

*** HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

+ WRIT PETITION No.7769 of 2015

% Dated 24-04-2015

Mr. Inder Raj Agarwal

.... Petitioner

Vs.

\$ Union of India, rep., by Secretary, Department of Co-operative societies, Secretariat, Hyderabad and three others.

.... Respondents

! Counsel for the petitioner: Sri T. Vinod Kumar

^ Counsel for respondent No.1: Standing Counsel for Central Government

Counsel for respondent No.2: Government Pleader for Cooperative

Counsel for respondent No.3: Sri K. Gopalakrishna Murty.

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? Citations:

1. II (2014) BC 303 (Guj.) = (2014 (1) Bankers Journal 464
2. (2007) 6 SCC 236
3. (2003) 9 SCC 401
4. (2010) 11 SCC 557
5. (1969) 1 SCC 110
6. (2012) 6 SCC 430

7. (2011) 8 SCC 249
8. 2008 (2) Bom CR 860 = 2007 (6) Mhij 712 = AIR 2008 (NOC) 44 (Bom)
9. AIR 2008 Karnataka 20
10. AIR 2008 Bom. 38
11. AIR 2008 Ker.91
12. AIR 2009 Mad.143
13. 2009 (4) Bom. CR 734
14. AIR 2010 P & H 20
15. 1998(2) GLR 1517
16. AIR 2008 MP 193
17. 2012 (173) Comp.Case 1 (Kant)
18. (1998) 3 SCC 573
19. 2005 (4) ALD 582 (FB)
20. (2010) 11 SCC 557
21. 1993 Supp (2) SCC 20
22. (1994) 6 SCC 620
23. (1995) 1 SCC 242
24. (1995) 3 SCC 507
25. (Judgment in Criminal Appeal No.781 of 2012 dated 27.03.2015)
26. AIR 1981 Rajasthan 3
27. 1977 WLN 88
28. (1997) 1 SCC 134
29. (2005) 6 SCC 138
30. (2000) 2 SCC 617 = (2000) 1 SCR 505
31. (1994) 2 SCC 481
32. AIR 1955 SC 425
33. AIR 1987 SC 2235
34. AIR 1989 SC 1972
35. (1993) 4 SCC 317
36. (1996) 8 SCC 285
37. (1977) 2 SCC 431
38. (1999) 1 SCC 271
39. (2003) 1 SCC 488
40. (2004) 7 SCC 166
- 41) (2010) 4 SCC 728

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

WRIT PETITION NO.7769 OF 2015

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

This Writ Petition is filed to declare the notification issued by the Union of India dated 28.01.2003, exercising powers under Section 2(1)[c](v) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "SARFAESI Act" for short), bringing Cooperative Banks within the purview of the SARFAESI Act, and the notice dated 21.02.2015 issued by the 3rd respondent-bank under Section 13(4) and Section 12 of the SARFAESI Act, as arbitrary, illegal and without jurisdiction. In seeking this relief, the petitioner places reliance on a Division Bench judgment of the Gujarat High Court in **Administrator, Shri Dhakdi Group Cooperative Cotton Seed v. Union of India**). The petitioner seeks a consequential direction to set aside the notification dated 28.01.2003 issued by the Union of India, and the notice dated 21.02.2015 issued by the 3rd respondent-bank under Section 13(4) of the SARFAESI Act as illegal.

The petitioner claims to be the absolute owner of the subject property, admeasuring 200 square yards on Plot No.F8, Fatehnagar, Balanagar, acquired by him through sale deed dated 15.04.1966, and to be in possession and enjoyment thereof from the date of its purchase. It is his case that the 4th respondent, a partnership firm carrying on business in the manufacture of sugar, had obtained a loan from the 3rd respondent-bank for which he had stood as a guarantor mortgaging the subject property. Reference is made by him, in the affidavit filed in support of the Writ Petition, to W.P.No.235 of 2003, W.P.No.16201 of 2004 and W.A.No.4161 of 2004 filed by the 4th respondent and M/s.Laxmi and Company before this Court, to submit that the 3rd respondent had proceeded against the 4th respondent under the A.P. Cooperative Societies Act till the year 2006, and had filed an execution petition which was not pursued later; thereafter in the year 2010 the 3rd respondent-bank invoked the provisions of the SARFAESI Act for recovery of the loan; they had caused publication in the newspapers to auction the subject property; a notice was issued by the 3rd respondent-bank on 12.12.2014 for auction of the subject property on 20.01.2015 for recovery of the outstanding dues of Rs.45.00 Lakhs with interest; the auction was to be conducted on an 'as is where is' basis, and the reserve price was fixed at Rs.45.00 Lakhs; questioning the said notice dated 12.12.2014, he had filed W.P.No.27 of 2015; and since the 3rd respondent had issued a fresh notice

dated 21.02.2015, under Section 13(4) and Section 12 of the SARFAESI Act, W.P.No.27 of 2015 had become infructuous.

