

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.30166 of 2016
and
W.M.P.Nos.26143 of 2016 and 27400 of 2016

1.M/s.Titanium Tantalum Products Ltd.
No.86/1 Vengaivasal Main Road
Gowrivakkam, Chennai - 600 073
Rep. by its Managing Director
T.Jeyananth
2.T.Jeyananth
3.Kamala Thangappan
4.T.Jeyamohan
5.T.Jeyavelan
6.T.Jeyashree ..Petitioners

vs.

State Bank of India
Overseas Branch
No.86, Rajaji Salai, Chennai 600 001
Represented by the Assistant General Manager
Stressed Assets Management Branch
Red Cross Society Buildings
No.32, Montieth Road, Egmore
Chennai - 600 008 ..Respondent

WRIT Petition filed under Article 226 of the Constitution of India, for a writ of mandamus forbearing the respondent bank from bringing the secured assets both movables and immovable properties of the petitioners for public e-auction sale on 07.09.2016 or on subsequent dates and consequently direct the respondent bank to consider the request of the first petitioner company for restructuring the loan.

For Petitioners: Mr.S.Rajasekar
For Respondent : Mr.M.Devaraj

ORDER
(delivered by S.MANIKUMAR, J)

Heard Mr.S.Rajasekar, learned counsel for the petitioners
and Mr. M. Devaraj, learned counsel for the respondent-bank.

2. M/s.Titanium Tantalum Products Ltd, a firm along with its directors and legal representatives of the founder-director, have joined together and sought for a writ of mandamus, forbearing the respondent bank from bringing the secured assets, both movables and immovable properties of the petitioners for public e-auction sale on 07.09.2016, or on subsequent dates and consequently, prayed for a direction to the respondent bank to consider the request of the first petitioner company for restructuring the loan.

3. Brief facts leading to the writ petition are that M/s.Titanium Tantalum Products Ltd was incorporated on 14.9.1980 and it is a multi-product and technology company with focus in the field of chemical process equipment design, engineering, manufacturing, erection/commissioning and services featuring exotic metals and electrochemical technologies. The company directly employs 170 employees and indirectly many through, its sub-vendor program.

4. The petitioner-company availed loan for its day-to-day operations in the year 2001, which was periodically renewed by the respondent-bank. Due to global recession and undue delay in infrastructure projects, petitioner company faced deficit cash flow and could not service the loan. The debt was classified as Non Performing Account (NPA) on 28.9.2013 and a demand notice under Section 13(2) of the SARFAESI Act, 2002 for Rs.59.06 Crores, was issued. The Bank filed O.A.No.156 of 2014 under Section 19(1) of Recovery of Debts due to the Banks and Financial Institution Act, 1993, for recovery of a sum of Rs.51.54 Crores.

5. The petitioners have further contended that vide letter dated 30.9.2014, respondent-bank, acknowledged the efforts of the company, in joining hands with Private Equity Investors, in short PE Investors, to infuse equity worth Rs.60 Crores, to ease the cash flow. On 03.03.2013, a Share Purchase Agreement was also entered into with PE Investor Company and the respondent allowed "hold on operations" and appointed M/s.Dun & Bradstreet (D&B) for Techno Economic Viability Study (Restructuring) to examine the proposal submitted by the petitioner company on 26.2.2015 for restructuring. In December 2015, a detailed 149 Pages report was prepared by M/s.Dun & Bradstreet, thoroughly analysing the critical aspects of the economic viability of the petitioner company and concluded that the process for restructuring is viable. The bank was keen on initial payment of Rs.5 Cores, when the first tranche of the fund, was received from the overseas investor. But suddenly, demanded Rs.3 Crores more from the petitioner company to be raised from its own source, contrary to the earlier arrangement by which the respondent-bank was supposed to give a letter of intent, sanctioning restructuring scheme of loan to infuse confidence in the mind of PE Investor to bring in equity capital. The writ petitioners have contended that the above was the position in March 2016. However, even

before the petitioner company could react, the respondent-bank by its letter dated 18.5.2016, rejected the proposal of restructuring and starting initiating drastic steps in a vindictive manner against the property and personal rights of the petitioners. The respondent-bank moved an application before the Debts Recovery Tribunal-II, Chennai, for freezing the passport of the petitioners 2 to 6, and also issued possession notice dated 27.6.2016 under Section 13(4) of SARFAESI Act, 2002, after 31 months from the date of demand notice under Section 13(2) of the Act. The same was followed by an auction notice dated 30.07.2016, to sell all the secured assets by public e-auction notice dated 7.9.2016.

6. The writ petitioners have contended that the properties are worth more than Rs.120 Crores and sought to be sold in public auction, by fixing a very low reserve price of Rs.57.46 Crores. They have further contended that the upset price shown in the public e-auction notice is in gross in violation of the secured assets and that the respondent-bank has failed to adopt the procedure under Rule 8 of the Security Interest and Enforcement Rules, 2002. The petitioners have further submitted that the consequential action taken by respondent-bank are tainted with malice and vindictive in nature, with glaring discrepancies and irregularities. The respondent-bank has erred in including an unexpired Bank Guarantee, while making the demand. The respondent-bank has not furnished any statement of account to substantiate their demand. The petitioners have further submitted that when there is a possibility for revival and to clear the financial burden by capital infusion, in all fairness, the respondent-bank ought to have, given sufficient opportunity to the company.

7. It is also the submission of the company that arrangements for payment of Rs.3 Crores was also made. The petitioners have further contended that PE Investor being a signatory to the Share Purchase Agreement, was also keen on investing USD 25 Million. Contending interalia that petitioners have a right under Article 300-A of the Constitution of India and in the above circumstances, the petitioners have contended that the action of the respondent-bank in bringing the secured assets for public e-auction sale, is liable to be set aside.

8. Record of proceedings shows that on 30.08.2016, while ordering notice to the respondent-bank returnable on 19.9.2016, this court in W.M.P.No.26143/2016, has granted stay of further proceedings pursuant to the e-auction notice, on condition that the petitioner depositing a sum of Rs.50.00 Lakhs, on or before 19.9.2016. A Hon'ble Division Bench of this court has also observed that the petitioners are at liberty to go for one time settlement, on an understanding between the respondent-bank, and the borrowers.

9. The respondent-bank has filed WMP No.27400/2016 in WMP No.26143/2016, to vacate the interim stay. At the outset, the respondent-bank has contended that the prayer sought for, in the writ petition, amounts to challenging the proceedings initiated under the SARFAESI Act, 2002 and further submitted that when there is an effective and alternative remedy under Section 17 of the Act before the Debts Recovery Tribunal - III, writ petition is not maintainable.

10. Without prejudice to the above, the respondent-bank has contended that during 2003, the petitioner company was granted financial facility of Rs.6.25 Crores, which is increased and decreased due to various limits and on 28.12.2012, a limit of Rs.78.5 Crores was sanctioned. Initially, the petitioner company, paid some dues. But from 2012, the petitioner company failed to adhere to the terms and conditions of the loan agreements. The petitioner company failed to adhere to the terms and conditions of the loan agreements. In spite of reminder and requests, the petitioner company failed to regularise the loan account and therefore, as per Reserve Bank of India guidelines, on 30.12.2012, the loan account was classified as NPA. A demand notice dated 30.11.2013 under Section 13(2) of the SARFAESI Act, 2002, was issued to the petitioners company and 3 others, demanding a sum of Rs.59.06 Crores. The said notice was served on the borrower and guarantors. Even after the receipt of the above said demand notice, the borrowers and guarantors have not paid the amount. Therefore, the respondent-bank was constrained to file O.A.No.156/2014 before the Debts Recovery Tribunal-II, Chennai. Even after the initiation of recovery proceedings, both the borrower and guarantors have failed to settle the dues. On the other hand, the company has approached the bank for rehabilitation of the unit. The respondent-bank considered the request of the company and based on the projection that the company has made arrangements to bring in capital by way of investors, the respondent-bank considered the request, for revival.

11. The respondent bank informed the company to bring in capital of Rs.3 Crores from their own sources and another sum of Rs.5 Crores from the investors, before March' 2016, which would be kept in escrow account. Till 18.5.2016, the Company has not infused any capital, either from its own sources or from investors. Even after two years of migration of the account and three years of the account declared as NPA, no steps have been taken by the petitioner company. Therefore, the respondent-bank was constrained to reject the proposal for revival and demanded an outstanding amount of Rs.68,29,82,697/-, as on 17.5.2016.

12. It is also the case of the respondent-bank that when the petitioners company failed to bring in investors, simultaneously, they had transacted business through a current account maintained by them in Axis Bank, without following the

terms and conditions of the agreements, executed with the respondent-bank.

13. The respondent bank has further submitted that possession notice issued under Section 13(4) has not been challenged. The petitioners have failed to pay the amount. Subsequent to the sale auction notice, five bids have been received, in respect of item No.4 and one bid has been received, in respect of item no.3 of the property mentioned in the auction notice. On the above averments, Mr.M.Devaraj, learned counsel for the respondent-bank prayed to vacate the interim order and consequently, dismiss the writ miscellaneous petition.

14. On 5.10.2016, when the matter came up for hearing, Mr.S.Rajasekar, learned counsel for the petitioners submitted that e-auction was conducted as scheduled. However, further proceedings have been stayed on condition that the petitioners should deposit a sum of Rs.50.00 Lakhs, on or before 19.09.2016. In terms of the observation made by this court on 30.08.2016, the petitioner company has sought for one time settlement. He further submitted that the bank had fixed for a meeting by 6.10.2016 for taking a decision on the proposal. Therefore, on 5.10.2016, we extended the interim order and directed the Registry to post the matter on 17.10.2016 and thus, it is listed today.

15. Mr.S.Rajasekar, learned counsel for the petitioners submitted that the bank has not agreed for one time settlement proposal. Setting out the reasons extracted supra, for issuance of mandamus, submissions have been made. Emphasis was also made on the Valuer's report of the bank and reduction in the reserved price fixed in the e-auction notice dated 7.9.2016. Learned counsel for the respondent-bank submitted that as on 17.05.2016, the outstanding amount is Rs.68,29,82,697/-.

16. Material on record discloses that on the request of the petitioner company, State Bank of India through its Overseas Branch, Chennai, has granted cash credit and letter of credit facilities, by way of financial assistance against stocks and fixed assets (loan) creating security interest, in favour of the bank. Necessary agreements have been executed. The first petitioner company has undertaken to repay the same, in terms of the agreements. Both the petitioners and guarantors have also created equitable mortgage by way of deposit of title deeds, creating security interest, in favour of the bank. The petitioner company has defaulted in payments and thus the loan account has been classified as NPA, as on 28.11.2013, as per the directive/guidelines issued by the Reserve Bank of India. A demand notice dated 28.11.2013 under Section 13(2) has been issued to the petitioners, informing that the outstanding amounts, due to the bank as on 30.11.2013 was Rs.59.06 Crores and the petitioner company has been

requested to discharge the liabilities within 60 days from the date of the notice, failing which, the bank would be constrained to take action under sub section (4) of Section 13 of the SARFAESI Act, 2002 or under other applicable provisions of the Act. The writ petitioners were also put on notice in terms of Section 13(13), that the company should not transfer by way of sale, lease or otherwise of the secured assets detailed in the schedule 'C' of the notice issued under Section 13(2) of the Act, without obtaining prior consent of the bank. On 08.02.2014, the panel valuers of the State Bank of India have submitted a Valuation Report on the fair market value, as on that date. Thereafter, the respondent bank has filed O.A.No.156/2014, for the following reliefs:

(i) directing the defendants 1 to 5 jointly and severally to pay the applicant a sum of Rs.51,54,46,373.58 (Rupees Fifty one crores fifty four lacs forty six thousand three hundred and seventy three and paise fifty eight only) as on 31.7.2014 with interest at the rate of 15.75% p.a. Linked with State Bank Base rate with monthly rests under term loan and cash credit facilities from the date of application till the repayment or realisation of the amounts;

(ii) in default of payment of the said amounts directing a sale of the hypothecated and mortgaged properties described Schedule A, B, C, D and E by the defendants and under direction of this Hon'ble Tribunal and the sale proceeds be applied towards decree amount with regard to clause (i) above;

(iii) directing, if the sale proceeds of Schedule "A", "B", "C", "D" and "E" are found insufficient to satisfy the entire claim amount with further interest, costs and expenses thereon, to recover the balance amounts from the defendants 1 to 5 personally and from and out of the other assets of the defendants;

(iv) directing the defendants 1 to 5 to pay the applicant the incidental costs and other expenses which may be incurred by the applicant subsequent to filing of this application; and

(v) to issue a recovery certificate for the amount as prayed for and to pass further orders as this Tribunal deems fit and proper to pass under the circumstances of the case.

17. Material on record discloses that on the proposal of the petitioner company, to infuse capital, either on its own or from PE Investors, recovery action was not proceeded further. As stated supra, when the company failed to bring in capital either on its own or through PE investors, even after two years of migration of account and three years of classifying the loan as NPA, and since no steps have been taken, the respondent-bank vide letter dated 17.5.2016 has

demanded an outstanding sum of Rs.68,29,82,697/- to be paid. Thereafter, a possession notice dated 27.6.2016 under Section 13(4) of the SARFAESI Act, 2002 has been issued.

18. The contention of the respondent-bank that the said notice, has not been challenged, has not been disputed. Thus from the above, it could be seen that the bank has proceeded in accordance with the statutory provisions, for recovery. Thereafter, the impugned e-auction notice dated 30.7.2016 has been issued under Rule 8(6) of Security Interest Enforcement Rules, 2002 fixing the auction on 7.9.2016. At paragraph No.10 of the supporting affidavit, the petitioners have contended that the alternative remedy available under SARFAESI Act, 2002, is too dilatory and difficult to get quick relief, especially in the context of the facts that public e-auction was fixed on 7.9.2016. The petitioners have also contended that alternative remedy is not efficacious. According to the petitioners, their right to property as guaranteed under Article 300-A of the Constitution of India, has been infringed, and left with no other choice, they have invoked the extraordinary jurisdiction of this court under Article 226 of the Constitution of India.

19. Section 17 of the SARFAESI Act, 2002, deals with appeal and it reads as follows:

"17. Right to appeal-(1) any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorized officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. Of the amount claimed in the notice referred to in sub-section (2) of section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 193 (51 of 1993) and rules made thereunder.

20. As observed earlier, receipt of Section 13(4) notice dated 27.6.2016 has not been disputed, nor challenged in the manner known to law, under Section 17 of the SARFAESI Act, 2002. As per sub section 1 of Section 17, any person

(including borrower), aggrieved by any of the measures referred in sub section (4) of Section 13 taken by the secured creditor or its authorised officer, can make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter, within 45 days from the date, on which such measure had been made. As per Section 13(4)(a) of the Act, in case the borrower fails to discharge its liability in full within the period specified in sub section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely, take possession of the secured assets of the borrower, including the right to transfer by way of lease assignment or sale for realising the secured asset. Sale Notice dated 30.07.2016 has been received and instead of challenging the same, under the provisions of SARFAESI Act, 2002, before the Tribunal, instant writ petition has been filed, for seeking a mandamus, forbearing the respondent bank from bringing the secured assets both movables and immovable properties of the petitioners for public e-auction sale on 07.09.2016 or on subsequent dates and consequently direct the respondent bank to consider the request of the first petitioner company for restructuring the loan.

21. As rightly contended by the learned counsel for the respondent-bank, prayer sought for, amounts to an indirect challenge to the proceedings, initiated under the SARFAESI Act, 2002. A Writ of Mandamus cannot be issued, to have the effect of setting at naught, actions taken under the provisions of a statute when an alternate remedy, provided under an Act more so, in the special enactments. Contention of the petitioners that remedy under SARFAESI Act is too dilatory and difficult to get quick relief and that the remedy is not efficacious, forcing the petitioners to file a writ petition before this court, cannot be accepted.

22. Having regard to the practice of the High Courts in entertaining writ petitions against SARFAESI action, ignoring the statutory remedies, the Hon'ble Supreme Court in United Bank of India v. Satyawati Tondon and others reported in (2010) BC 495 (SC) = 2010-5-L.W. 193, took a very strong view and at paragraph No.55 observed as follows:

"55. 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 the 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."

23. In Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, this Court held as follows:

"This Court has repeatedly held in a number of decisions right from the decision in Division Electronics Ltd. v. Indian Bank (DB) Markandey Katju, C.J., (2005 (3) C.T.C., 513), that the remedy of the aggrieved party as against the notice issued under Section 13(4) of SARFAESI Act is to approach the appropriate Tribunal and the writ petition is not maintainable. The same position has been succinctly stated by the Hon'ble the Supreme Court in Transcore v. Union Of India (2006 (5) C.T.C. 753) in paragraph No. 26 wherein the Supreme Court has held as under:-

"The Tribunal under the DRT Act is also the Tribunal under the NPA Act. Under Section 19 of the DRT Act read with Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (1993 Rules), the applicant bank or FI has to pay fees for filing such application to DRT under the DRT Act and, similarly, a borrower, aggrieved by an action under Section 13(4) of NPA Act was entitled to prefer an Application to the DRT under Section 17 of NPA." (Emphasis added)

Therefore, when there is an efficacious remedy available in law to the petitioner and the petitioner having stated in uncontraverted terms that he has invoked the SARFAESI Act by filing necessary appeal before the Debts Recovery Tribunal, the claim of the petitioner to seek for the very same relief in this writ petition cannot be entertained."

