**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

## WPC No. 1867 of 2015

1. Holistic Foundation Bhilai S/o ( Regd No. 13053 Dated 25/08/2007), Regd. Office- Block No. 6/2, F-3 Nehru Nagar Parisar, Nehru Nagar, Bhilai 490020, Tah & Distt. Durg, (Chhattisgarh) Through Secretary

2. Mohd Usman, S/o Shri Mohd. Hatim, Aged About 64 Years R/o 46- B/6, Transport Nagar, Hathkhoj, Bhilai- 490001, Tah & Distt Durg, (Chhattisgarh)

3. Saif Usman, S/o Shri Mohd. Usman, Aged About 39 Years R/o 19/14 Uttar Gangotri, G.E.Road, Supela- 490001, Bhilai, Tah & Distt. Durg, (Chhattisgarh)

4. Kaif Usman, S/o Shri Mohd. Usman, Aged About 34 Years R/o H- 22, R.K.C Complex, G.E. Road, Raipur, (Chhattisgarh) 492001 (Mobile No. 09752591111)

5. Smt. Rukhsana Bano, W/o Shri Mohd. Usman, Aged About 57 Years R/o House No. 43, A/3, Nehru Nagar, West- 490020, Bhilai, Tah & Distt Durg (Chhattisgarh)

6. Smt. Kamala Bhandari, W/o Late Shri K.K. Bhandari, Aged About 80 Years House No. 176, Santara- Badi House No. 176, Santara Badi, Durg 491001, Tah & Distt. Durg, (Chhattisgarh)

7. Mustaq Ahmed S/o Late Shri Shaukat Ali, Aged About 50 Years House No. 43, A/3, Nehru Nagar, Bhilai 490020, Tah & Distt Durg, (Chhattisgarh)

**---- Petitioners**

**Versus**

1. Punjab National Bank Through Chief Manager, Punjab National Bank, Gurudwara Road, P.S. Mohan Nagar, Durg 491001, Revenue Tahsil & District Durg, (Chhattisgarh)

2. Authorised Officer, Punjab National Bank, Branch Office Durg, Gurudwara Road, Durg City 491001, Tah & Distt. Durg (Chhattisgarh)

3. City Supdt. Of Police, Durg Office At Collectorate Durg 491001, Tah & Distt. Durg (Chhattisgarh)

**---- Respondents**

**And**

## WPC No. 110 Of 2015

1. M/s Jaitech Steel Forgings Private Limited, A Company Incorporated Under The Indian Companies Act, 1956, Having Its Registered Office At 22/A, Heavy Industrial Area; Hathkhoj, Bhilai, Distt. Durg C.G. And Office At House No. 17/13, Nehru Nagar (West), Bhilai, 490020 Distt. Durg C.G.

2. Shri Abdul Wazid Tazar S/o Shri Abdul Aziz Tazar Director Of M/s Jai Tech Steel Forgings Pvt. Ltd, R/o 17/13, Nehru Nagar (West) Bhilai 490 020 Distt. Durg C.G.

3. Smt. Shabnam Tazar W/o Shri Abdul Wahid Tazar Director of M/s Jai Tech Steel Forgings Pvt. Ltd, R/o 17/13, Nehru Nagar (West) Bhilai 490 020 Distt. Durg C.G.

4. Miss Farida Mirza D/o Late Shri Kashmuddin Mirza, Director Of M/s Jai Tech Steel Forgings Pvt. Ltd, R/o Plot No. 26/4, Radha Krishna Ward, 16/B, Ekta-Chowk, Kawardha C.G. Pin - 491995.

5. Shri Mehruddin Mirza S/o Late Shri Kashmuddin Mirza R/o Plot No. 26/4, Radha Krishna Ward 16/B Ekta Chowk Kawardha C.G. Pin 491995.

**---- Petitioners**

**Vs**

1. (Applicant) Canara Bank A Body Corporate Constituted Under The Companies (Acquisition And Transfer Of Undertaking) Act, 1970 Having Its Head Office At 112, J.C. , Bangalore And Branch Amongst Others At Durg Branch, Om Parisar Durg 491001 Tah. And Distt. Durg C.G.

2. (Defendant No. 06) Shri Abdul Rauf S/o Shri Abdul Sattar R/o Telibandha, Raipur 492099 Tah. And Distt. Raipur C.G.

**---- Respondents**

**And**

**WPC No. 482 Of 2013**

Harish Batra S/o Late R.L.Batra Aged About 62 Years R/o 9/330, Lalita Park, Laxmi Nagar, Delhi-92

**---- Petitioner**

**Vs**

1. Bank Of Baroda S/o Station Road, Durg, PS Mohan Nagar, Distt Durg, Through Branch Manager

2. Recovery Officer Office Of The Recovery Officer, Debt Recovery Tribunal 797/II Shanti Kunj South Civil Lines, Jabalpur, Distt Jabalpur, MP Pin 481001

**---- Respondents**

**And**

**WPC No. 1172 Of 2014**

1. Mrs. Sonia Dhody W/o Mr. Rajesh Dhody, Aged About 54 Years R/o 4, Malviya Nagar, Durg, Tahsil & Distt. Durg. C.G.

2. Mrs. Shweta Dhody W/o Mr. Vibhav Dhody Aged About 27 Years R/o 4, Malviya Nagar, Durg, Tahsil & Distt. Durg. C.G.

**---- Petitioners**

**Vs**

1. Authorized Officer Uco Bank, New Palasiya, Indore 452001 M.P.

2. M/s Surya Treasure Island Private Limited Registered Office Formerly Known As Bhilai Development Private Limited INIZIO, 209, Second Floor Cardinal Cracious Road, Chakala, Andheri East Mumbai 400099 Maharashtra

   Corporate Office :

   At 6th Floor, Treasure Island, 11 Tukoganj, M.G.Road, Indore (M.P.)

   Through – Director / Authorised Officer

**---- Respondents**

**And**

**WPC No. 1472 Of 2015**

1. Praveen Rai S/o Shri V. N. Rai Aged About 46 Years Resident Of - A- 41, Vidya Vihar, Nehru Nagar ( West), Bhilai, Pin 491001 Tah. & Distt. Durg (Chhattisgarh).

2. Amit Rai S/o Shri V. N. Rai Aged About 45 Years Resident Of - A- 41, Vidya Vihar, Nehru Nagar ( West), Bhilai, Pin 491001 Tah. & Distt. Durg (Chhattisgarh).

3. Sumit Rai S/o Shri V. N. Rai Aged About 43 Years Resident Of - A- 41, Vidya Vihar, Nehru Nagar ( West), Bhilai, Pin 491001 Tah. & Distt. Durg (Chhattisgarh).

4. Animesh Shrivastav S/o Shri P. K. Shrivastav Aged About 43 Years Resident Of House No. 52/6 Nehru Nagar, ( West), Bhilai, Tah. & Distt. Durg (Chhattisgarh).

5. Smt Smita Shrivastav W/o Shri Animesh Shrivastav Aged About 41 Years Resident Of House No. 52/6 Nehru Nagar, ( West), Bhilai, Tah. & Distt. Durg (Chhattisgarh).

6. Smt. Priya Jumnani W/o Shri Harish Jumnani Aged About 38 Years R/o Plot No. D- 75. R. D. A. Katora Talab, Scheme No. 016, Sector -7, Doctor Rajendra Prasad Ward No. 46, Amleedih, Raipur Tah. & Distt. Raipur (Chhattisgarh).

7. Bhowmick Singh S/o Shri Ram Singh Aged About 41 Years Residents Of - M. I. G. - C/2323, Housing Board Colony, Industrial Estate, Bhilai, Tah. & Distt. Durg (Chhattisgarh).

8. Ram Singh S/o Shri Chintamani Singh Aged About 63 Years Residents Of - M. I. G. - C/2323, Housing Board Colony, Industrial Estate, Bhilai, Tah. & Distt. Durg (Chhattisgarh).

**---- Petitioners**

**Vs**

State Bank Of India, Stressed Assets Recovery Branch, Sector- 1, Bhilai, 490001 Tah. & Distt. Durg (Chhattisgarh) Through - Authorised Officer

**---- Respondent**

**And**

**WPC No. 1464 Of 2015**

M/s Jaitech Steel Forgings Private Limited (No.10-07335 Of 1992) 24 A Heavy Industrial Area Hatkhoj, Bhilai- 492001 Tah & Distt Durg, (Chhattisgarh) Through- Director

**---- Petitioner**

**Vs**

Canara Bank Station Road Durg- 440001, P. S. Mohan-Nagar, Durg- 491001 Tah & Distt Durg, (Chhattisgarh) Through Authorized Officer

**---- Respondent**

**And**

**WPC No. 2350 Of 2014**

M/s Jaitech Steel Forgings Private Limited (No. 10-07335 Of 1992) 24A Heavy Industrial Area, Hathkhoj, Bhilai - 492001 Distt. Durg C.G. Through Director.