It is the petitioner's case that the 3rd respondent-bank was registered as a "Cooperative Society" with the Registrar of Cooperative Societies on 30.09.1989; the Central Government had, in the exercise of its powers under Section 2(1)[c](v) of the SARFAESI Act, issued the notification dated 28.01.2003 including "Cooperative Banks" within the definition of 'banks'; on the basis of the said notification dated 28.01.2003, the 3rd respondent-bank had invoked the provisions of the SARFAESI Act; the Supreme Court, in **Greater Bombay Co-operative Bank Ltd. v. M/s.United Yarn Tex. Pvt. Ltd.**, held that the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("DRT Act" for short) did not apply to cooperative banks in view of the language employed in the Cooperative Societies Act, the Banking Regulation Act and the DRT Act; cooperative societies could not be said to be covered by Central Legislation with reference to Entry 45 of the List I of the VII Schedule to the Constitution of India; and cooperative banks, constituted under the Cooperative Societies Act, were covered under Entry 32 of List I of the VII Schedule to the Constitution of India.

The petitioner submits that the SARFAESI Act was enacted by the Parliament under Entry 45 of List I; cooperative banks would fall within the ambit of Entry 32 of List II; consequently, the Government of India could not issue any notification which went beyond the legislative field set out in Entry 45 of List I; the impugned notification dated 28.01.2003, seeking to apply the provisions of the SARFAESI Act to cooperative banks, is *ultra vires* the powers conferred on the Central Government under Section 2(1)[c](v) of the SARFAESI Act, and is without jurisdiction; any notification, bringing banks within the purview of the SARFAESI Act, can only be in relation to a "bank" as defined under the Banking Regulation Act; it would not apply to a "cooperative bank" as they continue to be governed only by laws made under Entry 32 of List II; such cooperative banks cannot be brought within the ambit of the SARFAESI Act either by Parliamentary legislation, or by a notification issued by the Government of India in the exercise of its powers under Section 2(1)[c](v) of the SARFAESI Act; the notification dated 28.01.2003 was subjected to challenge in various High Courts; while the Kerala High Court, Bombay High Court and the Madras High Court had dismissed the Writ Petitions, the Gujarat High Court, in

Administrator, Shri Dhakdi Group Cooperative Cotton Seed¹, had declared the Central Government notification dated 28.01.2003 *ultra vires* the Constitution; and, as the 3rd respondent-bank had invoked the provisions of the SARFAESI Act, the validity of the notification dated 28.01.2003 has been subjected to challenge before this Court in the present Writ Petition.

In the counter-affidavit filed on behalf of the 3rd respondent-bank, it is stated they had sanctioned loans against mortgage of the subject immovable property of the petitioner (who was a partner in the 4th respondent); as the 4th respondent had defaulted in payment of the debt due, the 3rd respondent-bank had invoked the provisions of the A.P.Co-operative Societies Act to recover the amounts due; an Award was passed in favour of the Bank, in ARC No.97 dated 04.05.2002, against the secured mortgaged property; the petitioner and his daughter instituted various legal proceedings thereafter against the Bank; the petitioner filed the present Writ Petition just one day before the date on which the secured asset was to be put to auction, for recovery of the dues of the 3rd respondent bank; and there were no bonafides in the Writ Petition seeking stay of sale of the property in the auction scheduled to be held on 25.03.2015. The counter-affidavit refers to several proceedings, which the petitioner and his daughter had instituted against the 3rd respondent-bank, details of which shall be referred to hereinafter.

It is further submitted, on behalf of the 3rd respondent bank, that they are entitled to invoke the provisions of Section 13(4) of the SARFAESI Act; the petitioner was the owner of the subject property mortgaged by him in favour of the 3rd respondent-bank, to secure the loan sanctioned to the 4th respondent (a partnership firm in which the petitioner was a partner); while the petitioner has referred to the earlier Writ Petitions filed by him, he did not disclose his failure to comply with the conditional orders passed therein; in **Greater Bombay Cooperative Bank Ltd²**, the Supreme Court had referred to the provisions of the SARFAESI Act, the DRT Act, and the respective fields of legislation under the Constitution; the question which fell for consideration therein was whether cooperative banks, registered under the Cooperative Societies Act, were required to approach the DRT under the DRT Act; the provisions of the DRT Act were held inapplicable for recovery of debts due to cooperative societies from their members; the said judgment does not disentitle

