IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 63 OF 2016

M/s. Kalyani Exporters represented by its Managing Partner Shri. Premlaksh Padubidri, 4, Ujagar Industrial Estate, W. P. T. Marg, Deonar, Mumbai 400 088, Maharashtra	} } } } } } } }	Petitioner
versus		
1. Indusland Bank represented by its Chairman-cum-Managing Director, P. O. Box 9421, Chakala MIDC, Andheri (East), Mumbai – 400 093, Maharashtra	} } } } } } } }	
2. Shri. Ajay Kala Authorized Officer, Indusland Bank, P. O. Box 9421, Chakala MIDC, Andheri (East), Mumbai – 400 093, Maharashtra	} } } } } } }	
3. Pegasus Assets Reconstruction Pvt. Ltd., 55-56, 5th floor, Free Press House, Nariman Point, Mumbai – 400 021, Maharashtra	} } } } } } }	
4. Vasanji Asaria Mamania Auction Purchaser, Residing at 301, Mangal Swagat, Off Perry Road, Bandra (West), Mumbai 400 050, Maharashtra	} } } } } }	
5. Kaushik Gopaldas Juthani Auction Purchaser, Vaibhav Ind. Est. Unit No.	} } }	

18, S. T. Road, Deonar, }
Mumbai – 4. }
}
6. Union of India }
Represented by the }
Secretary, Department of }
Banking, Ministry of }
Finance, Government of }
India, New Delhi }
}
7. The State of Maharashtra }
Represented by its Chief }
Secretary, Mantralaya }
(State Secretariat Building), }
Mumbai – 400 032, }
Maharashtra }
}
8. The Governor, }
Reserve Bank of India, }
Central Office Building, }
Shahid Bhagat Singh Road, }
Mumbai – 400 001 }
}
9. The Secretary, }
Department of Banking, }
Jeevan Deep Building, }
Parliament Street, }
New Delhi – 110 001 }
}
10. The Chief Metropolitan }
Magistrate, Esplanade, }
Mumbai – 400 001 }
}
11. Assistant Registrar, }
Office of the Chief }
Metropolitan Magistrate }
Court at Esplanade, Mumbai }
}
12. The Inspector of Police, }
Deonar Police Station, }
Mumbai } Respondents.

Mr. Mathews Nedumpara with Mr.Nishant Sangle for the Petitioner.

Mr. Shirin Shaikh i/b. M/s. Raval Shah and Co. for Respondent Nos. 1 to 3.

Ms. Anita Borkar for Respondent No. 4.

CORAM :- S. C. DHARMADHIKARI & G. S. PATEL, JJ.

DATED :- JANUARY 14, 2016

P.C. :-

1) By this Petition under Article 226 of the Constitution of India, the Petitioner claims various reliefs.

2) We would advert to the prayers a little later.

3) The Petition was extensively argued yesterday by Mr.Nedumpara, learned Counsel appearing for the Petitioner. We had also heard the learned Counsel appearing for the Respondents. We had indicated, on closure of the arguments, that the judgment and order will be dictated in Court today. Today, the junior Advocate appearing for the Petitioner requests for the matter being kept back so as to enable Mr.Nidumpara to make additional submissions. We do not approve of any such request, and made belatedly, when everything was clarified yesterday. The request is therefore rejected.

4) The Petitioner is a partnership firm engaged in the business of manufacturing and export of garments. The Petition is filed through its managing partner.

5) Respondent No. 1 is a banking company and claims to be a secured creditor. Respondent No. 2 is its authorised officer.

Respondent No. 3 is the assignee of a debt due and payable to Respondent No. 1 bank and, therefore, in terms of the Deed of Assignment in its favour, has continued the legal proceedings. Respondent Nos. 4 and 5 are the auction purchasers and Respondent Nos. 6, 7, 8 and 9 are the Union of India, the State of Maharashtra, the Governor of Reserve Bank of India and the Secretary of the Department of Banking, Government of India, respectively. Respondent Nos. 10, 11 and 12 are formal Respondents.