**---- Petitioner**

**Vs**

1. Registrar Of Companies Chhattisgarh, Bilaspur, Distt. Bilaspur 495001, Tah. And Distt. Bilaspur C.G.

2. The Inspector General Of Police Economic Offence Investigation Bureau, In Front Of Jai Jawan Petrol Pump, G.E. Road, Raipur, Tah. And Distt. Raipur C.G. 492001.

3. Manager, Canara Bank Station Road, Durg 440001 Ps Mohan Nagar 491001, Tah. And Distt. Durg C.G.

4. Distt. Registrar Durg Distt. Registrar Office, Durg 491001, Tah. And Distt. Durg C.G.

**---- Respondents**

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Shri V.G.Tamaskar and Shri Abhinav Kardekar, counsel for the respective petitioners/
Shri Sachin Singh Rajput, Shri P.R.Patankar, Shri Ankit Singhal, Shri Ravindra Sharma, Shri Basant Dewangan, Shri Ramakant Pandey (for respondent No.1 in WP(C) No.2350/14) and Shri Neeraj Sharma, counsel for the respective respondents.

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**Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**04/01/2016**

These are the petitions which have been filed by the borrowers/ guarantor/ purchasers aggrieved by the notices of recovery and possession issued by the respondent / bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), order of the Recovery Officer, rejecting objection against auction in execution of decree passed by the Debt Recovery Tribunal.

**2.** In all the cases, the respondent / banks namely Punjab National Bank, Canara Bank, Bank of Baroda, Uco Bank and State Bank of India have raised a preliminary objection with regard to maintainability of these petitions on common grounds that in respect of notices issued under Section 13 (2) and 13 (4) of the SARFAESI Act, the borrowers / guarantors / purchasers have statutory alternative remedy of filing appeal under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal. In respect of those cases, where the Recovery Officer of the bank has rejected the objection against auction proceedings also, a common objection has been taken by learned counsel appearing for the banks that in all those cases, orders are appealable as there is a remedy of appeal under Section 30 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the Act of 1993"). It is submitted that the word "person" occurring in Section 17 (1) of the SARFAESI Act as well as in Section 30 of the Act of 1993 is of vide import which not only includes borrower / guarantor / purchaser but also includes every person affected by the proceedings towards recovery of public debt. It is also contended by learned counsel for the respondents that the petitioners not only have remedy of filing appeal but the Debt Recovery Tribunal and the appellate authority under Section 30 of the Act of 1993 have ample power to pass interim orders also. Learned counsel for the respondent / banks have heavily relied upon judgment in the case of **United Bank of India Vs. Satyawati Tondon & Ors, AIR 2010 SC 3413, Jagdish Singh Vs. Heeralal and others, (2014) 1 SCC 479, Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal, (2014) 1 SCC 603 and Standard Chartered Bank Vs. V. Noble Kumar and others with Senior Manager, State Bank of India and anr. Vs. R. Shiva Subramaniyan and anr., (2013) 9 SCC 620.**

**3.** Learned counsel for the petitioners in the aforesaid writ petitions however, submitted that the objections with regard to maintainability of the petition are liable to be rejected as the petitioners have approached this Court to protect their property from which they are being deprived without following procedure prescribed under the law which is violative of their constitutional right. It is argued that the bank has proceeded to take possession and also in some cases, proceeded to auction on the basis of the decree passed by the Debt Recovery Tribunal, so called secured assets which cannot be said to be duly mortgaged in accordance with law. It is argued that as the deeds are not registered and mere deposit of title deeds would not create mortgage except in cities specified in Section 58 (f) of the Transfer of Property Act, 1882, therefore, no proceedings for recovery can be drawn under the provisions of the SARFAESI Act and all those proceedings are without jurisdiction. It is submitted that in these extra ordinary circumstances and the grounds which have been raised in respective petitions, the matter is required to be examined on jurisdictional legal issues. Existence of alternative remedy is not an absolute bar. In appropriate cases, it is argued, where action of the respondents is arbitrary and involves complicated legal and jurisdictional issues, petitions can be entertained under Article 226 of the Constitution of India. Reliance has been placed on judgments in the cases of **Sheeba Philominal Merlin and Esther Evelyan Vs. The Repatriates Co-op Finance and Development Bank Ltd (Govt. of India Enterprise), The General Manager, Repco Bank, The Authorized Officer, Repco Bank and S. Sasikumar, 2010 (5) CTC 449, State of West Bengal and others Vs. Committee for**

