

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

WRIT PETITION NOS.10602 AND 17935 OF 2015

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioner, a banking company under Section 5[c] of the Banking Regulations Act, 1949 and a company incorporated under the Companies Act, 1956 with its registered office at Mumbai, invoked the jurisdiction of this Court, by way of W.P.No.10602 of 2015, seeking a writ of mandamus directing respondents 1 to 3 (The Station House Officer, Madhapur Police Station, the Principal Secretary, Home Department, State of Telangana, and the Director General of Police, State of Telangana, Hyderabad) to take necessary steps for putting them in absolute control of land admeasuring 9892.6 sq. yards in Survey No.186 situated at Kondapur in furtherance of the acts initiated by them under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (for short, the "SARFAESI Act"), and followed by violation of the undertaking by the 4th respondent (the Deccan Chronicle Holdings Limited-hereinafter called "DCHL") in W.A. No.679 of 2013 before this Court.

In its interim order, in WPMP No.14020 of 2015 in W.P.No.10602 of 2015 dated 09.06.2015, this Court observed that there was no order either of this Court, or of the Debt Recovery Tribunal, in force which prevented the police officers from rendering assistance to the petitioner. While making it clear that they had not issued any direction, as at present, to respondents 1 to 3 to give the petitioner police assistance, this Court clarified that there was no court order preventing respondents 1 to 3 from providing police aid, to the petitioner, if they so choose.

Thereafter, the petitioner filed W.P.No.17935 of 2015 seeking a writ of mandamus declaring the action of respondents 2 to 6 in not providing police aid for implementation of the rule of law in discharge of their public duties, in terms of the representation dated 15.06.2015 made by the petitioner seeking necessary police protection for taking absolute control of the property i.e., land admeasuring 9892.6 sq. yards in Survey No.186 situated at Kondapur, as arbitrary, illegal and in violation of Articles 14 and 300-A of the Constitution of India. They sought a consequential direction to respondents 1 to 6 to take necessary steps to put them in absolute

control over the property at Kondapur in furtherance of the acts initiated by them under the SARFAESI Act followed by the violation of the undertaking by the 7th respondent (DCHL) in W.A. No.679 of 2013 before this Court.

It is stated, in the affidavit filed in support of W.P.No.17935 of 2015, that the petitioner had approached respondents 1, 3 to 5 informing them that they intended to take absolute control over the property at Kondapur on 17.06.2015 at 11.00 A.M; they had, by their letter dated 15.06.2015, requested the respondent authorities to provide necessary police assistance/protection; the respondent-authorities had refused to provide protection on the pretext that there was no specific direction from the Court to the police officers to provide any such assistance while the petitioner took absolute control of the subject property; this Court, by its order in W.P.M.P. No.14020 of 2015 in W.P. No.10602 of 2015 dated 09.06.2015, did not direct the police to provide protection/assistance to the petitioner; when no favourable action was forthcoming from the respondent-authorities, they had proceeded to take absolute control over the property at Kondapur; however, the same was resisted by the representatives, agents, henchmen of DCHL and their employees union; due to the inaction of respondents 1 to 6, in providing necessary assistance and police protection to them, the petitioner was unable to take absolute control of the property at Kondapur; DCHL still continues to stay in the subject property by running a printing press, contrary to the directions of this Court dated 11.11.2013, and in gross violation of the undertaking given by them to vacate the premises on or before 28.02.2014 after removing all the machinery available in the premises; and respondents 1 to 6 were bound to provide assistance to the petitioner to enforce orders of the Court, and to ensure that such orders are not violated.

This case has a long and chequered history. The petitioner, a notified financial institution under Section 2(i)(m)(iv) of the SARFAESI Act, sanctioned a short term loan facility of Rs.50 crores in favour of DCHL by sanction letter dated 22.06.2010. Thereafter, they accorded sanction for a working capital demand loan facility of Rs.50 crores which was availed by DCHL, and an equitable mortgage was created by them, in favour of the petitioner, by deposit of title deeds over an extent of 9892.6 sq. yards of

land in Survey No.186 situated at Kondapur village along with the buildings located thereupon. DCHL defaulted in repayment of the loan, which resulted in the petitioner classifying their account as a non-performing asset (NPA). A notice dated 17.08.2012 was issued by the petitioner to DCHL recalling the credit facility, and calling upon them to clear the outstanding amounts due and payable under the credit facilities. The petitioner issued notice dated 25.10.2012, under Section 13(2) of the SARFAESI Act, to DCHL asking them to pay the petitioner the amounts due as on 15.08.2012 along with additional/penal interest. By way of the said notice, DCHL was informed that they were legally bound, under Section 13 (2) of the SARFAESI Act, not to transfer the mortgaged properties by way of sale or otherwise without the prior written consent of the petitioner. As DCHL, despite receipt of the Section 13(2) notice, failed to repay the amounts due, the petitioner initiated proceedings under Section 13(4) of the SARFAESI Act, and informed DCHL that they would take possession of the property on 07.01.2013 at 10.00 A.M. The petitioner claims that some persons, on behalf of DCHL, prevented the authorised officer from entering the property, and they took symbolic possession by affixing the possession notice dated 07.01.2013 as contemplated in Appendix-IV of the SARFAESI Act. A copy of the possession notice was also published in the "Times of India" and "Sakshi" daily newspapers on 09.01.2013.

Anticipating resistance from DCHL and its personnel, while taking actual physical possession, the petitioner filed CrI.M.P. No.123 of 2013, before the Chief Metropolitan Magistrate, Cyberabad, under Section 14 of the SARFAESI Act, requesting the court to appoint an advocate-commissioner to take actual physical possession of the property, and deliver it to the petitioner, if necessary, by providing police protection for taking possession of the property. By his order dated 26.03.2013, the Chief Metropolitan Magistrate, Cyberabad appointed an advocate-commissioner. The advocate commissioner was directed to take possession of the property and hand it over to the petitioner, if required, by taking necessary assistance from the concerned police after putting them on notice and, if further required, to break open the lock of the premises.

The Learned Chief Metropolitan Magistrate made it clear that if, in such a process, any articles were found at the spot, an inventory of the articles should be prepared and delivered to the bank.

DCHL filed S.A.I.R. No.167 of 2013 (later numbered as SA No.340 of 2013) before the Debt Recovery Tribunal, Hyderabad ("DRT" for short) under Section 17 of the SARFAESI Act, challenging the action initiated by the petitioner under Section 13(4) of the SARFAESI Act. By its order dated 14.03.2013, the DRT directed DCHL to deposit with the petitioner a sum of Rs.10 Crores (Rs.5 Crores within four weeks from the date of the order i.e., 14.03.2013, and the balance Rs.5 Crores within four weeks thereafter). The petitioner was directed to defer all further proceedings, in respect of the subject property and other properties, until further orders. The DRT observed that, in the event DCHL failed to deposit the said amount within the stipulated period, the petitioner was at liberty to proceed against DCHL in accordance with law.

According to the petitioner, DCHL neither sought extension of time to comply with the order dated 14.03.2013 nor did they file any application to that effect before the DRT. On the ground that there was no stay operating against the petitioner, with respect to the property at Kondapur as on 15.05.2013, the advocate-commissioner sought to execute the warrant in Crl.M.P. No.123 of 2013 and, at 3.20 P.M. on 15.05.2013, he visited the subject premises along with the authorised officer of the petitioner-bank. At the request of the advocate-commissioner, the Station House Officer, Madhapur PS deputed an assistant sub-inspector of police and four constables to ensure that there was no resistance in taking over possession of the property. The advocate-commissioner conducted a panchanama, and is said to have delivered possession of the property to the authorised officer.

W.P. No.14938 of 2013 was filed, by Deccan Chronicle Employees Union (hereinafter called the "Union") to declare the action of the petitioner in initiating proceedings under the SARFAESI Act, and in interfering and preventing the printing and publishing activity of "Deccan Chronicle" and "Andhra Bhoomi" newspapers as illegal, arbitrary and in violation of their fundamental rights. The jurisdiction of this Court was invoked by way of an

urgent house motion during summer vacation. A Learned Single Judge of this Court by his order in WP No.14938 of 2013 dated 15.05.2013, while posting the Writ Petition for admission in the next vacation Court, directed the petitioner herein, or any one claiming through them, not to prevent the Union from undertaking the activity of printing and publishing the newspapers. The Station House Officer, Madhapur PS was directed to extend co-operation in this regard. The Learned Single Judge also directed that attachment of the property, if any, would continue.