6) The Petitioner does not dispute that it had invoked the jurisdiction of the Debt Recovery Tribunal ("**DRT**") Mumbai under section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "**the SARFAESI Act**") by filing Securitisation Application No.27 of 2006. The Petitioner does not dispute that a demand was raised by the 1st Respondent by issuing a notice under section 13(2) of the SARFAESI Act. It claimed a sum of Rs.3,93,56,070/-. The bank claimed that the debt was secured by five properties mentioned in the notice. The Petitioner challenged these proceedings, which culminated in the measures under section 13(4) of the SARFAESI Act, by filing a Securitisation Application on the ground that the proceedings were vitiated by errors apparent on the face of the record; that the notice under section 13(2) was not served on it; that Respondent No. 3 was not authorised to take steps in accordance with the SARFAESI Act; that the properties allegedly claimed to be securities of the bank were not secured assets at all; that nothing was due and payable by the Petitioner to the bank; and, on the contrary, loss and injuries suffered by the Petitioner be quantified so as to compensate the Petitioner.

7) It is not disputed that this Securitisation Application was dismissed by the DRT. The Petitioner, therefore, places reliance upon a circular, copy of which is at Annexure 'A', and dated dated 2nd July, 2012, containing guidelines for identifying such assets which are non performing and thereafter to take steps against defaulting borrowers. It is claimed that this circular does not stipulate any prior opportunity being given to the Petitioner or parties like the Petitioner.

8) Then reference is made in para 6 to section 19 of an another Act, namely, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "**the RDDB Act**"). It is claimed that section 19 thereof enables filing of an application before the DRT and by virtue of section 17 of the said Act, the Civil Court's jurisdiction is ousted. Then, various sub-sections of Section 19 of the RDDB Act are referred and which enable the borrower against whom the bank has proceeded, in terms of the provision to claim a set off or a counter claim for compensation, damages etc. The Petitioner then refers to the proceedings in which an order was passed on 21st April, 2011 by the Debt Recovery Appellate Tribunal ("**DRAT**").

9) It is then claimed that the Original Application No.112 of 2007 was instituted against the Petitioner. Hence, recourse to the SARFAESI Act was impermissible. The Petitioner, therefore, is really aggrieved by the dismissal of its Securitisation Application No. 27 of 2006. The Petitioner then relies upon an order passed on 1st December, 2010 by the DRT. The Petitioner claims that institution of the proceedings under section 19 of the RDDB Act is barred by estoppel. That objection was raised, but the claim is that two Decrees have been passed, one in Securitisation Application No.225 of 2010 and another in Original Application No. 112 of 2010.

10) The Petitioner further does not dispute filing of an Appeal, being Appeal No. 45 of 2011 before the DRAT and an application made thereunder. The Petitioner points out the filing of interlocutory applications, namely, Miscellaneous Application No. 186 of 2011 in Appeal No. 45 of 2011 and Miscellaneous Application No. 184 of 2011 in Appeal No. 44 of 2011 seeking waiver of pre-deposit. The DRT, by order dated 7th March, 2011, allowed Miscellaneous Application No. 186 in Appeal No. 45 of

2011 in part, directing that Rs.50 lacs be paid within 15 days and the remaining Rs.50 lacs be paid within further 15 days, and that is how part waiver of the condition of pre-deposit was granted. The Petitioner does not dispute that the amounts were not deposited and therefore, the property was allowed to be auctioned. The claim of the Respondent bank, according to the Petitioner, is Rs.1.95 crores and the sum of Rs.99 lacs, which was in excess, even after adjusting the claim of the Petitioner, was directed to be deposited with the Registrar of DRAT to the credit of the Petitioner. Since the Petitioner was unable to comply with the pre-condition or order of pre-deposit, it filed a Miscellaneous Application No. 310 of 2011 seeking a relief that the amount to its credit lying with the Registrar of the DRAT be treated as a pre-deposit so as to satisfy the order passed on 7th March, 2011 by the DRAT directing deposit of Rs.1 crore in installments. This application of the Petitioner was allowed by the DRAT on 21st April, 2011.

