IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 727 OF 2015

1. Shri Jeetendra Ramchandra Bandodkar,
   son of Mr. Ramchandra Bandodkar,
   aged 45 years,
   R/o H.No.107, New Sanjay Nagar
   Co-operative Housing Society,
   building No.2, Parsiwa, Sahar Road,
   Behind Solitare Hotel,
   Andheri (East),
   Mumbai 400099
   Through Power of Attorney
   Mr. Pundalik Naik,
   son of late Shri Ranganath Naik,
   aged 35 years,
   Resident of H.No.17,
   Sdopao Durbhat, Ponda Goa. …. Petitioner

V e r s u s

1. State Bank of India,
   Principal Head Office at
   State Bank of India Bldg.,
   Branch Office at Margao.

2. Mr. Vikram Dharmu Gosavi,
   son of Shri Dharmu Krishna Gosavi,
   aged 39 years,

3. Mrs. Vimal Dharmu Gosavi,
   aged about 33 years,
   daughter of Sardar Aba Mali,
   Both residents of Raichem Mall,
   Mapa, Panchawadi, Ponda Goa.

4. State of Goa,
   through the Chief Secretary,
   having office at Secretariat,
   Porvorim Goa

5. Mamlatdar of Ponda,
   Office of the Mamlatdar of Ponda,
   Ponda Goa.

6. The District Magistrate,
   Office of the District Collector,
   North Goa District,
   Panjim Goa. … Respondents

Mr. Gaurish N. Agni, Advocate for the petitioner.

Mr. Iftikhar Agha, Advocate for the respondent no.1.

Mr. V. Sardessai, Addl. Government Advocate for respondent nos. 4 to 6.

Coram :- F. M. REIS &
K. L. WADANE, JJ

Date : 17th February, 2016

ORAL ORDER :

Heard Mr. G. Agni, learned counsel appearing for the petitioner, Mr. I. Agha, learned counsel appearing for the respondent no.1 and Mr. V. Sardessai, learned Addl. Government Advocate appearing for the respondent nos. 4 to 6.

2. The above petition inter-alia prays for a writ or direction under Articles 226 and 227 of the Constitution of India to quash and set aside the order dated 19.01.2015 and notices dated 23.05.2014 and 06.09.2014 issued under Sections 13(4) and 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the SARFAESI Act") being illegal and bad in law and further direction to de-seal the suit bungalow and to restore the possession of the suit land along with the suit bungalow to the

petitioner.

3. It is the case of the petitioner that the respondent nos. 2 and 3 expressed their desire to sell a bungalow/house bearing No.116 along with a plot admeasuring 505 square metres in the property known as "Rananamolie Varil Tucda" or "Raichemmall" situated at Mapa Panchawadi, Taluka and Sub District of Ponda Goa, described in Land Registration Office under No. 22010 of Book B-59 New Series at pages 92, enrolled in Land Revenue Office under Matriz No. 1025 and surveyed under No. 181/1 of Village Panchawadi and submitted the original title deeds/documents with that regard. It is further his case that before entering into the said sale transaction with the respondent nos. 2 and 3, he conducted a proper title search and inquiry and obtained a Nil Certificate of Encumbrance on the property from the office of Sub Registrar, Ponda. It is further his case that the respondent nos. 2 and 3 represented that there was no lien or encumbrances for sale of such plot and consequently, the petitioner along with Mr. P. R. Bandodkar purchased the said plot on 09.06.2012. It is further his case that pursuant to the said sale deed, the respondent no.2 had executed an affidavit in favour of the petitioner to transfer the electricity, water connection, etc. It is further his case that on or about May, 2015 the petitioner learnt that the officials of the Mamlatdar of Ponda had come to the bungalow and pasted on the main door an order of District Magistrate dated 19.01.2015. It is further his case

that such notice was issued in terms of sub section 2 of Section 14 to take steps as may be required, to take possession of the said premises. It is further his case that thereafter he questioned the respondent nos. 2 and 3 and they informed him that they had availed of a housing loan of Rs.11,79,000/- from the respondent no.1 and that they have not disclosed the said fact to the petitioner. It is further the contention of the petitioner that thereafter inquiry was made in the office of Mamlatdar and he was furnished with the application under Section 14 filed by the respondent no.1 and on perusal thereof the petitioner learnt about the proceedings which were initiated under SARFAESI Act. Accordingly, the petitioner has filed the above petition seeking the above reliefs and contended that the impugned order is arbitrary and unreasonable and the proceedings under SARFAESI Act are vitiated and are in violation of the provisions of Section 13 of the SARFAESI Act.

4. The respondent no.1 appeared and raised preliminary objections to the effect that the petitioner has an alternate remedy and this Court cannot interfere in the orders passed under SARFAESI Act in exercise of extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. It is further the contention of the respondent no.1 that the petitioner can avail of remedy provided under SARFAESI Act and as such, as the petitioner has an efficacious alternate remedy, the petition deserves to be rejected.

5. We have heard the learned counsel appearing for the respective parties and we have also gone through the records. We have not examined the rival contentions on merits but only the aspect whether this Court should interfere in the impugned orders in exercise of extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. The Apex Court in the judgment reported in **(2010) 8 SCC 110** in the case of **United Bank of India v/s Satyawati Tondon and others**, has observed at para 36 thus :

> "**36**. We have heard the learned counsel for the appellant and perused the record. Normally, this Court does not interfere with the discretion exercised by the High Court to pass an interim order in a pending matter but, having carefully examined the matter, we have felt persuaded to make an exception in this case because the order under challenge has the effect of defeating the very object of the legislation enacted by Parliament for ensuring that there are no unwarranted impediments in the recovery of the debts, etc., due to banks, other financial institutions and secured creditors."