Aggrieved thereby the petitioner filed W.A.No.679 of 2013 and a Division Bench of this Court, by its order in W.A. No.679 of 2013 dated 17.05.2013, held that, for the purpose of protecting the property as it is, the representatives of the petitioner-bank were permitted to stay in the property without any interruption by the Union or anybody else, including the police. The Division Bench made it clear that neither the petitioner-bank nor their representatives should cause any interruption to the activity of printing and publishing the newspaper.

Thereafter, both W.A.No.679 of 2013 and W.P.No.14938 of 2013 were finally disposed of by order dated 11.11.2013. The relief sought for in this Writ Petition is largely based on the said order dated 11.11.2013 which reads thus:-

“.....With the consent of counsel appearing for the parties, we order the following:

In view of the contentions raised by counsel appearing for the parties, we direct respondent No.4-Deccan Chronicle Holdings Limited to vacate the premises on or before 28.02.2014 and remove all machinery available in the premises in question. In view of the fact that possession was already handed over to appellant herein, the appellant can take further steps to sell the property in order to recover the amount due to the Bank.

4. With the above terms, the Writ Appeal as well as the Writ Petition are disposed of directing respondent No.4 to file unconditional affidavit within one week from today to the effect that it will remove the machinery by the end of 28.02.2014 and in case, respondent No.4 fails to file any such undertaking affidavit, the Writ Petition shall stand dismissed and consequently, the appeal would be allowed. Counsel for the Writ Petition agreed for the same. Similarly, respondent No.1 herein shall also file an undertaking affidavit to the effect that it will cooperate with respondent No.4. There shall be no order as to costs. Miscellaneous petitions pending, if any, in the Writ Appeal as well as in the Writ Petition shall stand closed.”

The first respondent in W.A. No.679 of 2013 was the Union, and respondent No.4 was DCHL. Aggrieved by the order of the Division Bench in W.A. No.679 of 2013 dated 11.11.2013, DCHL carried the matter in

appeal to the Supreme Court and, in its order in SLP (Civil) No.37891 of 2013 dated 17.12.2013, the Supreme Court recorded the request of the Learned Counsel for DCHL for permission to withdraw the SLP with liberty to approach the High Court by filing a review petition. The Supreme Court, while granting permission, dismissed the SLP as withdrawn with liberty as prayed for.

DCHL filed W.P.No.5286 of 2014 challenging the vires of Section 2(1)(o) of the SARFAESI Act. They sought a declaration from this Court that the action of the petitioner-bank, in declaring their account as N.P.A, was contrary to the letter and spirit of Section 2(1)(o) of the SARFAESI Act; and the action of the petitioner-bank, in taking action against DCHL under the SARFAESI Act, was arbitrary and illegal. A Division Bench of this Court, by its order in WPMP No.6563 of 2014 in W.P.No.5286 of 2014 dated 03.03.2014, held that DCHL had failed to establish a *prima-facie* case, and the balance of convenience was also not in their favour. The Division Bench was not inclined to grant any interim order as it appeared to them that the Writ Petition was filed with a view to evade repayment of the loan taken by DCHL. The Division Bench further observed that their order should not nullify another judicial order passed by the DRT. While admitting W.P.No.5286 of 2014 the Division Bench, by its order dated 03.03.2014, dismissed WPMP No.6563 of 2014.

Aggrieved thereby, DCHL carried the matter in appeal to the Supreme Court by way of SLP (Civil)..../2014 in CC No.4636 of 2014. By its order dated 14.03.2014, the Supreme Court dismissed the Special Leave Petition. However, having regard to the controversy involved in the matter, the Supreme Court requested the High Court to hear and decide WP No.5286 of 2014 as expeditiously as possible, and preferably within eight weeks from the date of the order. The Supreme Court made it clear that dismissal of the SLP should not be construed as its opinion on the merits of the case.

DCHL filed Review WPMP No.1156 of 2014 in W.A. No.679 of 2013 seeking review of the order passed in W.A. No.679 of 2013 dated 11.11.2013. In its order, in Review WPMP No.1156 of 2014 dated 14.03.2014, the Division bench held that the counsel for the review

petitioner had sought time to shift the machinery available at the site, which was handed over to the petitioner-bank for the purpose of proceeding further in terms of the SARFAESI Act; the consent given by the Counsel for the review petitioner was to enable DCHL to vacate the premises; as DCHL had consented to vacate the premises on that day, they could not, thereafter, turn around and state that the consent given was with regard to the undertaking; the same could not be accepted; Order XXIII Rule 3 CPC made it clear that the agreement or compromise shall be in writing and signed by the parties; in the present case no such agreement or compromise was entered into; the consent given was to remove the machinery from the premises in question; Order XXIII Rule 3 had no application; and there was no error apparent on the face of the record so as to review the order passed earlier. The review petition was, accordingly, dismissed.

The General Secretary of Union informed the authorised officer of the petitioner bank, by letter dated 15.03.2014, that they undertook to comply with the order in W.A. No.679 of 2013 dated 11.11.2013, and in WPMP No.6563 of 2014 dated 03.03.2014. They requested him to consider postponing his proceedings, for vacating the premises, till Tuesday. They undertook to unconditionally, and without any coercion, leave the premises irrespective of whether there was any order from the management or not, and to peacefully vacate the premises by 10.00 A.M. on 19.03.2014. The said letter dated 15.03.2014 was attested by the General Manager, DCHL, despite which neither the Union nor DCHL have vacated the subject premises till date.

The earlier order of the DRT, in SAIR No.167 of 2013 (later numbered as S.A.No.340 of 2013) dated 14.03.2013 was subjected to challenge by DCHL in WP No.8304 of 2014. A Division bench of this Court, by its order dated 19.03.2014, disposed of W.P. No.8304 of 2014 at the admission stage directing DCHL to deposit a demand draft for Rs.1 crore with the petitioner-bank by the next day i.e., 20.03.2014. DCHL was also directed to deposit Rs.4.5 crores on or before 31.05.2014, and another sum of Rs.4.5 crores on or before 31.07.2014. The Division bench restrained the petitioner-bank from taking coercive steps to recover the

amount, and from taking any action against DCHL in running the printing press. The Division bench made it clear that, in case DCHL was already in possession of the secured asset, it could not be dispossessed in the meantime; and, in case, DCHL failed to pay the amount in compliance with the directions, the petitioner-bank was at liberty to proceed in accordance with law.

Aggrieved by the order, in W.P. No.8304 of 2014 dated 19.03.2014, the petitioner-bank filed Civil Appeal No.4402 of 2014 and the Supreme Court, by its order dated 04.04.2014, set aside the order passed by the Division bench in W.P. No.8304 of 2014 dated 19.03.2014, restored W.P. No.8304 of 2014 to the file of this Court, and granted liberty to DCHL to apply to this Court for consideration of the matter on 07.04.2014. The Supreme Court observed that, if the petitioner-bank desired to remain present before the High Court, it could do so.

Consequent on W.P. No.8304 of 2014 being restored to file, the Division bench, by its order in WPMP No.10367 of 2014 in W.P. No.8304 of 2014 dated 29.04.2014, directed DCHL to deposit the demand draft for Rs.1 crore with the petitioner bank on or before 05.05.2014, deposit Rs.4.5 crores on or before 05.06.2014, and Rs.4.5 crores on or before 07.07.2014. The petitioner bank was restrained from taking any coercive steps to recover the amount due and from taking any action against DCHL for running the printing press. The Division bench observed that, if DCHL was already in possession of the secured asset, it should not be dispossessed in the meantime and, in case DCHL failed to pay the amount in compliance with the said directions, the petitioner bank would be at liberty to proceed in accordance with law.

Aggrieved by the order passed, in WPMP No.10367 of 2014 in WP No.8304 of 2014 dated 29.04.2014, the petitioner-bank filed SLP (Civil) No.12617 of 2014 and the Supreme Court, by its order dated 09.05.2014, dismissed the SLP and requested this Court to hear and decide the Writ Petition on the next date or, in any case, within three months. Thereafter WP No.8304 of 2014 was taken up for final hearing. The Division bench, in its order in W.P. No.8304 of 2014 dated 05.08.2014, held that there was an effective alternate remedy available to DCHL under Section 18 of the

SARFAESI Act. The Writ Petition was dismissed, leaving it open to DCHL to avail its remedies under law. The Division bench made it clear that any observation, or finding made in the Writ Petition could not be construed as a finding of the Court, and it was only for the purpose of disposal of the Writ Petition. The DRT was also directed to dispose of the SA in accordance with law, uninfluenced by any observations made in the order. It is not in dispute that DCHL did not, thereafter, avail the statutory remedy of appeal. The petitioner-bank filed a contempt case alleging violation of the order passed by the Division bench in WA No.679 of 2013 and WP No.14938 of 2013 dated 11.11.2013, and to punish DCHL and the official respondents under the Contempt of Courts Act, which is said to be still pending. It is relevant to note that DCHL have not complied with the order of the DRT in S.A.No.340 of 2013 dated 14.03.2013 till date. While they are said to have deposited Rs.1.00 crore long thereafter, the remaining Rs.9 crores was not deposited at all.

The petitioner bank issued sale notice dated 08.10.2014 under Rule 8(6) of the SARFAESI Rules (hereinafter called the "Rules") informing DCHL that, in case they failed to repay the loan amount of Rs.50.25 crores with interest from 16.08.2012 within thirty days from the date of receipt of the notice, the scheduled property would be brought to sale. DCHL filed I.A. No.14460 of 2014 in S.A. No.384 of 2013 questioning the action of the petitioner bank in bringing the subject properties to sale. On a *status quo* order being passed by the DRT on 14.11.2014, the petitioner-bank carried the matter in appeal to the Debt Recovery Appellate Tribunal ("DRAT" for short) at Calcutta. The DRAT, by its order dated 04.03.2015, set aside the order of *status quo* passed by the DRT, and allowed the appeal. The petitioner bank issued a sale notice afresh, under Rule 8(6) of the SARFAESI Rules, on 13.04.2015 informing DCHL that, if they failed to repay the loan amount of around Rs.62.61 crores with interest from 06.03.2015 within thirty days, the scheduled property would be brought to sale by public bid-cum-auction on 27.05.2015. DCHL was informed that they should remove all the moveable properties lying in the Scheduled premises within fifteen days from the date of receipt of the notice, failing which the authorised officer

would be constrained to remove and deal with the moveable properties.

Questioning the sale notice dated 13.04.2015, DCHL filed I.A. No.1916 of 2015 in SA No.384 of 2013. The DRT, by its order dated 01.05.2015, directed the petitioner bank to maintain *status quo*. Aggrieved thereby the petitioner-bank filed Appeal No.44 of 2015 before the DRAT, Calcutta. By its order dated 26.05.2015, the DRAT, while setting aside the order of *status quo* passed by the DRT, held that the sale if any conducted, and even if it was confirmed, would be subject to the outcome of S.A. No.384 of 2013. The DRAT directed the authorised officer to obtain an undertaking from the successful bidder that he would be bound by the decision in S.A. No.384 of 2013, and to only defer registration of the sale pending disposal of S.A. No.384 of 2013. The DRT was directed to dispose of S.A. No.384 of 2013 within three months from the date of receipt of a copy of the order, along with the connected S.A. No.340 of 2013. The subject property was auctioned on 27.05.2015, and the bid of Dr. D. Satyanaryana Raju, for Rs.22.10 crores, was accepted. Sri S. Niranjan Reddy, Learned Counsel for the petitioner, would submit that, while the highest bidder has since deposited the entire sale consideration, the petitioner-bank is unable to deliver possession of the subject property to him as the respondent police officers have expressed their inability to provide assistance to them in taking absolute control of the subject property.

Elaborate submissions were put forth by Sri S.Niranjan Reddy, Learned Counsel for the petitioner, the Learned Government Pleader for Home appearing on behalf of the official respondents, and Sri D.V. Sitaram Murthy and Sri Vedula Venkata Ramana, Learned Senior Counsel appearing on behalf of DCHL in W.P.No.10602 of 2015 and W.P.No.17935 of 2015 respectively. It is convenient to examine the contentions, urged by Learned Counsel on either side, under different heads.

I. DOCTRINE OF RESTITUTION: ITS SCOPE:

Sri S. Niranjan Reddy, Learned Counsel for the petitioner, would submit that the legal right conferred on the petitioner, by the order of the Chief Metropolitan Magistrate in CrI.M.P.No.123 of 2013 dated 26.03.2013,

stood negated by the interim order of this Court in W.P.No.14938 of 2013 dated 15.05.2013; as the petitioner is now rendered remediless, they have perforce invoked the jurisdiction of this Court under Article 226 of the Constitution of India to seek restitution; and the principle of *actus curiae neminem gravabit* (an act of the Court should prejudice no one) should be applied in granting them relief. Learned Counsel would rely on **V.M. Manohar Prasad v. N. Ratnam Raju**^[1]; **South Eastern Coalfields Ltd. v. State of M.P.**^[2]; **State of Gujarat v. Essar Oil Ltd.**^[3]; **Hon'ble Secretary and Correspondent, Badruka College of Commerce and Arts (Day), Hyderabad v. State of A.P.**^[4]; and **Sarah Mathew v. Institute of Cardio Vascular Diseases**^[5] in this regard.

Though the petitioners were put in possession of the subject property by the advocate-commissioner, appointed by the Chief Metropolitan Magistrate, Cyberabad by his order in CrI.M.P. No.123 of 2013 dated 26.03.2013, the interim order passed by this Court in W.P. No.14938 of 2013 dated 15.05.2013 barred the petitioner and the police officers either from removing the machinery of DCHL from the subject premises or from stopping either DCHL or its Union from carrying on the activity of printing and publishing the newspapers. But for the interim order in W.P.No.14938 of 2013 dated 15.05.2013, the petitioner would have been put in absolute and exclusive control of the subject premises by the advocate commissioner with the assistance of police personnel, and the machinery and other moveables of DCHL would have been removed therefrom. The interim order, passed in W.P.No.14938 of 2013 dated 15.05.2013, merged in the final order passed in W.A. No.679 of 2013 and W.P. No.14938 of 2013 dated 11.11.2013 whereby DCHL was directed to vacate the premises on or before 28.02.2014, and remove all machinery available in the subject premises.

An interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless, otherwise ordered by the Court, the successful party at the end would be justified, with all expediency, in demanding compensation

and to be placed in the same situation in which it would have been if the interim order had not been passed against it. The successful party could demand (a) delivery of the benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it had lost; and it is the duty of the court to do so unless it feels that, in the facts and circumstances of the case, the restitution, far from meeting the ends of justice, would defeat the same. Undoing the effect of an interim order, by resorting to the principles of restitution, is an obligation of the party who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the Court at the stage of final decision, the Court earlier would not, or ought not to, have passed. An effort should be made to restore the parties to the same position in which they would have been if the interim order did not exist. (**South Eastern Coalfields Ltd.**²). While the petitioner can seek damages as compensation for the loss they suffered, and the benefits which the Union and DCHL gained by continuing to print and publish the newspapers under the protection of the interim order in W.P. No.14938 of 2013 dated 15.05.2013, they can also seek restitution from this Court.

An act of the Court cannot prejudice anyone. This principle is based on the Latin maxim “***actus curiae neminem gravabit***”. The *actus curiae* principle is founded upon justice and good sense, and is a guide for the administration of law. (**Essar Oil Ltd.**,³). In **Sarah Mathew**⁵ the Supreme Court applied the legal maxim *actus curiae neminem gravabit* (which means the act of court shall prejudice no man) to hold that the court’s inaction in taking cognizance (i.e. court’s inaction in applying its mind to the suspected offence) should not be allowed to cause prejudice to a diligent complainant.

