

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 06/09/2017****Judgment Delivered on : 08/09/2017****Writ Appeal No. 307 of 2017***(Arising out of Order dated 31.07.2017 passed in Writ Petition (C) No. 1821 of 2016 by the learned Single Judge)*

1. M/s. Madhuban Vehicles and Fertilizers Private Limited, Corporate Identity Number U50100CT2010PTC021984 (Incorporated under the Companies Act, 1956), Dhamdha Road, Jevra Sirsa, Durg, 49100, Through Director.
2. Mithilesh Singh, aged about 35 years, S/o Shri Kamal Singh, Director, M/s. Madhuban Vehicles and Fertilizers Private Limited.
3. Kamal Bhan Singh, Aged about 65 years S/o Shri Gulab Singh.
4. Santosh Kumar Singh, Aged about 32 years S/o Shri Kamal Bhan Singh.
5. Smt. Sushila Devi Singh, Aged about 62 years W/o Shri Kamal Bhan Singh.

Appellant No. 2 to 5 all resident of village Jevra Sirsa, Dhamdha Road, Tahsil and District Durg, Chhattisgarh.

---- Appellants**Versus**

Authorized Officer, State Bank of India, Secured Creditor, Enforcement Recovery Branch, Section 1, Bhilai Nagar, Tahsil and District Durg, Chhattisgarh.

---- Respondent

For Appellants	: Shri V.G. Tamaskar, Advocate.
For Respondent	: None.

Hon'ble Shri Thottathil B. Radhakrishnan. Chief Justice
Hon'ble Shri Sharad Kumar Gupta, J.

C.A.V. Judgment**Per Thottathil B. Radhakrishnan, Chief Justice**

1. This writ appeal is filed challenging the dismissal of a writ petition on the ground that the Writ Petitioners have alternative remedy in terms of the provisions of the Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002; for short "SARFAESI Act", the provisions of which lead to applicability of the relevant provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; for short, "RDDB Act".

2. The learned counsel for the Appellants/Writ Petitioners argued that it is the settled position of law that the jurisdiction under Articles 226 and 227 of the Constitution is, in its content, wider than that referable to Article 32 of the Constitution and that there is no statutory embargo to entertain the writ petition in view of Section 18 of the RDDB Act. He further argued that the fundamental question that arises is as to whether the so-called mortgage created by the Appellants by deposit of title deeds is enforceable without registration in terms of the Indian Registration Act having regard to Section 58(f) of the Transfer of Property Act. It was argued that absence of jurisdiction is an issue which goes to the root of a matter and can be raised at any stage. Reference was made to different decisions to argue that the mortgage in question was required to be registered. Precedents were also cited in support of the argument that the writ petition ought to have been entertained.
3. The learned Single Judge had applied the law laid by the Hon'ble Supreme Court in **United Bank of India v. Satyawati Tondon**; AIR 2010 SC 3413, in contradistinction to reference made on behalf of the Writ Petitioners before the learned Single Judge to different precedents which are enumerated in paragraph 3 of the impugned judgment. Making copious reference to the contents of the judgment in **Satyawati Tondon** (supra), the learned Single Judge had obviously noticed the decisions of the Apex Court in **Titaghur Paper Mills Company Ltd. v. State of Orissa**; (1983) 2 SCC 433, which was followed by Their Lordships in **Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd**; (1985) 1 SCC 260, as also different other

precedents and in particular, **Punjab National Bank v. O.C. Krishnan**; (2001) 6 SCC 569, which dealt with questions relatable to entertaining writ petitions under Article 226 of the Constitution as against orders of the Debts Recovery Tribunal issued under the provisions of the RDDB Act. **City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla**; (2009) 1 SCC 168, was quoted and followed in **Satyawati Tondon** (supra) for the position that while exercising jurisdiction under Article 226 of the Constitution, the Court is bound to consider the different aspects enumerated in paragraph 30 of the judgment in **City and Industrial Development Corporation** (supra) (as reported in SCC). This includes the need to consider whether the person invoking jurisdiction has any alternative or effective remedy for resolution of the disputes and also whether the adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved in writ jurisdiction.

4. One of the issues highlighted in this case by the learned counsel for the Appellants is that there is no creation of equitable mortgage by deposit of title deeds, because, according to him, such a transaction is required to be registered under the Registration Act. We would not deal with the judicial precedents referred to by him in that regard for the simple reason that the question whether any equitable mortgage has been created or not, and whether the so-called transaction results in a mortgage which ought to have been registered and the legal incidence that flow out of the facts and materials which would disclose the transaction between the parties, are essentially in the domain of the questions of facts to be determined applying the principles of law that would govern the particular transaction which would arise for judicial determination. Such issues cannot be adjudicated in writ petitions because they include disputed questions of facts and which cannot be satisfactorily resolved through

adjudication of a writ petition under Article 226 of the Constitution. Complex and disputed questions of facts which arise in this case are such that they cannot be decided merely based on affidavits. We say that particularly because there is no pleading, either in the writ petition or in the writ appeal, that the transaction in question was not entered into, and the deposit of title deeds with the lender was not made, in a town specified by the State Government through a notification in terms of clause (f) of Section 58 of the Transfer of Property Act, and therefore such deposit of title deed does not satisfy the statutory parameters relevant in that regard, under Section 58(f) of the Transfer of Property Act, for creation of equitable mortgage by deposit of title deeds.

5. For the aforesaid reasons, we do not find any jurisdictional infirmity or illegality in the learned Single Judge having relegated the Writ Petitioners to the statutory authority in terms of the provisions of SARFAESI Act and RDDB Act, as would be applicable. Hence, we do not find any ground to interfere with the impugned judgment through this intra-court appeal, which accordingly fails.
6. In the result, the writ appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE