**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11823 OF 2017

**M/S AMBARWADIKAR INFRASTRUCTURE LTD THROUGH ITS CHAIRMAN AND MANAGING DIRECTOR ANR.
VERSUS
THE DOMBIWALI NAGARI SAHAKARI BANK LTD THROUGH ITS GENERAL MANAGER AND OTHERS
...
Advocate for Petitioners : Mantri Ramesh R.**

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**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**

DATE : 27/09/2017

PER COURT :-

Mr.Mantri, learned advocate for the petitioners submits that the respondent no.1 bank has acted in high handed manner. The loan of Rs.1300 lakh was sanctioned to the petitioner. The petitioner directed the respondent no.1 to adjust the said amount in its two loan accounts i.e. Loan Account No.21 and Loan Account No.19. However, the respondent no.1 bank though sanctioned the loan amount of Rs.13 crores, instead of adjusting the amount as directed by the petitioner, adjusted major part of the loan amount in other account of the different companies. The learned counsel submits that u/s 59 of the Indian Contract Act, the debtor has a right to ask the creditor to adjust the amounts in a particular manner with regards to the various debts. The learned counsel relies on the judgment of the Apex Court in the case of <u>Gurpreet Singh V/s Union of India</u>

reported in 2006 (8) SCC 457.

2] The learned counsel further submits that even action u/s 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 (SARFAESI Act for short) has been taken in respect of the property of the petitioner. The same is without adherence to the procedure as laid down, forcible physical possession is taken without resorting to the measures u/s 14 of the SARFAESI Act. The said Act is also illegal. The learned counsel submits that though alternate remedy is available, still the facts on record are so explicit that it would shock the conscious of the Court and in such cases the petitioner need not be relegated to the alternate remedy. The learned counsel relies on the judgment of the Apex Court in the case of Harbanslal Sahnia and another V/s Indian Oil Corporation Ltd. And Others reported in (2003) 2 S.C.C. 107.

3] We have considered the submissions.

4] The rule of alternate remedy is no doubt rule of self-restraint. The dispute between the parties is arising out of contract. As far as measure taken u/s 13(4) of the SARFAESI Act is concerned, the Act itself has provided substantive remedy u/s 17 by filing an application before the Debt Recovery Tribunal. The petitioner can assail the action before the D.R.T. As far as the contention of the petitioner with regard to appropriation of payment is concerned, the petitioner has a forum available to agitate its grievance. The contractual liability and the rights flowing from the contract can be agitated before appropriate forum. This Court in its writ jurisdiction under Article 226 of the Constitution of India would be slow to exercise its jurisdiction to deal with such contentions of factual nature in contractual matters, more particularly in matter of the present nature.

5] In light of the above, Writ Petition is disposed of with liberty to the petitioner to avail the appropriate remedies available under law. No costs.

6] In case such remedies are availed, all contentions raised in the Petition are kept open.

(MANGESH S. PATIL,J.) **(S.V.GANGAPURWALA,J.)**

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