One of the first and highest duties of all Courts is to ensure that the act of the Court does no injury to any of the suitors, and when the expression, ‘the act of the court’ is used, it does not merely mean the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which exercises jurisdiction over the matter upto the highest Court which finally disposes of the case. This

is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In the exercise of such inherent power, Courts have applied the principles of restitution to myriad situations. (**South Eastern Coalfields Ltd.**²; **Rodger v. Comptoir D'Escompte de Paris**^[6]; **A. Arunagiri Nadar v. S.P. Rathinasami**^[7]).

The word “**restitution**”, in its etymological sense, means restoring to a party, on the modification, variation or reversal of a decree or order, what has been lost to him in execution of the decree or order of the court, or in direct consequence of a decree or order. In law, the term “**restitution**” is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (**South Eastern Coalfields Ltd.**²; **Zafar Khan v. Board of Revenue, U.P.**^[8]; **Black's Law Dictionary, 7th Edn., p. 1315; The Law of Contracts by John D. Calamari & Joseph M. Perillo**). “**Restitution**” sometimes refers to the disgorging of something which has been taken, and at times to compensation for injury done. Often, the result under either meaning of the term would be the same. Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. (**South Eastern Coalfields Ltd.**²; **Black's Law Dictionary, 7th Edn., p. 1315; The Law of Contracts by John D. Calamari & Joseph M. Perillo**).

The doctrine of restitution is based on the principle that, on the reversal of a judgment, the law imposes an obligation on the party, who received the benefit of the erroneous judgment, to make restitution to the other party for what he had lost; and it is the duty of the court to enforce that obligation. (**Lal Bhagwant Singh v. Sri Kishen Das**^[9]; **Essar Oil Ltd.**³; **Binayak Swain v. Ramesh Chandra Panigrahi**^[10]). The concept of restitution is a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the Court which prevents a party from retaining the benefit derived from another which it has received by way of an erroneous decree of the Court. (**Essar Oil Ltd.**³). The obligation to retribute lies on the person or the

authority that has received unjust enrichment or unjust benefit. (**Essar Oil Ltd.**,³; **Halsbury's Laws of England, 4th Edn., Vol. 9, p. 434**).

That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the Court. The “**act of the court**” embraces, within its sweep, all such acts which the court may form an opinion in any legal proceedings that it would not have so acted had it been correctly apprised of the facts and the law. The factor, attracting applicability of restitution, is not the act of the Court being wrongful or a mistake or an error. The test is whether, on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, the earlier order had resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. (**South Eastern Coalfields Ltd.**²).

When a decree is reversed, the law imposes an obligation on the party, who received the unjust benefit of an erroneous decree, to reconstitute the other party for what the other party had lost during the period the erroneous decree was in operation. The Court, while granting restitution, is required to restore the parties, as far as possible, to the same position as they were in at the time when the Court, by its erroneous action, displaced them. (**Essar Oil Ltd.**,³). The Court has the inherent jurisdiction to order restitution so as to do complete justice between the parties. It is the duty of the Court to ‘place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed’. This duty or jurisdiction is inherent in the general jurisdiction of the Court to act rightly and fairly, according to the circumstances, towards all the parties involved. (**South Eastern Coalfields Ltd.**²; **Jai Berham v Kedar Nath Marwari**^[11]).

The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned, if it was not interdicted by the order of the Court, would be restored to, or conferred on, the party by suitably commanding the party liable to do so. Any opinion to the contrary

would lead to unjust, if not disastrous, consequences. Litigation may turn into a fruitful industry. Unscrupulous litigants may feel encouraged to approach the Courts, persuading it to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and, if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits which the interim order yielded, even though the battle is lost at the end. This cannot be countenanced. (**South Eastern Coalfields Ltd.**²).

The litigation thereafter had no effect on the order of the Division Bench, in W.A.No.679 of 2013 and W.P.No.14938 of 2013 dated 11.11.2013, and, on the said order attaining finality, DCHL should have vacated the premises, and removed the machinery therefrom, which they have failed to do. It is only because the order of the Chief Metropolitan Magistrate, in CrI.M.P.No.123 of 2013 dated 26.03.2013, was interdicted by the interlocutory order, passed in WP No.14938 of 2013 dated 15.05.2013, was the petitioner prevented from enforcing its rights under the SARFAESI Act to have the machinery of DCHL, lying in the subject premises, removed therefrom.

The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made, but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding that they be placed in the same position in which they would have been had the Court not intervened by its interim order when, at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. (**South Eastern Coalfields Ltd.**²).

As the petitioner has suffered injury, as a result of the interim order of this Court in W.P. No.14938 of 2013 dated 15.05.2013, they are entitled for restitution and to be extended the benefits which they would have secured but for the said interlocutory order. The only manner in which the petitioner can be placed in a similar position, in which they would have been but for the aforesaid interim order, is if the respondent police officers

are directed to render assistance to them in having the machinery of DCHL removed from the subject premises, and in taking absolute and exclusive control thereof.

II. RESTITUTION CANNOT BE ORDERED IN CONTEMPT PROCEEDINGS:

Sri S. Niranjan Reddy, Learned Counsel for the petitioner, would submit that, while the petitioner can invoke the contempt jurisdiction of this Court, for violation by DCHL of the order of the Division bench dated 11.11.2013, DCHL can only be punished for contempt; the petitioner would not be entitled to seek any other relief in contempt proceedings; as the petitioner has been made to suffer as a result of the interim order passed in W.P. No.14938 of 2013 dated 15.05.2013, this Court should now command DCHL to vacate the premises, and put the petitioner in absolute control thereof; the police officers should be directed to render assistance to enforce the order of this Court in W.A.No.679 of 2013 and W.P.No.14938 of 2013 dated 11.11.2013; and such a power, though not available under the Contempt of Courts Act, is available to be exercised under Article 226 of the Constitution of India.

While contempt proceedings can be initiated for violation of orders of Court, the jurisdiction which this Court exercises, under the Contempt of Courts Act, is limited only to an enquiry whether its orders have been wilfully violated and, in such cases, to impose punishment. The injury which the person, in whose favour an order is passed by the Court, suffers at the hands of the other party who has violated the order, cannot be compensated in contempt proceedings. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision has been complied with or not. The Court, exercising contempt jurisdiction, is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. (**Special Deputy Collector (LA) v. N. Vasudeva Rao**^[12]; **Union of India v. Subedar Devassy PV**^[13]; **Prithawi Nath Ram v. State of**

Jharkhand^[14]; and **Lalith Mathur v. L. Maheswara Rao**^[15]).

In a proceeding for contempt, the High Court can decide whether contempt of court has been committed and, if so, what should be the punishment to be imposed, and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties. Any direction issued, or decision made, by the High Court on the merits of a dispute between the parties will not be in the exercise of the “jurisdiction to punish for contempt”. (**Midnapore Peoples’ Coop. Bank Ltd. v. Chunilal Nanda**^[16]). The only remedy which the person who suffered an injury has, in this regard, is to invoke the jurisdiction of this Court under Article 226 of the Constitution of India seeking restitution, and for necessary directions to enforce its earlier order.

III. POLICE OFFICERS HAVE A LEGAL DUTY TO ENFORCE ORDERS OF COURT:

Sri S. Niranjan Reddy, Learned Counsel for the petitioner, would submit that the rule of law requires lawful orders of Court to be implemented; the lawful orders which DCHL has violated are (1) the order of the Chief Metropolitan Magistrate, Cyberabad, in CrI.M.P. No123 dated 26.03.2013, giving the petitioner control and possession over the subject property, and (2) the order of the Division Bench, in W.A.No.679 of 2013 and W.P.No.14938 of 2013 dated 11.11.2013, directing DCHL to vacate the premises and deliver possession to the petitioner by 28.02.2014; a public duty is cast on police officers to ensure compliance of the orders of Court; as the duty to enforce orders of the Court is a public duty, a Writ Petition would lie to enforce it; and a writ of mandamus should be issued directing the police officers to render assistance to the petitioner in taking exclusive and absolute control over the subject property. Learned Counsel would rely on **Satyanarayana Tiwari v. SHO, PS Santhoshnagar, Hyderabad**^[17]; **Rayapati Audemma v. Pothineni Narasimham**^[18]; **P.R. Murlidharan v. Swami Dharmananda Theertha Padar**^[19]; and **R. v.**

Commissioner of Police of the Metropolis Ex P. Blackburn (No.1)^[20]

in this regard.

On the other hand, Learned Government Pleader for Home would submit that this Court has the power, under Article 226 of the Constitution of India, to issue necessary directions for implementation of its earlier orders; in the absence of any specific direction from this Court, it would be impermissible for police officers to act on their own; while the order of the Division Bench, in W.A. No.679 of 2013 and W.P. No.14938 of 2013 dated 11.11.2013, required DCHL to remove the machinery and vacate the premises by 28.02.2014, no direction was issued therein to the police officers to act against DCHL in case they failed to comply with the said order; and, as the disputes between the petitioner and DCHL are in the nature of civil disputes, police officers cannot render assistance, in putting the petitioner in absolute control over the subject property, in the absence of any specific order or direction from this Court. Learned Government Pleader would also rely on **Satyanarayana Tiwari**¹⁷; and **Rayapati Audemma**¹⁸).

The order of the Chief Metropolitan Magistrate in CrI.M.P. No.123 of 2013 dated 26.03.2013, and the order of the Division Bench in W.A. No.679 of 2013 and WP No.14938 of 2013 dated 17.05.2013, necessitated compliance by DCHL. Police officers are duty bound to enforce the law, including orders of Courts. The petitioners' representation notwithstanding, the respondent police officers have expressed their inability to render them assistance in the absence of any specific direction or order from this Court.

In the absence of an express provision for enforcement of its orders, it is not only proper but also necessary that Courts should render all aid to the aggrieved party to enable him to derive the full benefits of the order. While the aggrieved party can himself approach the police authorities seeking their assistance for enforcement of the order, there is no reason why, when the same person brings to the notice of the Court that enforcement of the order is sought to be prevented or obstructed, the Court should not exercise its inherent power and direct the police authorities to

render all aid to the aggrieved party in the implementation of the court order. The court has ample jurisdiction to exercise such powers, and pass such orders as are necessary to meet the ends of justice and to prevent abuse of its process, and the police officers are bound to obey such directions (**Rayapati Audemma**¹⁸; **Satyanarayana Tiwari**¹⁷) as it is their duty to ensure that the orders of the High Court, and the Civil Court, are not only faithfully enforced but also that all persons, seeking enforcement of such orders, are given the required assistance and protection. (**Satyanarayana Tiwari**¹⁷). The law enforcement officers owe a legal duty to the public to perform those functions which are the *raison d'etre* of their existence. These legal duties include the duty to enforce the law. In these matters, they are not the servant of anyone, save of the law itself. The responsibility for law enforcement lies on them, and they are answerable to the law and to the law alone. (**Rayapati Audemma**¹⁸; **R. v. Commissioner of Police of the Metropolis Ex P. Blackburn (No.1)**²⁰; **Varadachariar v. Commr. of Police**^[21]).

IV. POWER OF THE CIVIL COURT TO DIRECT POLICE OFFICERS TO PROVIDE ASSISTANCE IN THE EXECUTION OF ORDERS OR DECREES:

The power of the Civil Court to direct police officers to render assistance is well recognized. When parties violate orders of injunction or stay, the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authorities to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit, and also order police protection for implementation of such an order. (**Meera Chauhan v. Harsh Bishnoi**^[22]).

In **Rayapati Audemma**¹⁸, a Division Bench of this Court held that, though an order of injunction under Order 39 CPC is only interim in nature, it still clothes the person, who obtained the order, with certain rights which he is entitled to enforce against the party who is bound by the order; in such a case the aggrieved party can, himself, approach the police authorities and seek their assistance to prevent obstruction to the

enforcement of the order, or to the exercise of the right which he derives under the order of the Court; there is no reason why, when the same person brings to the notice of the court that enforcement of the order is sought to be prevented or obstructed, the Civil Court should not exercise its inherent power under Section 151 CPC, and direct the police authorities to render all aid to the aggrieved party in the implementation of the court order; the exercise of such power is necessary to meet the ends of justice or to prevent abuse of the process of court; the Civil Court has ample jurisdiction to pass such an order under Section 151 CPC; and the police are bound to obey such directions.

However a slightly different view was taken by a Division Bench of this Court, in **Polavarapu Nagamani v. Parchuri Koteswara Rao** ^[23], wherein it was held that in a situation, where threat of violation or disobedience is alleged by the party obtaining a prohibitory order, the Court has the power to direct the police to prevent such violation and disobedience by providing necessary protection to enforce the order of injunction; such police protection order, when there is a threat of disobedience, is justifiable under Section 94(e) read with Section 151 CPC; in a situation, where a complaint is made that the order of injunction granted by the Court, restraining or prohibiting the opposite party from interfering with possession etc, has been violated, the Civil Court cannot pass a police protection order in the exercise of its powers under Section 94(e) or Section 151 CPC; and the power of the Court to pass a police protection order to prevent the disobedience of the injunction order is different from the power of the Court to deal with actual disobedience.

V. POWER OF THE HIGH COURT TO COMMAND POLICE OFFICERS TO AID IN ENFORCEMENT OF ITS ORDERS:

Whatever be the view, regarding the power of the Civil Court to direct police officers to render assistance to enforce its orders, the High Court, undoubtedly, has the power to issue such directions. Article 226 is a part of the basic structure of the Constitution of India (**L. Chandra Kumar v. Union of India** ^[24]), and the power conferred on the High Court

thereunder cannot be negated or circumscribed even by an amendment to the Constitution, much less by legislation – plenary or subordinate. Article 226 of the Constitution confers on the High Court wide powers in issuing writs for the enforcement of any of the rights conferred by Part III of the Constitution, and for any other purpose. Under the first part of Article 226 of the Constitution, a writ would be issued only after holding that the aggrieved party has a fundamental right, and that it has been infringed. Under the second part, a writ may be issued only after finding that the aggrieved party has a legal right, and that such a right has been infringed.

(**Rashid, K.S. v. Income-tax Investigation Commissioner**^[25]; **State of Orissa v. Rungta**^[26]; **Calcutta Gas Co. v. State of West Bengal**^[27]; **K. Venkatachalam v. A. Swamickan**^[28]; **B.A. Bhavani v. LAO, Yeluru Reservoir Project, Peddapuram**^[29]).

The words “any other purpose” in Article 226 brings within its ambit the enforcement of any legally enforceable right. (**Satyanarayana Tiwari**¹⁷). Article 226 of the Constitution is a storehouse or a reservoir of justice, equity and good conscience which are meant, within the discretionary power of the Court vested by that Article, to do full and complete justice. (**Hon’ble Secretary and Correspondent, Badruka College of Commerce and Arts (Day), Hyderabad**⁴). The High Court, in issuing directions, orders and writs under Article 226, can travel beyond the contents of the writs which are normally issued, provided the broad and fundamental principles that regulate the exercise of jurisdiction, in the grant of such writs, are not transgressed. Article 226 empowers the High Court to grant appropriate relief, and also to modify the form of relief according to the exigencies of each case, without being obsessed by the limitations of prerogative writs. There can be no higher purpose than the enforcement of orders of the High Court whereby the rights of a party are either confirmed or recognized. The power of the High Court under Article 226 of the Constitution of India, to enforce its own orders or the orders of the Civil Court, cannot be curtailed. (**Satyanarayana Tiwari**¹⁷; **Calcutta**

Gas Company (Prop) Ltd.²⁷; **T.C. Basappa v. T. Nagappa**^[30]).

As the police authorities owe a legal duty to enforce the law, citizens are entitled to seek directions, under Article 226 of the Constitution, for discharge of such duties by them. (**Satyanarayana Tiwari**¹⁷; **Rayapati Audemma**¹⁸; **R. v. Commissioner of Police of the Metropolis Ex P. Blackburn (No.1)**²⁰). The High Court can be approached for issuance of a writ on the plea that a particular party has not obeyed a decree or an order of injunction passed in his favour, or that he was deliberately flouting that decree or order and, inspite of the petitioner applying for it, the police authorities were not giving him the needed protection in terms of the decree or order passed by a court of competent jurisdiction. (**P.R. Murlidharan**¹⁹). In the event of the police failing or refusing to carry out their duty, the court would not be powerless to intervene, and an order of mandamus would issue. (**R. v. Commissioner of Police of the Metropolis Ex P. Blackburn (No.1)**²⁰). Mandamus is a very wide remedy which is available against public officers to ensure that they discharge their public duty. Once the party, who applies for mandamus, shows that he has sufficient interest to be protected, and there is no other equally convenient remedy, the remedy of mandamus is available. (**R. v. Commissioner of Police of the Metropolis Ex P. Blackburn (No.1)**²⁰).

The petitioner is entitled for restitution and to be placed in the position which they would have been in, but for the interim order in W.P. No.14938 of 2013 dated 15.05.2013. Likewise, DCHL cannot be permitted to unjustly enrich itself, and continue to remain in the subject premises flouting the order of the Division bench in W.A. No.679 of 2013 and W.P. No.14938 of 2013 dated 11.11.2013 and the undertaking given by them therein. As Review WPMP No.1156 of 2014 in W.A. No.679 of 2013 was dismissed by order dated 14.03.2014, the order of the Division bench, in W.A. No.679 of 2013 and W.P. No.14938 of 2013 dated 11.11.2013, has attained finality. A mandamus shall, therefore, be issued to the respondent police officers to provide assistance in having the machinery of DCHL, lying in the premises, removed therefrom, and in putting the petitioner in

absolute and exclusive control of the subject property.

VI. IS THE HIGH COURT REQUIRED TO HAVE ITS ORDERS ENFORCED ONLY BY THE CIVIL COURT?

Sri Vedula Venkataramana, Learned Senior Counsel, would submit that all orders of the High Court, where directions are issued, are in the nature of mandatory directions or injunctions; execution of such orders is necessary for obtaining the relief; the order of the Division Bench, in W.A. No.679 of 2013 and W.P.No.14938 of 2013 dated 11.11.2013, is in the nature of a decree against DCHL; the said order dated 11.11.2013 is an executable decree which, in terms of Rule 23 of the Writ Proceeding Rules, can only be executed by the Civil Court; the order of the Division Bench dated 11.11.2013 requires execution through the process of Court, and not through police officers; the police officers can, at best, assist in execution of the order of the High Court through the process of the Civil Court i.e., the Court of the Principal District Judge which is a Court of unlimited jurisdiction; and, even in the absence of any specific provision, the High Court has the inherent power to direct the Civil Court to execute the order of the Division Bench dated 11.11.2013 which is an executable decree.

The Civil Procedure Code prescribes the procedure for execution of decrees passed by a Civil Court of competent jurisdiction. There is no provision therein for enforcement of orders of the High Court. The jurisdiction of this Court, under Article 226 of the Constitution, is extremely wide, and the power to issue prerogative writs, orders or directions is not circumscribed by any limitation of its orders being required to be enforced only in execution proceedings by the Civil Court. Accepting this startling submission of the Learned Senior Counsel would mean that, while the High Court can issue writs, orders or directions and punish, those who disobey its orders, under the Contempt of Courts Act, it cannot enforce its own orders, and must depend upon the Civil Court to have its orders enforced. It would also require us to hold that the power of the High Court under Article 226, (which in view of its being a part of the basic structure of the Constitution cannot be negated even by a constitutional amendment

much less by legislation (plenary and subordinate)), is implicitly limited by the requirement of having its orders executed by the Civil Court (again implicitly) under the provisions of the Civil Procedure Code. Neither has the Learned Senior Counsel referred to any statutory provision, nor to any judicial pronouncement, which requires the High Court to have its orders enforced only by the Civil Court. Such a far fetched submission does not merit acceptance.

Reliance placed on Rule 23(1) of the Writ Proceeding Rules, to contend that the orders of the High Court must only be enforced by invoking the jurisdiction of the Civil Court, is misplaced. Rule 23(1) provides that a party, to whom costs have been awarded in a Writ Petition or a Writ Appeal, on an application therein, may obtain an order of the Court for transmission for the purpose of execution of the order of costs to the court of the District Munsif or to the Court of the Subordinate Judge in the State in whose jurisdiction the party, against whom the order is to be executed, ordinarily resides or carries on business or has property which can be attached. The said Rule, which enables the Civil Court to execute the order of the High Court, is restricted only to recovery of the costs awarded by the High Court. Rule 23(1) does not, in any manner, circumscribe the power of the High Court to pass orders or issue directions, under Article 226 of the Constitution of India, for the enforcement of its orders.

VII. OTHER CONTENTIONS:

(A). ALTERNATIVE REMEDY:

Sri D.V. Sitarama Murthy, Learned Senior Counsel appearing on behalf of DCHL in W.P.No.10602 of 2015, would submit that, for failure to comply with the order passed by the Chief Metropolitan Magistrate under Section 14(1) of the SARFAESI Act, the petitioner has an effective alternative remedy of approaching the Chief Metropolitan Magistrate himself under Section 14(2) thereof; and, as the petitioner has an effective alternative statutory remedy, the jurisdiction of this Court, under Article 226 of the Constitution of India, cannot be invoked. Learned Senior Counsel would rely on **Polavarapu Nagamani**²³; **Vemula Prabhakar v. LAO and**

RDO, Peddapalli, Karimnagar Dt. ^[31]; and the order of the Debt Recovery Appellate Tribunal in Appeal No.44 of 2015 dated 26.05.2015.

Section 14 of the SARFAESI Act requires the Chief Metropolitan Magistrate or the District Magistrate to assist the secured creditor in taking possession of the secured asset and, under sub-section (1) thereof, where the possession of any secured asset is required to be taken by the secured creditor, or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such a request being made to him (a) take possession of such asset and documents relating thereto; and (b) forward such assets and documents to the secured creditor. Under sub-section (2) thereof, for the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force as may, in his opinion, be necessary.

It is only if the Chief Metropolitan Magistrate had passed an order merely under Section 14(1) of the SARFAESI Act and, if the said order had not been complied with, could his jurisdiction, under Section 14(2) of the SARFAESI Act, have been invoked. By his order, in Crl.M.P. No.123 of 2013 dated 26.03.2013, the Chief Metropolitan Magistrate, Cyberabad directed the advocate Commissioner to take possession of the property and hand it over to the petitioner; permitted the advocate commissioner, if required, to take necessary assistance from the concerned police officers after putting them on notice; and, if further required, also to break open the locks of the premises. The order of the Chief Metropolitan Magistrate, in Crl.M.P.No.123 of 2013 dated 26.03.2013, is an order passed both under Section 14(1) and (2) of the SARFAESI Act. As they have already exhausted their remedy under clauses (1) and (2) of Section 14 of the

SARFAESI Act, the petitioner cannot again be relegated to invoke the jurisdiction of the Chief Metropolitan Magistrate under Section 14(2) of the SARFAESI Act. As the said order of the Chief Metropolitan Magistrate dated 26.03.2013 was interdicted by the interlocutory order of this Court, in W.P. No.14938 of 2013 dated 15.05.2013, the petitioner-bank no longer has the remedy of approaching the Chief Metropolitan Magistrate under Section 14(2) of the SARFAESI Act, and the only remedy available to them is to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

Reliance placed by Sri D.V. Sitaram Murthy, Learned Senior Counsel, on **Vemula Prabhakar**³¹ is misplaced. In **Vemula Prabhakar**³¹, a Full Bench of this Court held that, in view of the provisions contained in Section 53 of the Land Acquisition Act, an execution petition under Order 21 CPC was maintainable even for executing a decree passed by a Civil Court in a reference under Section 18 of the Land Acquisition Act; mere absence of the ingredients of coercion against the State, and/or Collector, in executing the decree, was no ground for by-passing such a civil remedy; the provisions contained in the Civil Procedure Code, dealing with the execution of a decree, were wide; it could not be said to be an ineffective remedy; the submission that an award made by a Civil Court, being a right of property under Article 300-A of the Constitution, can be enforced through a writ of mandamus could not be accepted; a decree passed, in terms of Section 18 of the Land Acquisition Act, was a money decree; and, if the aforementioned proposition was accepted, all money decrees, passed against the Government, could be directed to be executed through a writ of mandamus. In **B. A. Bhavani**²⁹, a Larger Bench (5 Judges) of this Court held that the view taken by the Full Bench, in **Vemula Prabhakar**³¹, was bad, contrary to law, and was, accordingly, overruled. The plea of existence of an alternative remedy, requiring this Court to refrain from interference, does not therefore merit acceptance.