6. The learned counsel appearing for the petitioner has relied upon the judgment of the Apex Court reported in **(2014) 6 SCC 1** in the case of **Harshad Govardhan Sondagar V/s International Assets Reconstruction Company Limited and others,** to point out that the occupation of the petitioner is akin to that of lessee and wherein the Apex Court has observed at para 29 thus :

"29. Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or Court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. To quote, the observations of this Court in *Columbia Sportswear Company v. Director of Income Tax, Bangalore* [(2012) 11 SCC 224] (SCC p. 234, para 17) :

> "17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution

> and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245-S of the Act, insofar as, it makes the advance ruling of the Authority binding on the applicant, in respect of the transaction and on the Commissioner and income-tax authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the Authority."

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the

> Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law."

7. In the present case, it is not the contention of the petitioner that there was any lease created by the respondent nos. 2 and 3 in favour of the petitioner either before security was created or thereafter. The creation of security itself is seriously disputed by the petitioner. It is further alleged by the respondent no.1 that there was collusion between the petitioner and the respondent nos. 2 and 3 to defeat the claim of the respondent no.1 over the security which was created in favour of the respondent no.1 towards the payment of the housing loan which was admittedly availed of by the respondent no.2 from the respondent no.1. These disputed questions of fact cannot be examined by this Court in the petition under Articles 226 and 227 of the Constitution of India. The contention of the petitioner that he is a bonafide purchaser is a disputed question of fact and as such we find that the question of entertaining the present petition on that count would not at all be justified. Apart from that, it is contended by the petitioner that the subject bungalow is sealed and the possession has already been taken and as such the question of granting any relief in

the present petition would not at all be justified unless the disputed questions of fact are adjudicated before the appropriate forum. The Apex Court in the judgment reported in **2013(10) SCALE 540** in the case of **Standard Chartered Bank V/s V. Noble Kumar and others,** has observed at paras 30 and 31 thus :

> "**30**. It can be noticed from the language of the proviso to section 13(3A) and the language of section 17 that an "appeal" under section 17 is available to the borrower only after losing possession of the secured asset. The employment of the words "aggrieved by ……........ **taken by the** secured creditor" in section 17(1) clearly indicates the appeal under section 17 is available to the borrower only after losing possession of the property. To set at naught any doubt regarding the interpretation of section 17, the proviso to sub section (3A) of section 13 makes it explicitly clear that either the reasons indicated for rejection of the objections of the borrower or the **likely action** of the secured creditor shall not confer any right under section 17.
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> **31**. The same principle is re-emphasised with the newly added explanation in section 17(1) which came to be inserted by Act No.30 of 2004:
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> " Explanation : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured

> creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section 1 of Section 17."

8. The fact that the orders impugned in the present petition can be assailed before the Appellate forum in terms of Section 17 of the SARFAESI Act cannot be disputed and as such, the petitioner has an alternate remedy. Apart from that, the petitioner who claim through the borrower can get his dispute adjudicated before any appropriate forum to establish his contention being an aggrieved person. There are disputed questions of fact which cannot be decided based on the material produced on record to ascertain whether a security has been created in respect of the subject property in favour of the respondent no.1. Such disputed question of fact cannot be decided in a Writ Petition under Articles 226 and 227 of the Constitution of India. The Apex Court in the judgment reported in **(2013) 10 SCC 652** in the case of **T. P. Vishnu Kumar V/s Canara Bank, P.N. Road, Tiruppur and others,** has observed at paras 6 and 10 thus :

> "**6**. The Debt Recovery Tribunals in the country are established for expeditious adjudication and recovery of debts due to banks and financial institutions. It

was noticed that banks and financial institutions have been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them and therefore the actual need was felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. It was noticed that on 30.9.1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crores in dues of public sector banks and about 391 crores of dues of the financial institutions. The locking up of such huge amount of money in litigation, it was noticed, prevents proper utilisation and recycling of the funds for the development of the country. It is in the above scenario, Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993). The Act itself provides the mechanism to an aggrieved party, if he is dissatisfied with an order passed by the Tribunal.

10. Powers of the High Court under Article 226 cannot be invoked in the

> matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to the party or where such proceedings or action is wholly arbitrary, unreasonable and unfair. When the Act itself provides for a mechanism, by an appeal under Section 20 of the Act, in our view, the High Court is not justified in invoking jurisdiction under Article 226 of the Constitution of India to examine that the rejection of the applications by the Tribunal was correct or not. The petitioner and the contesting respondents have no case that either the Bank or the Tribunal had violated any statutory provisions by rejecting their applications."

9. Taking note of the said observations of the Apex Court and applying them to the facts of the present case wherein a mechanism has been provided under the SARFAESI Act to raise a challenge before the Appellate forum and considering that there are disputed questions of fact with regard to the creation of the security itself, we find that there is no case made out by the petitioner to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India for the aforesaid reasons.

10. Hence, we find that the question of entertaining the above petition is not at all justified. The petition stands accordingly disposed of. Needless to say that all the contentions of the parties are left open. The petitioner if so advised may avail of any remedy available in law to get his alleged claim adjudicated in accordance with law.

K. L. WADANE, J **F. M. REIS, J**

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