cooperative banks from taking measures under the SARFAESI Act; Section 56 of the Banking Regulation Act was amended in furtherance of the Banking Laws (Amendment) Act 2012 which came into force with effect from 05.01.2013; Section 56 of the amended Banking Regulation Act specifically includes co-operative banks; the 3rd respondent is a co-operative bank registered under the Co-operative Societies Act, and is included with the definition of “bank” under Section 2(1)(c)(v) of the SARFAESI Act; the 3rd respondent-bank had the right to take measures under the SARFAESI Act; consequent to the amendment of the Banking Regulation Act, co-operative banks have been brought within the definition of “banks” under the Banking Regulation Act, and consequently within the purview of the SARFAESI Act; the petitioner was protracting the vexatious litigation, from the year 2002 onwards, to prevent recovery of the amount due under the Award secured by the 3rd respondent-bank against the mortgaged immovable properties; the petitioner did not deserve any relief from this Court, in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India; the 3rd respondent-bank has been incurring considerable expenses in its efforts to recover its dues; and the very fact the petitioner had failed to serve the papers, despite a caveat being filed, showed his malafide intention to somehow or the other avoid proceedings for recovery of the sums due to the respondent bank.

The petitioner has not chosen to rebut the specific allegations in the counter-affidavit, of the several cases filed by his daughter, son and a purported tenant, by way of a reply affidavit. On copies of the several orders passed by Courts/Tribunals, as referred to in the counter-affidavit, being made available, we asked the Learned Counsel for the petitioner whether the genuineness of these orders were disputed. Learned Counsel for the petitioner fairly stated that they were, indeed, copies of the various orders passed by Courts/Tribunals. While the petitioner has made a bald and vague reference in the Writ affidavit, to the Writ Petitions and the Writ Appeal filed by him without referring to his failure to comply with some of the orders passed therein, he has suppressed the fact of his daughter, son and supposed tenant having filed cases before various Courts/Tribunals, though he was arrayed as a respondent in these proceedings.

In order to sustain and maintain the sanctity and solemnity of proceedings in

law courts it is necessary that parties should not make false or, knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the Court where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by recourse to misrepresentation, and conceals material facts, it does so at its own risk. Such a party must be ready to take the consequences that follow. There is a compelling need to take a serious view in such matters to ensure purity in the administration of justice. (**Vijay Syal v. State of Punjab**). As a petition containing misleading and inaccurate statements, if filed to achieve an ulterior purpose, amounts to an abuse of the process of the court, the litigant should not be dealt with lightly. A litigant is bound to make “*full and true disclosure of facts*”. (**Manohar Lal v. Ugrasen; Tilokchand Motichand v. H.B. Munshi**).

Every litigant is expected to state the truth before the Court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in the judicial process. (**A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam**). The pleadings must set forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. False averments, evasive or false denials should not be introduced. Courts must insist that those who approach it must do so with clean hands. (**A. Shanmugam**⁶).

In order to curb uncalled for and frivolous litigation, and to prevent its scarce and valuable time being consumed, or more appropriately wasted in a large number of uncalled for cases, the Court should ensure that there is no incentive for such litigation. (**Ramrameshwari Devi v. Nirmala Devi**). Unscrupulous litigants should not be permitted to derive any benefit by abusing the judicial process. (**A. Shanmugam**⁶). It is the duty of the Court to take appropriate remedial and preventive steps so that no one derives any benefit or advantage by abusing the process of law. The Court must effectively discourage fraudulent and dishonest litigants. (**A. Shanmugam**⁶). Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should, in addition to full restitution, impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and no one should be permitted to pollute the stream of justice. (**A.**

Shanmugam⁶).

Several High Courts, including the Bombay, Kerala, Karnataka, Madras, Madhya Pradesh and Punjab and Haryana High Courts, have held that the Union of India had the power to bring cooperative banks within the purview of the SARFAESI Act. These judgments are **M/s. Khaja Industries v. State of Maharashtra; V.Krishnaswamy v. Karnataka Rajya Kajgarika Sahakara Bank Niyamitha, Bangalore; M/s.Rama Steel Industries v. Union of India; A.P.Varghese v. Kerala State Co-op. Bank Ltd.,; Raj Kumar Khemka v. Union of India; Nashik Merchants Co-op. Bank Ltd. v. Aditya Hotels Pvt. Ltd.; Nakodar Hindu Urban Co-op. Bank v. Deputy Registrar, Co-op. Society; Kheralu Nagrik Sahakari Bank Ltd. v. State of Gujarat; Hanz Zakir Hussain v. Akola Janta Commercial Co-op. Bank Ltd.,; and Karnataka Rajya Kajgarika Sahakara Bank Niyamitha v. V. Krishnaswamy**. While the Division Bench of Gujarat High Court has, no doubt, taken a different view in **Administrator, Shri Dhakdi Group Cooperative Cotton Seed¹**, the question, which arises for consideration in this Writ Petition, is whether this Court should examine this legal issue even if it is satisfied that its process is being abused by the petitioner?