(B). IS THE PETITIONER, UNDER THE GUISE OF POLICE ASSISTANCE, SEEKING ADJUDICATION OF CIVIL DISPUTES?

Sri Vedula Venkataramana, Learned Senior Counsel, would submit that no Writ can be sought to take possession of the property with police force; there is no specific plea in the Writ Petition that the petitioner had lost possession; the very fact that the petitioner has sought the relief, of being put in possession by police force, implies that they are not in possession; a direction to render police assistance can be given either to enforce an order of the Court or to perform a statutory duty or to protect a statutory right; and no direction can be given to the police to render assistance in putting the petitioner in possession of the subject property. On the other hand Sri S. Niranjan Reddy, Learned Counsel for the petitioner, would submit that the relief sought for in the Writ Petition is not for a direction to put the petitioner in possession, but to direct police officers to enforce the earlier order of the Division Bench of this Court in W.A. No.679 of 2013 and W.P. No.14938 of 2013 dated 11.11.2013.

The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations. (**P.R. Murlidharan**¹⁹). Though the power, which the High Court exercises under Article 226 of the Constitution, is discretionary and no limits can be placed upon the exercise of such discretion, the power must be exercised judiciously, along recognised lines, and not arbitrarily. While exercising this power, Courts have imposed upon themselves certain self-imposed limitations. (**B.A. Bhavani**²⁹).

A writ of mandamus cannot be sought for protection of property, status or right which remains to be adjudicated, that too when such an exercise of adjudication can only be undertaken in properly instituted proceedings. Under the guise of seeking a writ of mandamus, directing the police authorities to give him protection, no person can make the Court a forum for adjudicating his civil rights. It would be an abuse of process of the Court for any person to approach the High Court, under Article 226 of the Constitution, seeking a writ of mandamus directing police officers to protect his claimed possession of property without first establishing his possession in appropriate legal proceedings. The temptation to grant relief, in cases of this nature, should be resisted by the High Court. (**P.R.**

Murlidharan¹⁹). A writ for “police protection”, so-called, has limited application to cases where the Court is approached for protection of the rights declared by a decree, or by an order passed by the Court. It cannot be extended to cases where rights have not yet been determined either finally by the Court or at least at an interlocutory stage in an unambiguous manner, and even then only in furtherance of the decree or order. (**P.R. Murlidharan**¹⁹). While exercising jurisdiction under Article 226, the High Court would not, collaterally, determine disputed questions of fact. (**P.R. Murlidharan**¹⁹). This Court would not exercise jurisdiction, under Article 226 of the Constitution of India, save on a clear case, of a legal injury having been caused to the person who has invoked its jurisdiction, being made out requiring its interference.

While the need for police officers to ensure compliance of, and to enforce, orders of Court cannot be over emphasised, the need for them to tread warily in such matters must also be recognised. While interlocutory orders of Court can be varied in appeal or in revision, final orders of Court can also be set aside in appeal or in review. The possibility of the orders of Court, enforced by police officers, being varied or set aside later cannot be ruled out. If police officers are given a free hand, and are permitted to interpret court orders in the guise of implementing them, irreparable loss may ensue to the party which has suffered the order. While police officers are no doubt obligated to assist in implementation of orders of court any bonafide dispute, regarding the scope and purport of the order, would require them to exercise restraint and leave it to the party, which seeks police assistance, to approach the Court and obtain necessary directions/orders in this regard. This safeguard is essential to ensure that police officers do not run amok.

The facts, in the present case, justify interference by this Court in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India. There is neither any dispute with regards title or possession, nor is it purely a civil dispute between two private parties which necessitates adjudication by a competent Civil Court. It is not in dispute that the subject property was mortgaged by DCHL in favour of the

petitioner, or that the petitioner invoked Section 13(4) of the SARFAESI Act to take possession of the subject property and to put it to sale. It is only because their attempt to take possession met with resistance from DCHL that the petitioner invoked the jurisdiction of the Chief Metropolitan Magistrate, under Section 14 of the SARFAESI Act, seeking assistance in taking possession of the subject property. The entire litigation thereafter, till the present Writ Petitions were filed before this Court, was only because the petitioner was prevented from taking absolute and exclusive control of the subject premises despite the order of the Chief Metropolitan Magistrate, under Section 14 of the SARFAESI Act, dated 26.03.2013 and the order of the Division bench of this Court dated 11.11.2013.

It is not as if the petitioner's right to take absolute control of the subject property, to the exclusion of DCHL or the Union, is yet to be determined. It is not even the case of DCHL that disputed questions of fact are involved in the present case which necessitate adjudication in appropriate legal proceedings. By its order in W.A. No.679 of 2013 and W.P. No.14938 of 2013 dated 11.11.2013, the Division Bench had directed DCHL to vacate the premises by 28.02.2014 and remove all machinery available therein. As possession of the subject premises was already handed over to them, the Division Bench also permitted the petitioner to take further steps to sell the property in order to recover the amount due to them. Consequent upon the review petition, in review WPMP No.1156 of 2014 in W.A.No.679 of 2013, being dismissed on 14.03.2014, the earlier order of the Division bench, in W.A.No.679 of 2013 and W.P.No.14938 of 2013 dated 11.11.2013, attained finality. In such circumstances there is no reason why this Court, in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, should refrain from granting the petitioner the benefit of restitution. A mandamus shall issue to the respondent police officers to provide all necessary assistance to enable the petitioner-bank to remove the machinery of DCHL from, and to take absolute and exclusive control of, the subject premises.

The petitioner's request for police assistance to enable them to be put in absolute control of the subject premises, must be seen in the context of the interim order passed in W.P. No.14938 of 2013 dated 15.05.2013

whereby DCHL was permitted to continue to carry on its printing activity in the subject premises. As there appeared to be a dispute whether the interim order passed in W.P. No.14938 of 2013 dated 15.05.2013 enabled the petitioner to remain in possession, *albeit* along with DCHL and the Union, the petitioner filed WA No.679 of 2013. The Division Bench, by its order in W.A.No.679 of 2013 dated 17.05.2013, directed that, for the purpose of protecting the property as it was, the representative of the petitioner-bank was permitted to stay in the property without any interruption by the Union or anyone else including the police. The petitioner-bank and their representatives were also directed not to cause any obstruction to the activity of printing and publishing of the newspapers. As a result of the said order dated 17.05.2013, while the petitioner-bank continued to remain in possession of the subject property, DCHL has also been carrying on its printing activity thereat, and has not removed the machinery from the subject premises till date, though the final order of the Division Bench, in W.A.No.679 of 2013 and W.P.No.14938 of 2013 dated 11.11.2013, required them to vacate the premises and remove all machinery therefrom on or before 28.02.2014. It is only on DCHL being required to remove the machinery, and to vacate the subject premises, can the petitioner-bank remain in absolute control of the property to the exclusion of DCHL and its Union. Police officers are duty bound to render assistance in implementation of the orders of Court, and can be directed to discharge their legal duty of ensuring compliance with court orders. A writ of mandamus being issued, in the present case, does not necessitate adjudication of any civil disputes.

(C). ARE THE TWIN PRAYERS IN W.P. NO.17935 OF 2015 SELF-CONTRADICTIONARY?

Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of DCHL in W.P.No.17935 of 2015, would submit that the prayer in the said Writ Petition is in two parts; while the first limb relates to inaction of the police in not considering the representation dated 15.06.2015, the second limb is for a direction to the police to put the petitioner in absolute control; even if the first limb of the prayer is allowed, the only direction which can be issued to the police officials is to act upon the petitioner's

representation dated 15.06.2015; the first limb of the prayer contradicts the second limb; the twin prayers in the Writ Petition are self-contradictory; and, if the first limb of the prayer is granted, there would be no necessity to grant the second limb of the prayer, as grant of relief of the first limb would result in the petitioner achieving what it wanted.