11) Since the auction proceedings were finalised, the auction purchaser, aggrieved by such a direction, filed a Writ Petition in this Court, being Writ Petition No. 2512 of 2013. That Writ Petition has been allowed by this Court on 9th June, 2015 and a copy of the order is annexed to the present Writ Petition itself as Annexure 'G'. The Petitioner instituted a Writ Petition No.

602 of 2015 in the Hon'ble Supreme Court of India, but on 31st August, 2015, that was withdrawn with liberty to file a Writ Petition in the High Court.

12) That is how, according to the Petitioner, this Petition is filed and would be maintainable.

13) Mr. Nedumpara, appearing on behalf of the Petitioner, submits that the Petition claims a declaration based on a legal position that there are two separate forums created by the SARFAESI Act and RDDB Act. The Civil Court's jurisdiction is ousted in terms of the scheme of both the Acts. However, that cannot be said to be ousted, inasmuch as if the preamble to the SARFAESI Act is looked into together with Chapter II, Sections 5A and 6 and sub-section 4 of section 5, it would be apparent that Civil Court retains jurisdiction. In any event and without prejudice, it is submitted that section 19 of the RDDB Act, which was earlier not held to be legal and valid, was amended and thereafter the Parliament introduced and inserted various sub-sections so as to afford protection to a debtor/borrower who has been proceeded against by the bank. He would be entitled to make a counter claim or raise appropriate defences so as to pray for damages and compensation. However, the law never intended that the banks can resort to both enactments simultaneously. That has precisely taken place in the present matter. The bank filed an Original Application and the DRT proceeded to adjudicate the same. However, when the Petitioner raised several contentions and claimed compensation and damages for a wrongful action, the bank should have first withdrawn this Original Application and thereafter taken recourse to the SARFAESI Act. The proceedings under the SARFAESI Act, without such withdrawal, were, therefore, *ab-initio*, null and void. They were not maintainable.

14) Mr. Nedumpara, while not disputing the essential facts, would submit that the declaration that is claimed in the Petition is founded on the broad and general principles of equity and justice. The Petitioner, therefore, claims that the declaration sought is based on the principle that if a Tribunal is created as a substitute for Civil Court, it must be invested with the entire jurisdiction of the Civil Court. The bar, therefore, under the enactments, should not be construed as preventing the Tribunal from allowing parties like the Petitioner to raise all defences. In these circumstances, all the issues in relation to the alleged debt and the manner in which that is sought to be recovered should have been allowed to be raised in terms of the prayers of this Petition.

15) In response to this Petition, there are two affidavits in reply. We have an affidavit of the auction purchaser Respondent

No. 4 at page 293 of the paper book. Respondent No. 4 states that the asset, namely Unit No. 4, Ujagar Industrial Estate, Sub-Plot 2D, W. T. Patil Marg, Deonar, Mumbai 400 088 was purchased in the auction sale held under section 13(4)(a) of the SARFAESI Act read with Rules 8 and 9 of Security Interest (Enforcement) Rules, 2002. The auction was concluded and the property was purchased on 4th March, 2011. A sum of Rs.1,85,00,000/- was paid. The sale was confirmed on 21st March, 2011 and possession was handed over on 25th March, 2011. The Sale Certificate was registered on 27th June, 2011 and therefore, Respondent No. 4 claims that he has acquired ownership and title to this property.

16) He is opposing the prayers in the Petition because he would submit that in effect, this Petition seeks quashing and setting aside of an earlier order of this Court dated 9th June, 2015 passed in Two Writ Petitions, namely, Writ Petition No. 2414 of 2013 and 2512 of 2013. The order passed, copy of which is at Annexure 'G' to the Petition, of a Division Bench was not challenged by way of an Appeal or a Special Leave Petition in the Hon'ble Supreme Court of India, but that was sought to be questioned by another Writ Petition. The Petitioner has already adopted a remedy under section 18 of the SARFAESI Act and under section 20 of the RDDB Act. The circular issued on 2nd July, 2012 by the Reserve Bank of India is inapplicable as the account of the Petitioner/borrower was declared as non-performing asset in March, 2004 and the auction sale was held on 4th March, 2011. This circular has come thereafter, viz., on 2nd July, 2012. The entire sequence of events is set out.

17) It is stated that the Petitioner attempted to file first a Writ Petition under Lodging No.2008 of 2015, but did not remove office objections and therefore, that Petition stood dismissed. In the meanwhile, the Petitioner moved Notice of Motion No. 434 of 2015 in the disposed of Writ Petitions and prayed for extension of interim protection for two weeks. This Notice of Motion was moved on 23rd July, 2015 and no ad-interim order was passed, but the Writ Petition filed in the Hon'ble Supreme Court was moved and the Hon'ble Supreme Court was informed that there was some interim protection. On that basis the Hon'ble Supreme Court passed an order of status quo and in pursuance thereof, the present Petition has been filed on 7th September, 2015. However, the earlier Petition on the same cause of action filed on 13th July, 2015 stood rejected under High Court (Original Side) Rules on 6th October, 2015. The Petitioner has suppressed some material facts from the Hon'ble Supreme Court of India and that is how the entire affidavit proceeds. It states that the Petitioner has raised several pleas and when the SARFAESI Act is held to be constitutionally valid and enforceable, now the prayers cannot be granted and the Petition be dismissed.

18) Respondent No. 1 bank has filed an affidavit and while accusing the Petitioner of suppressing material and relevant facts, it has proceeded to state that the Petitioner has also filed a Suit in the City Civil Court, being Suit (L) No. 13452 of 2015 for the same reliefs as are sought in the present Petition. Hence, two proceedings on the same cause of action do not lie. The Petition should be dismissed.

19) Further, similar relief, as was claimed before this Court earlier, has been claimed in the present Petition. Apart from all this, the DRT was empowered in terms of both the Acts to pass the orders now impugned. The Petitioner does not reveal that it was sanctioned Export Packing Credit Limit of Rs.375 lacs, Foreign Bill Negotiable Limit of Rs.375 lacs, Letter of Credit of Rs.100 lacs and Bank Guarantee of Rs.100 lacs. On account of non payment of the sums which were due and payable by the Petitioner, Respondent No. 1 issued a demand notice dated 1st June, 2004 under the provisions of section 13(2) of the SARFAESI Act demanding sum of Rs.3,93,56,070.20 under the EPC facility, current account and bank guarantee. Symbolic possession of the property was taken on 16th October, 2004 by the bank (Respondent No. 1) for want of compliance with this notice by the Petitioner. Being aggrieved by the measures, the Petitioner filed Securitisation Application No. 27 of 2006, which came to be rejected by the DRT on 12th April, 2006. The Petitioner filed Appeal No. 209 of 2006 before the DRAT, which also came to be rejected on 6th August, 2007.

20) The debts of the Petitioner were assigned by the 1st Respondent bank by deed of assignment dated 30th December, 2006. The Petitioner had challenged the proceedings after the deed of assignment right up to the Hon'ble Supreme Court of India. It is in these circumstances that the Petitioner's request, which was accepted by the DRAT and noted by us in detail above, could not have been accepted and that is why its order was interfered with by this Court. For all these reasons, it is claimed that this Petition is a gross abuse of the process of this Court and ought to be dismissed.

21) We have, with the assistance of learned Counsel appearing for both sides, perused this Writ Petition and all Annexures thereto. We have considered the submissions very carefully. We find that the Petitioner continues to resist the lawful claims of the bank and the assignee of the bank despite knowing that the legal position has been clarified in the judgments of the Hon'ble Supreme Court of India. The SARFAESI Act has been upheld in a judgment in the case of *Mardia Chemicals Ltd. vs. Union of India* reported in **(2004) 4 SCC 311** and that is known to the Petitioner. That judgment was rendered after duly considering all the challenges and objections to the constitutional validity of the Act. The Petitioner was aware that the Civil Court's jurisdiction stands ousted and therefore, none of the steps or measures taken under the SARFAESI Act can be questioned in view of the bar created by the SARFAESI Act. The legality, validity and correctness thereof, thus, cannot be questioned in the Civil Court. All the measures and which have been held to be valid, the orders or the proceedings themselves can be challenged under the SARFAESI Act before the forums created by these two statutes. The forum (DRT) is one and the same under both Acts. Both, an original application for recovery and the measures under the SARFAESI Act can be filed and adopted. That position in law is also settled as conceded before us. The Petitioner is very well aware of the same and therefore, resorts to only such proceedings as are permissible under the SARFAESI Act. Equally, the Petitioner is aware that the RDDB Act having been enacted for providing an exclusive remedy to banks or financial institutions for recovery of debts, the financial institution is in a position to approach the Tribunal within the local limits of its jurisdiction the parties reside or work for gain or the cause of action arises. The proviso which has been added to sub-section (1) of section 19 of the RDDB Act after 11th November, 2004 enables the bank to approach DRT and seek its permission to withdraw the original application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the SARFAESI Act and if no such action had been taken earlier under that Act, the proviso thereto, therefore, empowers the bank to initiate measures even under the SARFAESI Act and, if already initiated, to continue them. We do not see, therefore, any impediment in law for the bank to resort in this case to the SARFAESI Act. The bank has taken proceedings thereunder to their logical end and conclusion. The assignee of the debt was not prevented from initiating proceedings under the RDDB Act so as to recover the sums which remained due and payable despite the sale proceeds being adjusted and appropriated towards the outstanding claim of the bank.

22) It is with full knowledge of all this that the Petitioner, in challenging the proceedings under the SARFAESI Act, approached the DRAT. The concluded sale was sought to be questioned for want of compliance and by alleging that it was illegal. According to the bank, a litigant like the Petitioner cannot continue in this fashion by dragging it before these Forums and those Forums obliging parties like the Petitioner to institute and proceed with legal proceedings at the cost of the creditor.

Meaning thereby, the Petitioner's huge debt and outstanding for nearly a decade was sought to be recovered by taking recourse to SARFAESI Act. The sale only redeemed the debt in part. The sale proceeds or the sum over and above the debt, therefore, were kept aside. In these circumstances the Petitioner cannot claim a title to the sale proceeds or the excess thereof over and above the bank's claim and request the DRAT to adjust it against the pre-deposit condition. That is how the DRAT's order came to be challenged by Respondent No. 4 auction purchaser in the Writ Petitions before this Court. In a detailed judgment delivered on 9th June, 2015, the Division Bench held that the order of the DRAT cannot be supported in law. The questions that have been framed for consideration in para 19 are (i) Whether the DRAT could have passed the order directing adjustment of the amount realised from the sale of the mortgaged properties towards the amount which was directed to be paid as condition for entertaining the Appeal under section 18 and particularly when the sale of the auctioned property was challenged by the borrower in separate proceedings before the DRAT? and (ii) whether the DRAT has committed a jurisdictional error in entertaining the Appeal without the borrower depositing the amount under section 18 by treating the amount realised after sale of the auctioned properties as amount deposited by the borrower and, thereafter entertaining the Appeal? After reproducing relevant legal provisions, the Division Bench had an occasion to refer to the judgment delivered by the Hon'ble Supreme Court of India in the case of *Narayan Chandra Ghosh vs. UCO Bank and Ors.* reported in **2011 AIR (SC) 1913.** The Hon'ble Supreme Court decision in the case of *Indian Bank vs. Blue Jaggers Estates Ltd. and Ors.* reported in **2010 AIR (SC) 2980** has also been referred and noticing the right of an auction purchaser, eventually, the Division Bench concluded that the condition could not have been waived in this fashion by the DRAT. The reasons assigned in para 23 are after taking note of the factual position as well. We find that all the dates and events and the history of the legal proceedings has been adverted to in order to set aside the order passed by the DRAT.

23) In these circumstances that the Petitioner was granted time to approach the higher Court against this judgment.

24) The Petitioner did not pursue the proceeding before the higher Court and it is conceded that the Writ Petition which was filed in the Hon'ble Supreme Court was withdrawn voluntarily. The Writ Petition having been withdrawn, the judgment of the Division Bench attained finality. We cannot, in the garb of some legal submissions now canvassed, reopen the controversy and which is concluded by the Division Bench setting aside the order of the DRAT. Therefore, the Petitioner can pursue its legal proceedings before the DRAT only after compliance with the conditions imposed on it by the statute. The Petitioner cannot, in the garb of this Petition, request this Court to question the auction proceedings and to consider the issue of legality and validity of the auction sale. That would amount to the Petitioner being facilitated in getting over a binding judgment and statutory condition. That can never be the intent and purpose of conferring this Court with jurisdiction under Article 226 of the Constitution of India. That is an extraordinary jurisdiction, but it is equally discretionary and equitable. The Petitioner has also instituted a Civil Suit knowing fully well that the bar that is created to the jurisdiction of the Civil Courts in both enactments is held to be valid. In exceptional circumstances and as clarified in the judgment in the case of *Mardia Chemicals Ltd.* (supra), the Civil Court can be approached. Once in judgments rendered by the Hon'ble Supreme Court all enactments are upheld, then, we cannot allow the Petitioner and parties like it to pursue legal proceedings for a cause which is *ex-facie* unsustainable. The Petitioner is a defaulter. The Petitioner has borrowed huge sums and has not repaid them. The Petitioner does not dispute that the sum is due and payable in terms of the credit facilities extended to it. At no stage we find that the Petitioner proved that any amount was due and payable to it by the contesting Respondents. The Petitioner cannot merely say in the body of the Petition that in answer to the securitisation notice all these contentions have been raised and in fact nothing is due and payable and that loss has been caused to the Petitioner. Whenever legal proceedings to claim such reliefs have been instituted by the Petitioner, the Petitioner has chosen not to abide by any condition imposed by a statute for proceedings with the same. Rather, the Petitioner, knowing fully well that an auction sale has taken place, proceeds to question the same and even in such proceedings, it does not wish to abide by the statutory condition.

25) We are in agreement with the learned Counsel appearing for the Respondents that this Petition is really an abuse of process of this Court. Repeatedly, the Court has been accommodating the Petitioner. The Petitioner, as noted throughout, was given ample opportunities to repay the sums or at least to abide by the statutory conditions. Once the Petitioner knows that there are pending legal proceedings for recovery of sums and all defences can be raised therein, then, we do not see how in writ jurisdiction we can interfere and assist the Petitioner. If the original application of the bank is pending or even if it is allowed and the recovery certificate is issued an Appeal to challenge the same if instituted by the Petitioner can still be proceeded with. However, he cannot make such a request before this Court. It is for the Tribunal to consider the request and to pass orders in accordance with law. A Writ Petition to raise concluded issues cannot be allowed.

26) We are, therefore, in agreement with the learned Counsel appearing for the Respondents that this Writ Petition should not be entertained.

27) For the reasons indicated above, we proceed to dismiss the Writ Petition. It is accordingly dismissed.

28) However, before parting, we would like to make few observations for the ultimate direction that we wish to issue in this Petition.