The term “abuse of the process of the court” connotes that the process of the court must be used bonafide and properly, and must not be abused. The court will prevent improper use of its machinery and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material. A proceeding being filed for a collateral purpose would also, in a given set of facts, amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the court process. (**K.K. Modi v. K.N. Modi**).

The manner in which the judicial process has been abused by the petitioner (either directly or through his daughter, son or a third party (allegedly his tenant)), to avoid repayment of the debt due to the 3rd respondent-bank, and the subject property being put to sale for realisation of the amounts due, is a tale in itself. On the 3rd respondent-bank invoking his jurisdiction, under Section 61 r/w. Section 62(4) of

the A.P.Co-operative Societies Act, 1964, the Co-operative Sub-Registrar-cum-Arbitrator passed an award in A.R.C.No.97 of 2002 dated 04.05.2002 against, among others, the 4th respondent and its partners including the petitioner herein for recovery of Rs.54,49,786.25 ps. with costs and further interest at 20% per annum from 01.01.2002 onwards. The arbitrator directed that, on failure to repay the amount due, it could be recovered by attaching the movable and immovable properties of the 4th respondent and its partners.

The 3rd respondent-bank filed E.P.No.66 of 2002 for execution of the award in A.R.C.No.97 of 2002. The 4th respondent herein, represented by the petitioner as its managing partner, filed W.P.No.235 of 2003 before this Court contending that the arbitrator lacked jurisdiction to pass the award in view of the provisions of the DRT Act. By its order, in WPMP No.311 of 2003 in W.P.No.235 of 2003 dated 07.01.2003, this Court granted stay of all further proceedings in A.R.C.No.97 of 2002. On a petition being filed by the 3rd respondent-bank to vacate the stay, the earlier interim order was modified by this Court on 01.04.2004, and the 4th respondent herein was directed to deposit half of the award amount. Instead of doing so, the petitioner preferred an appeal along with the 4th respondent, in C.T.A. SR No.2213 of 2004, against the award passed in A.R.C.No.97 of 2002, before the A.P. Cooperative Tribunal at Hyderabad. They filed I.A.No.522 of 2004 therein to condone the delay of 659 days in preferring the appeal. The petitioner contended before the Tribunal that, as the recoverable amount exceeded Rs.10.00 Lakhs and the matter fell within the jurisdiction of the Debt Recovery Tribunal under the provisions of the DRT Act, the arbitrator had no power to pass the award. The Cooperative Tribunal dismissed the I.A., by order dated 21.07.2004, holding that the 4th respondent was aware of the proceedings before the arbitrator, and the award passed by him; and they had filed W.P.No.235 of 2003 before the High Court, and had obtained stay of proceedings on condition of payment of the half the principal amount of Rs.27,25,000/- within a period of 8 weeks. The I.A. was dismissed. Aggrieved thereby, the petitioner filed W.P.No.16201 of 2004.

The 3rd respondent-bank instituted proceedings in A.R.C.No.430 of 2002 against M/s.Laxmi and Company of which the petitioner herein was the managing partner. M/s.Laxmi and Company, represented by the petitioner herein, filed W.P.No.667 of 2003 before this Court contending that, in view of the provisions of

the DRT Act, the arbitrator lacked jurisdiction to entertain the reference. Following the judgment of the Supreme Court in **Greater Bombay Co-operative Bank Ltd.**², a Division Bench of this Court dismissed W.P.No.667 of 2003 by its order dated 01.05.2007.

Against the order dated 01.04.2004, modifying the earlier interim order passed in WPMP No.311 of 2003 in W.P.No.235 of 2003 dated 07.01.2003, the 4th respondent and the petitioner herein filed W.A.No.1461 of 2004. A Division Bench of this Court heard W.A.No.1461 of 2004, W.P.No.235 of 2003 and W.P.No.16201 of 2004 together and, by a common order dated 30.09.2004, condoned the delay of 659 days in preferring the appeal to the Tribunal, on condition that the 4th respondent and the petitioner deposit Rs.15.00 Lakhs with the 3rd respondent-bank within six weeks. The Cooperative Tribunal was directed, on such deposit being made, to entertain the petitioner's appeal as having been filed within the period of limitation, and to decide the appeal in accordance with law. The Division Bench made it clear that, in case the petitioner failed to deposit Rs.15.00 Lakhs within six weeks, the order passed by the Cooperative Tribunal in C.T.A.SR.No.522 of 2004 dated 21.07.2004 shall continue to remain in force. The Writ Appeal and both the Writ petitions were disposed of accordingly.

The petitioner's son Sri Kamal Agarwal, who was also a partner in the 4th respondent firm, filed W.P.No.14858 of 2004 before this Court against the 3rd respondent-bank, the 4th respondent and others, questioning the action of the sale officer of the 3rd respondent-bank in putting the subject property to sale on 23.08.2004, in E.P.No.66 of 2002 in A.R.C.No.97 of 2002. This Court, by order in WPMP No.19173 of 2004 in W.P.No.14858 of 2004 dated 20.08.2004, granted interim stay of all further proceedings in E.P.No.66 of 2002 subject to the condition that Sri Kamal Agarwal deposited Rs.25.00 Lakhs within six weeks. W.P.No.14858 of 2004, along with several others, were heard and decided by a Full Bench of this Court in W.A.No.1754 of 2004 and batch dated 05.07.2005, (**M.Babu Rao V. Deputy Registrar of Co-operative Societies**), and it was held that the action taken against the borrowers, under the A.P.Co-operative Societies Act, was illegal; and the remedy of the Bank was to approach the DRT under the DRT Act. The order of

the Full Bench in **M.Babu Rao**¹⁹, was reversed by the Supreme Court in **Greater Bombay Cooperative Bank Ltd**².

After the appeal preferred by the 4th respondent and the petitioner was dismissed by the A. P. Cooperative Tribunal, the petitioner's daughter Smt.Anjana filed Claim Petition No.1 of 2007 in E.P.No.66 of 2002 (which was renumbered as E.P.No.1 of 2007) against, among others, the 3rd respondent-bank and her father (the petitioner herein) claiming 1/5th share in the mortgaged immovable property. The sale officer, by order dated 23.05.2007, rejected the claim petition holding that no evidence was produced by Smt.Anjana that the subject property was purchased from joint family funds; her father (the petitioner herein) had created a mortgage in favour of the 3rd respondent-bank in his individual capacity, and had availed a loan facility from the bank; Smt.Anjana had not raised any objection, when the property was mortgaged by the petitioner while availing the loan or thereafter; her claim that she had 1/5th share in the subject property was not supported by any documentary evidence; and, hence, the claim petition was liable to be rejected. Aggrieved thereby Smt.Anjana filed C.T.A.No.26 of 2009 before the A.P.Co-operative Tribunal which, in its order dated 11.02.2010, held that the claim was frivolous; her father (the petitioner herein) had bought the property while he was in service in the year 1966, and not while carrying on business with ancestral joint family funds; it was he alone who had mortgaged the property with the 3rd respondent-bank, and had committed defaults in payment of the loan; execution proceedings were, therefore, initiated for sale of the mortgaged property; the claimant had failed to make out any legal ground; and, hence, the appeal was liable to be dismissed. The order passed by the sale officer in Claim Petition No.1 of 2007 in E.P.No.1 of 2007 was confirmed.

Aggrieved thereby, Smt.Anjana invoked the jurisdiction of this Court in C.R.P.No.219 of 2011 filed under Article 227 of the Constitution of India. In its order, in C.R.P.No.219 of 2011 dated 21.09.2011, this Court noted her claim that the property belonged to the joint family, it was purchased with joint family funds, and she had 1/5th share therein. This Court held that Smt.Anjana had not adduced any evidence before the sale officer to show that her father and paternal grandfather constituted a joint family, they migrated to Hyderabad in 1960 from Rajasthan for carrying on business, and there was a joint family business; on the other hand the sale deed, under which the claimant's father (the petitioner herein), had purchased

the scheduled plot from Hyderabad Allwyn Employees Cooperative Housing Society showed that his occupation was service; in the absence of any evidence, showing the existence of a joint family or a joint family business or joint family funds, her claim that the scheduled property was purchased from out of joint family funds, and she had 1/5th share therein, was baseless; the claimant had not filed any Suit demanding partition, or claiming any share in the property; the claim was frivolous and without any material in support thereof; and the order of the Tribunal did not necessitate interference.

The 3rd respondent-bank initiated proceedings thereafter under the SARFAESI Act. The petitioner's daughter Smt.Anjana filed W.P.No.8783 of 2011 to declare the auction notice dated 04.03.2011, issued by the 3rd respondent-bank under the SARFAESI Act in respect of her 1/5th undivided share in Plot No.F8, situated at Fathenagar, Balanagar, as illegal and arbitrary. A Division Bench of this Court, by order in WP No.8783 of 2011 dated 13.12.2012, held that she could not be granted relief as she had an alternative remedy. Granting liberty to her to avail her alternative remedies, the Writ Petition was dismissed. Thereafter, Smt.Anjana filed S.A.No.185 of 2013 before the Debt Recovery Tribunal at Hyderabad against the 3rd and 4th respondents, and the petitioner herein. She filed I.A.No.852 of 2013 in S.A.No.185 of 2013 seeking stay of all further proceedings pursuant to the auction notice dated 14.02.2013 in respect of the scheduled property. The Debt Recovery Tribunal, by its order dated 18.02.2013, granted stay of all further proceedings on condition that Smt.Anjana deposited Rs.10.00 Lakhs directly with the 3rd respondent-bank, Rs.1,00,000/- by the time of auction i.e., on or before 19.03.2013 at 1.00 P.M, Rs.5.00 Lakhs within four weeks from the date of auction, and the balance Rs.4.00 Lakhs within four weeks thereafter. The 3rd respondent-bank was directed to defer all further proceedings pursuant to the auction notice dated 14.02.2013.

Aggrieved thereby, Smt.Anjana filed an appeal before the Debt Recovery Appellate Tribunal ("DRAT" for short) at Kolkata in Appeal No.71 of 2013. She filed Application No.130 of 2013 in Appeal No.71 of 2013, under Section 18(1) of the SARFAESI Act, seeking total waiver of the pre-deposit on the ground that she was a third party to the alleged loan transaction; she was one of the co-sharers of the property allegedly mortgaged by her father; and the 3rd respondent-bank lacked

locus standi to exercise jurisdiction under the SARFAESI Act as the Gujarat High Court had declared invocation of the SARFAESI Act by co-operative banks as illegal. By its order dated 15.07.2014 the DRAT, while directing Smt.Anjana to deposit 25% of Rs.2,28,29,213/- ie Rs.57.00 Lakhs towards pre-deposit, observed that the appeal would otherwise stand de-registered. Smt.Anjana requested the DRAT to grant her liberty to move the Debt Recovery Tribunal by filing an application challenging the *locus standi* of the 3rd respondent-bank to initiate proceedings under the SARFAESI Act in view of the decision of the Gujarat High Court. The DRAT observed that it was open to her to do so. Thereafter on 31.07.2014 Appeal No.71 of 2013, preferred by Smt.Anjana, was dismissed by the DRAT as not pressed and as no pre-deposit had been made.

Smt.Anjana filed O.S.No.1324 of 2014 before the VIII Senior Civil Judge, Ranga Reddy District, against her father (the petitioner herein), her three brothers including Sri Kamal Agarwal, and the 3rd respondent-bank for partition and separate possession of the subject property. O.S.No.1324 of 2014 is said to be still pending. Smt.Anjana, thereafter, filed an out of order petition in I.A.No.852 of 2013 in S.A.No.185 of 2013 questioning the sale notice issued by the 3rd respondent-bank dated 21.02.2015 fixing the auction date as 25.03.2015.

As their efforts to stall proceedings under the SARFAESI Act were not successful, a new actor was introduced in this lengthy “play”. One Sri T.K.Selva Kumar filed S.A.No.39 of 2015 requesting the DRT to restrain the 3rd respondent-bank from taking physical possession of the schedule property through the advocate-commissioner on 27.11.2014, in pursuance of the order passed by the Chief Metropolitan Magistrate, Ranga Reddy District in CrI.M.P.No.815 of 2014. The petitioner herein was among the respondents in S.A.No.39 of 2015. Sri T.K.Selva Kumar contended before the DRT that he was a tenant of the petitioner, the tenancy was oral, and he was residing in the house at Plot No.F8, Fateh Nagar, Balanagar having taken the subject property on oral lease from the petitioner herein. He contended that on 27.11.2014 some persons, claiming to be the officials of the 3rd respondent-bank, had come to his residence, and had started executing the warrant. The action of the 3rd respondent-bank, in evicting him without serving any notice on him, was questioned as being illegal and arbitrary. Sri T.K.Selva Kumar thereafter filed an I.A. to advance the date of hearing of S.A.No.39 of 2015.

As the efforts of others to stall proceedings under the SARFAESI Act were of no avail, the petitioner again entered the scene and moved this court during vacation by filing W.P.No.27 of 2015. The proceedings under challenge, in W.P.No.27 of 2015, was the sale notice, issued by the 3rd respondent-bank under the SARFAESI Act, bringing the subject property to sale by close tender-cum-public auction on 20.01.2015. The petitioner sought interim stay of all further proceedings, pursuant to the notice dated 12.12.2014 issued by the 3rd respondent-bank, during the pendency of the Writ Petition. A Division Bench of this Court, by order dated 07.01.2015, granted stay of all further proceedings, pursuant to the notice dated 12.12.2014, for a period of three weeks. As a result thereof, the 3rd respondent-bank was disabled from proceeding with the auction scheduled to be held on 20.01.2015. Though the three weeks period expired on 28.01.2015, the petitioner did not seek extension of stay thereafter as his purpose, of stalling the auction proceedings scheduled to be held on 20.01.2015, was served by the interim order dated 07.01.2015.

While the action taken by the 3rd respondent-bank under Sections 13(4) and 12 of the SARFAESI Act, and in issuing notice dated 12.12.2014 to put the subject property to sale on 20.01.2015 was put in issue in W.P.No.27 of 2015, the validity of the notification issued by the Union of India dated 28.01.2003 was not under challenge therein, though the affidavit, filed in support of W.P.No.27 of 2005, refers to the Division Bench judgement of the Gujarat High Court in **Administrator, Shri Dhakdi Group Cooperative Cotton Seed**¹. Having succeeded in his endeavour to prevent the auction, scheduled to be held on 20.01.2015, from being held and the subject property being put to sale, the petitioner has chosen not to pursue W.P.No.27 of 2015 which is still pending on the file of this Court.

The 3rd respondent-bank issued a fresh sale notice under the SARFAESI Act dated 21.02.2015, putting the subject property to auction on 25.03.2015 at 1.00 P.M. The present Writ Petition has been filed questioning the jurisdiction of the 3rd respondent-bank, in initiating proceedings under the SARFAESI Act, contending that cooperative banks cannot be brought within the purview of the SARFAESI Act, and the notification issued by the Union of India dated 28.01.2003, exercising

jurisdiction under Section 2(1)[c](v) of the SARFAESI Act, bringing co-operative banks within the ambit of the SARFAESI Act is *ultra vires* and without jurisdiction. It is evident that the notification issued by the Union of India, more than 12 years ago on 28.01.2003, was subjected to challenge in this Writ Petition only to scuttle the auction scheduled to be held on 25.03.2015.

The award in ARC No.97 of 2002 dated 04.05.2002 passed by the arbitrator has attained finality. The fact that he had mortgaged the subject property in favour of the 3rd respondent-bank, for the loan advanced by them to the 4th respondent, is admitted by the petitioner herein. It is also not in dispute that the amount due, from the 4th respondent to the 3rd respondent-bank, has not been cleared till date. While the award passed in ARC No.97 of 2002 dated 04.05.2002 was for Rs.54,49,786.25 ps., it is evident from the order of the DRAT dated 15.07.2014 that, even by then, the debt due to the 3rd respondent-bank had increased to Rs.2,28,29,213/-. While the proceedings in WP No.235 of 2003, WP No.667 of 2003, W.A.No.1461 of 2004 and W.P.No.16201 of 2004 were instituted by the petitioner contending that the proceedings initiated by the 3rd respondent-bank, under the A.P. Co-operative Societies Act, was without jurisdiction and their remedy to recover their dues was only by approaching the D.R.T. under the provisions of the DRT Act, he has now made a somersault to contend that the provisions of the SARFAESI Act are inapplicable to cooperative banks meaning thereby that the jurisdiction which the 3rd respondent-bank can exercise, to recover the amounts due to them from the 4th respondent, is only under the A.P. Cooperative Societies Act. It is obvious that this flip-flop is only to avoid repayment of the amount, admittedly, due to the 3rd respondent-bank, and to prevent them from putting the subject property to sale.

That the 3rd respondent-bank has been repeatedly thwarted in recovering the amounts due under the Award in A.R.C.No.97 of 2002 for the past thirteen years, by the misuse of the judicial process by the petitioner and his family, is disconcerting. This case reflects the need for the judicial branch to be more vigilant in preventing its process from being abused. The challenge to the notification issued by the Union of India dated 28.01.2003 in the present Writ Petition, is yet another attempt to scuttle the sale of the subject property and, at the same time, to avoid repayment of the debt due to the 3rd respondent-bank. We are satisfied that, in the facts and circumstances of the present case, there is no justification in exercising the

discretionary jurisdiction of this Court, under Article 226 of the Constitution of India, to entertain this Writ Petition challenging the applicability of the SARFAESI Act to co-operative banks, and to the notification dated 28.01.2003 issued by the Union of India 12 years ago bringing co-operative banks within the purview of the SARFAESI Act, more so when the petitioner has, all the while, taken a contrary stand that the action taken by the 3rd respondent-bank, under the A.P.Co-operative Societies Act, is without jurisdiction.