सत्यमेव जयते

24. In Satyawati Tondon's case, the Hon'ble Apex Court also held at Paragraphs 16 to 18 and 27 to 29, as follows:

"16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos. 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent No. 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under Section 13(2) and 13(4) and by

filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No. 1.

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 re-dressal 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=1999-2-L.W. 200 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

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.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy."

25. In *Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India*, reported in (2010) 5 LW 560, the Court held as follows:

"6. It is categorically brought out by the bank that pending the SARFAESI proceedings initiated by the bank, the petitioner, in order to deprive the right of the bank to recover the amount, has clandestinely transferred the secured assets in favour of her son and in that event, the bank has got every right to decline to extend the benefits of One time settlement scheme to the petitioner. Further, the possession notice sent to the petitioner way back in the year 2004, remains unchallenged by her till 2010 by approaching the competent Forum namely Debts Recovery Tribunal. When a specific forum has been created which enables the borrower to challenge the action of the financial institution by filing necessary petition under Section 17, the petitioner is not entitled to invoke the writ jurisdiction of this Court. What could not be achieved by the petitioner by filing a petition before the appropriate Forum, which is at present barred by period of limitation, could not be permitted

to be achieved by extending the jurisdiction conferred to this Court under Article 226 of The Constitution of India. Above all, since the petitioner has violated the terms and conditions of the loan by transferring the property in favour of her son, this Court is not inclined to entertain the petition.

7. In this connection, we are fortified by the decision of the Honourable Supreme Court reported in (United Bank of India v. Satyawati Tondon and others) III (2010) BC 495 (SC) = 2010-5-L.W. 193, wherein in para Nos. 17 and 18, it was held thus:-

"17. ...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 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order, (underlining added).

9. In the light of the above decision of the Honourable Supreme Court, the writ petition filed by the petitioner seeking to set aside the possession notice issued to her long back is legally not sustainable. We are of the considered view that this petition has been filed only to drag on the proceedings and to evade repayment of the loan. That be so, the petitioner has no legal right to compel the bank to accept the one time settlement offer made by her.

13. The present case is identical in nature and it is covered by the judgment of the Supreme Court mentioned supra. In this case, the petitioner has violated the condition of mortgage by transferring the secured asset in favour of her son and therefore, as per clause 1.7 of the OTS Scheme offered by the bank, the petitioner has to be excluded from extending the benefits of the scheme which was rightly done by the bank. In any event, without exhausting the alternative remedy, the relief sought for by the petitioner by invoking the discretionary remedy under Article 226 of The Constitution of India cannot be granted."

26. In Simon's Foot Wear Pvt. Ltd. v. Indian Bank, reported in (2015) 2 MLJ 166, a Hon'ble Division Bench of this court held as follows:

"9.As against the confirmation of sale and issuance of the sale certificate, the writ petitioners did have their remedy of filing an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal. The appeal remedy is an effective and efficacious remedy. When such an effective and efficacious remedy is available, this court will decline exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

10. So far as the challenge made to the order dated 24.06.2013 is concerned, since an appeal remedy is available the writ petitioners ought to

have exhausted the appeal remedy before approaching this Court with this writ petition.”

27. Reverting to the case on hand, it could be seen that a sale notice dated 7.9.2016, can always be challenged before the Debts Recovery Appellate Tribunal - II, Chennai, under Section 17(1) of the SARFAESI Act, 2002, within 45 days from the date of notice. Instead of doing so, the petitioners have filed the instant writ petition on 22.08.2016, within 45 days and obtained an interim stay of further proceedings pursuant to e-auction notice.

28. In the light of the decisions considered and discussion, we are of the view that instant writ petition filed for a mandamus forbearing the respondent bank from bringing the secured assets both movables and immovable properties of the petitioners for public e-auction sale on 07.09.2016 or on subsequent dates, is not maintainable and cannot be granted. The other prayer for a direction to the respondent bank to consider the request of the first petitioner company for restructuring the loan also cannot be granted. Writ Petition is dismissed, reserving the right of the petitioners to take recourse to the statutory remedy, as provided for under Section 17 of the SARFAESI Act, 2002, by raising all grounds available to the petitioners, including non-consideration of the valuation report on which emphasis has been made before this court. It is made clear that if there is any challenge to the sale notice dated 7.9.2016, the time spent on litigating before this court, be excluded by the Tribunal, for the purpose of computing the period of limitation. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

asr

+1cc to Mr.S. Rajasekar, Advocate, S.R.No.59492

+1cc to Mr.M. Devaraj, Advocate, S.R.No.59754

KS (CO)

EU(17/11/2016)

W.P.No.30166 of 2016