29) We have been noticing that parties like the Petitioner institute Petitions under Article 226 of the Constitution of India despite the fact that they have instituted proceedings for same reliefs before Civil Courts and Tribunals, some of which are pending. In the garb of raising constitutional questions and challenges what we find is that defaulting parties like the Petitioner raise contentions which have already been dealt with in judgments of the Hon'ble Supreme Court of India. The parties like the Petitioner and their Counsel are fully aware that these judgments bind us. Even if some other argument and apparently not noticed in this judgment can be canvased before us, that would never undermine the authority of these judgments. They continue to be binding precedents. The judgments of superior Courts cannot be brushed aside or ignored in this manner. Knowing fully well this position in law, these contentions are raised and it is urged that Draconian powers are conferred by the SARFAESI Act and RDDB Act. The Forums and Tribunals thereunder are substitutes for Civil Courts. Though they are such substitutes, they are not invested with all powers of Civil Courts. Surely, this is not an aspect which this Court can now consider. If the law as it stands and the provisions made thereunder do not violate any Constitutional guarantee of equality much less any fundamental freedoms, then, the wisdom of such enactments or provisions thereof cannot be questioned. The Courts are, therefore, not empowered to find out whether there are any defects or lacunas in the legislation. Courts interprete legislation. Courts do not make law or legislation. In these circumstances, we do not approve of the lengthy pleadings and the various aspects which are sought to be raised. We find that precious judicial time has been wasted for such frivolous and vexatious litigation. The present litigation is one such example or rather one more. Parties and litigants have access to justice. They can approach a Court of law. However, in what manner and by what legal process that Court of law should deal with the cause brought before it is something over which the parties cannot have any control. There is a certain discipline in judicial proceedings. We find that when precious judicial time is wasted by parties like a Petitioner, one who does not wish to come forward and repay the debts, then only dismissal of this Petition would not be enough deterrent. The litigation being frivolous and vexatious having consumed precious judicial time, it deserves to be thrown out with heavy compensatory costs.

30) We have found that the Petitioner has not put in any affidavit in rejoinder. There are serious allegations made against the Petitioner, including of suppression of material and relevant facts from the Hon'ble Supreme Court of India. In the affidavit in reply filed by the auction purchaser, it has been clarified that this Court passed the order while dismissing the Petition, but that order was not enabling the Petitioner to claim a substantive relief, much less of status quo. Yet, when it filed the Writ Petition in the Hon'ble Supreme Court, the Petitioner relied upon the prayers and facts in some other case, namely, M/s. Shree LTC Exports India Limited and that is how it requested the Hon'ble Supreme Court of India to grant an order of status quo. The Hon'ble Supreme Court was misled into passing such an order. We do not find any denial of the Petitioner on record though these affidavits are filed in this Court way back in December, 2015. This is one more reason for us to impose costs while dismissing the Writ Petition.

31) In these circumstances, we direct that the Petitioner shall pay costs quantified at Rs.1 lac each to the auction purchaser Respondent No. 4 and Respondent No. 1 bank.

32) The Petitioner shall pay costs quantified as above within four weeks from today. If the costs are not paid, it would be open for these Respondents to recover them in accordance with law. If the costs, as directed above, are not paid, then, in any pending legal proceedings against the Petitioner, the appropriate Forums/Courts shall take cognizance of this act of the Petitioner and while passing final orders and directions with regard to payment of money, include the sum due and payable above. We have passed this order because the Petitioner claims that it has suffered on account of acts of the bank and the bank has caused loss and damage to it. If the Petitioner claims relief on such cause of action, then, while deciding the legal proceedings, it would be open for the Courts or Tribunals to pass appropriate orders with regard to costs. Equally, in proceedings against the Petitioner, we have given the opportunity as above to the bank to claim such costs as are awarded by this Court and which remain unpaid.

(G.S.PATEL, J.) **(S.C.DHARMADHIKARI, J.)**