On the other hand Sri S. Niranjan Reddy, Learned Counsel for the petitioner, would submit that the complaint in the Writ Petition is that police officers are not performing their public duties; no relief has been sought to direct police officers to dispose of the petitioner's representation; the petitioner has not only sought police aid in removing the machinery of DCHL, they have also sought assistance to take absolute and exclusive control over the subject property; they were unable to do so in view of the resistance offered by DCHL and their men; the Writ Petition does not emanate merely from the representation submitted by the petitioner to the police officers, but also from the subsequent event of the resistance offered by DCHL when the petitioner attempted to take absolute control in terms of the order of the Division bench dated 11.11.2013; and, while grant of the relief sought for in the first limb of the prayer may render the second limb superfluous, the second limb does not contradict the first.

The prayer in W.P.No.10602 of 2015 is for this Court to issue a Writ of Mandamus directing respondent Nos.1 to 3 to take necessary steps to put the petitioner in absolute control of the subject property in furtherance of the acts initiated by them under the SARFAESI Act, followed by the violation of the undertaking of DCHL in W.A. No.679 of 2013. The first limb of the prayer in W.P.No.17935 of 2015 is for this Court to issue a "Writ of Mandamus" declaring the action of Respondent Nos.2 to 6 in not providing police aid, in terms of their representation dated 15.06.2015, to take absolute control of the subject property as illegal, arbitrary and violative of Articles 14 and 300A of the Constitution of India. The second limb of the prayer is for a consequential direction to respondent Nos.1 to 6 to take necessary steps to put the petitioner in absolute control over the subject property in furtherance of the action initiated by them under the SARFAESI Act followed by the violation of the undertaking made by DCHL in W.A. No.679 of 2013.

Both W.P.Nos.10602 and 17935 of 2015 have been filed questioning the action of police officers in not providing police aid for implementation of the rule of law which, in the present case, relates to implementation of the orders of the Chief Metropolitan Magistrate in CrI.M.P.No.123 of 2013 dated 26.03.2013, and the order of the Division Bench in W.A.No.679 of 2013 and W.P.No.14938 of 2013 dated 11.11.2013 which order attained finality on the review petition, filed in Review WPMP No.1156 of 2014, being dismissed by the Division Bench by its order dated 14.03.2014. On their failure to consider the petitioner's representation, to render police assistance, being declared illegal, a mandamus would ordinarily have been issued directing the respondent police officers to consider the representation of the petitioner-bank afresh, and in accordance with law. However, the stand of the respondent-police officers, in their counter-affidavit filed before this Court, is that they would not be able to render police assistance in the absence of any specific direction from this Court. No useful purpose would, therefore, be served in directing them to re-consider the representation of the petitioner-bank seeking police aid. We see no inconsistency between the first limb and the second limb of the prayer as the second limb is merely a consequence of the first. In any event the High Court, while exercising jurisdiction under [Article 226](#) of the Constitution, has the power to mould the relief taking into account the totality of the circumstances and the exigencies of the situation. (**D. Satyanarayana v. N.T.Rama Rao** ^[32]).

VIII. CONCLUSION:

DCHL has failed to comply with the conditional order passed by the DRT, in SA No.340 of 2013 dated 14.03.2013, to deposit Rs.10 crores, and has merely deposited Rs.1 crore that too long after the time stipulated therefor had expired. They have repeatedly used the judicial process to deny the petitioner their right to enforce the mortgage in terms of the provisions of the SARFAESI Act, to take possession of the subject mortgaged property, and to put it to sale. They have also violated the solemn undertaking given to this Court more than a year and a half ago, in WA No.679 of 2013 and WP No.14938 of 2013, to remove the machinery

from the premises by 28.02.2014, and have continued to retain possession of the subject property in brazen defiance, and utter disregard, of the order of the Chief Metropolitan Magistrate in CrI.M.P. No.123 of 2013 dated 26.03.2013, and the order of the Division bench of this Court in W.A. No.679 of 2013 and W.P. No.14938 of 2013 dated 11.11.2013.

The judicial adventures of DCHL, to somehow or the other retain possession of the subject property culminating in the order of the Debt Recovery Appellate Tribunal in Appeal No.44 of 2015 dated 26.05.2015, have all come to naught. Yet they have not removed their machinery from the subject premises, possession of which was handed over to the petitioner by the advocate commissioner on 15.05.2013 more than two years. The petitioner has been unable either to recover its debt in excess of Rupees 62 crores, or to take exclusive and absolute control over the subject property. Even though sale of the subject property was confirmed in favour of the highest bidder in the auction held on 27.05.2015, the petitioner has not been able to deliver possession to him till date. The only way in which the petitioner can be restituted for the loss and injury suffered by them, on account of the interim order passed by this Court in W.P. No.14938 of 2013 dated 15.05.2013, is if a direction is issued to the respondent police officers to provide them necessary assistance in taking absolute and exclusive control of the subject property, and to have the machinery and movables of DCHL removed therefrom. A writ of mandamus shall be issued accordingly.

Notwithstanding the intransigence of DCHL, in failing to vacate the premises and remove the machinery therefrom, this Court cannot ignore the possibility of the expensive printing machinery of DCHL, lying in the subject premises, suffering extensive damage if sufficient safeguards are not taken while removing it therefrom. We consider it appropriate, therefore, to permit DCHL to remove its machinery and moveables from, and vacate, the subject premises by 31.08.2015. If they fail to do so by then, the respondent police officers shall, on a written request from the petitioner, provide them necessary assistance in having the machinery and other movables of DCHL removed from the subject premises without interference from either DCHL or any one else on their behalf. This order

shall also not preclude the petitioner from initiating appropriate legal proceedings for damages on account of the loss and injury suffered by them as a result of the repeated, *albeit* unsuccessful, forays by DCHL into the portals of this Court.

Both the Writ Petitions are allowed with exemplary costs of Rs.25,000/-, which DCHL shall pay the petitioner-bank within four weeks from today. The miscellaneous petitions pending, if any, shall also stand disposed of.

RAMESH RANGANATHAN, J

S. RAVI KUMAR, J

Date: 28.07.2015.

Note: L.R. copy to be marked

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- [\[1\]](#) (2004) 13 SCC 610
 - [\[2\]](#) (2003) 8 SCC 648
 - [\[3\]](#) (2012) 3 SCC 522
 - [\[4\]](#) AIR 1997 AP 179
 - [\[5\]](#) (2014) 2 SCC 62
 - [\[6\]](#) (1871) 3 PC 465
 - [\[7\]](#) (1971) 1 MLJ 220
 - [\[8\]](#) AIR 1985 SC 39
 - [\[9\]](#) AIR 1953 SC 136
 - [\[10\]](#) AIR 1966 SC 948
 - [\[11\]](#) (1922) 49 IA 359 = AIR 1922 PC 269
 - [\[12\]](#) (2007) 14 SCC 165
 - [\[13\]](#) (2006) 1 SCC 613
 - [\[14\]](#) (2004) 7 SCC 261
 - [\[15\]](#) (2000) 10 SCC 285
 - [\[16\]](#) (2006) 5 SCC 399
 - [\[17\]](#) AIR 1982 AP 394
 - [\[18\]](#) AIR 1971 AP 53
 - [\[19\]](#) (2006) 4 SCC 501
 - [\[20\]](#) (1968) 1 ALL ER 763
 - [\[21\]](#) (1969) 2 Mad LJ 1
 - [\[22\]](#) (2007) 12 SCC 201
 - [\[23\]](#) 2010 (2) ALD 41 (DB)

[\[24\]](#) AIR 1997 SC 1125

[\[25\]](#) AIR 1954 SC 207

[\[26\]](#) AIR 1952 SC 12

[\[27\]](#) AIR 1962 SC 1044

[\[28\]](#) (1999) 4 SCC 526

[\[29\]](#) (2005) 3 ALD 233 (LB)

[\[30\]](#) AIR 1954 SC 440

[\[31\]](#) 2002 (1) ALD 200 (FB)

[\[32\]](#) AIR 1988 A.P. 144