When a person invokes the equitable and extraordinary jurisdiction of the High Court, under Articles 226/227 of the Constitution, he must approach the court not only with clean hands but also with a clean mind, a clean heart and a clean objective. "The judicial process should never become an instrument of oppression or abuse or a means to subvert justice." He, who seeks equity, must do equity. The legal maxim "*Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*", means that it is the law of nature that one should not be enriched by the loss or injury to another. (**Manohar Lal v. Ugrasen; Ramjas Foundation v. Union of India; K.R. Srinivas v. R.M. Premchand; Noorduiddin v. Dr. K.L. Anand**). The petitioner, along with his son and daughter, has indulged in judicial adventurism by raiding one court or the other. Each of such raids is a clear abuse of process of court, (**Delhi Development Authority v. Skipper Construction**), calculated to obstruct the respondent-bank from realizing the debt due, by the sale of the secured asset ie the immovable property mortgaged by the petitioner with the respondent-bank.

In **Mr. Priyanka Srivastava v. State of UP** the Supreme Court expressed its concern of the manner in which some unscrupulous litigants repeatedly knock the doors of the Court, and adroitly abuse its process, to harass and pressurize financial institutions to compromise and accept their request for a "one-time settlement". In **Mohanlal v. State of Rajasthan**, the Rajasthan High Court, after referring with approval to its earlier judgment in **Fatehlal v. State of Rajasthan**, held:-

".....An antisocial adventurer cannot claim, for his nefarious and injurious activities, any greater legal regard than for the defence of society itself. If members belonging to higher status in life should show scant regard for the laws of this country which are for public good, for protecting the common man, the consequential punishment for the violation of such laws must be equally deterrent and such person should be made to suffer inequity for the harm he has done to the society....."

.....I am, therefore, convinced that it is time that exploitation, abuse and misuse of equitable jurisdiction is stopped, as founding fathers never intended it to make it an

"Allaudin's lamp" for providing protective umbrella to all inequitable evil geniuses and social parasites. **Anti-social dishonest and unjust litigants cannot use smoke screen of 'natural justice' to perpetuate unnatural injustice. Tainted hands cannot be allowed to touch pure fountains of justice...**" (emphasis supplied)

The jurisdiction of this Court, under Article 226 of the Constitution of India, is discretionary and is exercised only in furtherance of the interest of justice and in larger public interest, and not merely on a legal point being made out. The interest of justice and the public interest coalesce. They are very often one and the same. The Court has to weigh public interest vis-à-vis private interest while exercising its discretionary powers. (**Ramnikal N. Bhutta v. State of Maharashtra; Manohar Lal²⁰; Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd; Air India Ltd. v. Cochin International Airport Ltd.**). This Court would refrain from interference, in the exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, save larger public interest. A writ of mandamus and a writ of certiorari are discretionary, unlike a writ of habeas corpus which can be sought as a matter of right. One of the principles inherent is that the exercise of discretionary power should be for the sake of justice and, if interference would result in greater harm to society, then this Court may refrain from exercising the power. (**State of Maharashtra v. Prabhu**). One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a Court of appeal to set right supposed errors of law which do not occasion injustice. (**Sangram Singh v. Election Tribunal, Kotah**). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice. (**Rashpal Malhotra v. Mrs. Satya Rajput; Council of Scientific and Industrial Research v. K. G. S. Bhatt**).

It is also the duty of the High Court to ensure that its judicial process is not abused and its order does not become an instrument or aid to overreach the adversary. (**M.V. Venkataramana Bhat v. Returning Officer and Tahsildar**). Once the Court is satisfied that the petitioner has abused the process of law, and has misused the legal system, it is entitled to act in such cases to prevent such abuse and misuse. (**Municipal Corpn. of Delhi v. Kamla Devi**). On the Court coming to such a conclusion, it would be justified in not proceeding further, and in refusing relief to the party. This rule has been evolved out of the need for Courts to deter a

litigant from abusing its process by deception. (**Manohar Lal**²⁰; **State of Haryana v. Karnal Distillery Co. Ltd. Sabia Khan v. State of U.P.; Abdul Rahman v. Prasony Bai; S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Oswal Fats & Oils Ltd. v. Commr. (Admn.)**). The Court then has the power to stop such proceedings summarily, and prevent the time of Court from being wasted. It is a matter in the discretion of the Court whether such proceedings should be stopped or not and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. (**K.K. Modi**¹⁸). It would be wholly inappropriate for this Court, in the aforesaid facts and circumstances, to exercise its discretion to entertain the present Writ Petition filed by the petitioner, as it is clearly an abuse of process of Court, and is yet another attempt to scuttle the efforts of the 3rd respondent-bank from putting the subject property to sale and thereby realise its dues.

The Writ Petition is, accordingly, dismissed with exemplary costs of Rs.25,000/- which the petitioner shall pay to the 3rd respondent-bank within four weeks from today. Miscellaneous Petitions, if any pending, shall also stand dismissed.

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RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 24-04.2015.

Note: L.R. copy to be marked.

B/o

CS/MRKR