**Protection of Democratic Rights, West Bengal and others, (2010) 3 SCC 571, United Bank of India Ltd. Vs. Lekharam Sonaram and Co. and ors, AIR 1965 SC 1591, Syndicate Bank Vs. Estate Officer & Manager, APIIC Ltd. and others, 2007 (8) SCC 361, Radhika Devi Vs. Bajrangi Singh, 1997 (1) MPWN 193, Dr. Jagmittar Sain Bhagat Vs. Director, Health Services, Haryana and Ors. AIR 2013 SC 3060, State of Madhya Pradesh and ors. Vs. Sanjay Nagayach and ors. 2013 (7) SCC 25.**

**4.** Learned counsel for the petitioners in all these petitions do not dispute that they all have statutory alternative remedy of filing appeal either under Section 17 of the SARFAESI Act or under Section 30 of the Act of 1993. However, taking recourse to the submissions and merits of the case, it has been submitted that the present petitioners seek to challenge action of the respondents which are grounds of extra ordinary nature. Therefore, alternative remedy may not be insisted upon and the cases may be heard.

**5.** In the case of **United Bank of India Vs. Satyawati Tondon & ors. (supra),** the Supreme Court examined the issue of maintainability of writ petitions on the face of availability of remedy under Section 17 of the SARFAESI Act. It was held -

> "17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression `any person' used

in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases,

any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila

Parishad AIR 1969 SC 556, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1: (AIR 1999 SC 22: 1998 AIR SCW 3345) and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107: (AIR 2003 SC 2120 : 2003 AIR SCW 126) and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

19. In Thansingh Nathmal v. Superintendent of Taxes (1964) 6 SCR 654, the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under:

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self- imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

20. In Titaghur Paper Mills Co. Ltd. v. State of Orissa (1983) 2 SCC 433, a three-Judge Bench considered the question whether a petition under Article 226 of the Constitution should be entertained in a matter involving challenge to the order of the assessment passed by the competent authority under the Central Sales Tax Act, 1956 and corresponding law enacted by the State legislature and answered the same in negative by making the following observations:

"Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section

23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute. . . . But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. . .the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd. and Secretary of State v. Mask & Co. (AIR 1940 PC 105). It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

21. The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa (supra) were echoed in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others(1985) 1 SCC 260 in the following words:

"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

22. In Punjab National Bank v. O.C. Krishnan and others (2001) 6 SCC 569, this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed:

"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

23. In CCT, Orissa and others v. Indian Explosives Ltd. (2008) 3 SCC 688, the Court reversed an order passed by the Division Bench of Orissa High Court quashing the

show cause notice issued to the respondent under the Orissa Sales Tax Act by observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy.

24. In City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala and others(2009) 1 SCC 168, the Court highlighted the parameters which are required to be kept in view by the High Court while exercising jurisdiction under Article 226 of the Constitution. Paragraphs 29 and 30 of that judgment which contain the views of this Court read as under:-

"29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) *ex facie* barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

25. In Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another (2010) 4 SCC 772, the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed:

"31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

32. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum."

26. In Modern Industries v. Steel Authority of India Limited (2010) 5 SCC 44, the Court held that where the remedy was available under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, the High Court was not justified in entertaining a petition under Article 226 of the Constitution.

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We

> hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.
>
> 28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act."

The aforesaid verdict of the Supreme Court has been affirmed in subsequent decisions also which have been placed before this Court by the respondent / banks.

**6.** In view of above, as all the petitioners in these cases have an alternative remedy of either approaching the Debt Recovery Tribunal under Section 17 of the SARFAESI Act or the competent appellate authority under Section 30 of the Act of 1993, where they have liberty to raise all the grounds which have been raised herein for consideration including such other grounds as are available under the law and further taking into consideration that it is not only the borrower / guarantor / purchaser but any person affected by the order, who can approach the competent authority by taking recourse to remedy available under the law and further taking into consideration that the authorities have ample power to grant interim relief also, all these writ petitions are dismissed with liberty to the appellants to approach the competent authority ventilating their grievance by filing appropriate petitions.

However, considering that in some of the cases, interim order is operating and the petitioners are apprehending dispossession, the interim protection granted will continue for a period of 45 days from today.

Sd/-
**(Manindra Mohan Shrivastava )**
**Judge**

Deepti