IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 869 OF 2017

Hallmark Steel Pvt. Ltd. and Ors.	}	**Petitioners**
versus		
Tata Capital Finance Services Ltd.	}	**Respondents**

Mr. Aditya Gupta with Ms. Neeta Pandit and Mr. Sandeep Sharma for the petitioners.

Mr. Sanjay Dubey with Mr. Omar Khaiyam Shaikh i/b. M/s. Vikas Salvi and Associates for the respondents.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.

DATED :- APRIL 4, 2017

P.C. :-

1. The petitioners in this petition under Article 226 of the Constitution of India are challenging a demand notice dated 28th October, 2016 issued under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act").

2. It is fairly conceded that after this demand notice was issued, the respondent has taken all the consequential steps, in

the sense the measures under section 13(4) of the SARFAESI Act. The respondent has even obtained the possession of the immovable property, which constituted its secured asset.

3. Mr. Aditya Gupta learned counsel appearing for the petitioners tried his best to persuade us to hold that this writ petition is maintainable even though the above measures have been taken, for in appeal, which is the remedy provided by section 17 of the SARFAESI Act, it would not be open for the petitioners to argue that firstly not taking recourse to the SARFAESI Act but filing a Suit No. 29 of 2016 in this court would not permit it to then invoke section 13 of the SARFAESI Act. In other words, the SARFAESI Act having not been invoked by the respondent earlier, as it chose to file the suit in this court, it was not open for it to later on take recourse to it and take the impugned action. In any event, without abandoning the suit, but keeping it pending, the measures under the SARFAESI Act were taken and that is also impermissible in law. Lastly and without prejudice, parallel remedies cannot be resorted to once the SARFAESI Act has a overriding effect and over Order XXXIV of the Code of Civil Procedure, 1908.

4. After having perused the SARFAESI Act, which is an Act to regulate securitisation and reconstruction of financial assets and

enforcement of security interest and to provide for a central database of security interests created on property rights and for matters connected therewith or incidental thereto, we are unable to agree with the learned counsel. Now far reaching amendments have been made by Act 44 of 2016 to the SARFAESI Act. The statement of object and reasons for such amendments clarify as to how the amendments proposed in not only this Act, but the other enactment enable expeditious disposal of the applications. It is for expeditious recovery of loans of banks or financial institutions that the amendments have been made.

5. Section 17 of the SARFAESI Act also has undergone an amendment. Pertinently, section 17 is a provision which enables not only the borrower, but any person aggrieved by any of the measures under sub-section (4) of section 13 of the SARFAESI Act, taken by the secured creditor or his authorised officer under the Chapter in which this provision falls, to make an application to the Debt Recovery Tribunal having jurisdiction. Though the remedy is styled as application, it is conceded that it is in the nature of an original proceeding, in which all the issues, particularly the legality and validity of the measures taken, can be raised. The wide wording of the provision, namely, whether the measures have been taken in accordance with the Act or not

so also the rules framed thereunder, would denote that by sub-section (3) of section 17, the power conferred in the tribunal is very wide. There is also an appeal provided against the Debt Recovery Tribunal's order and which appeal lies to the Debt Recovery Appellate Tribunal. The argument that firstly a suit was fled, that was not abandoned and during its pendency, the measures under the SARFAESI Act were taken, particularly under section 13(4), which is impermissible under the scheme of that Act, can always be raised in the application. Next that the suit has to be either withdrawn or specifically given up before these measures were taken can also be a subsidiary and supplementary argument. Lastly, the parallel remedies have been resorted to, to defeat the object and purpose of the SARFAESI Act, is the argument before us.

6. We see no impediment in such arguments being raised in the proceedings under section 17 of the SARFAESI Act. That is thus an alternate and equally efficacious remedy.

7. We are of the opinion that the reliance placed on the judgment of the Single Judge of the High Court of Patna, delivered in CWJC No. 15468 of 2012, decided on 19th October, 2012 is entirely misplaced. The argument there was that strict compliance of the provisions of sub-sections (2), (3) and (3-A) of

section 13 of the SARFAESI Act in case a representation/ objection is filed, independently or collectively, is a pre-condition for any secured creditor to initiate action under sub-section (4). Whether any lapse, independently or collectively, in compliance of any of the provisions of the sub-sections (2, (3) and (3-A) makes it impermissible for a secured creditor to initiate steps under sub-section (4) to recover its secured debt in the manner prescribed. The attention of the learned Single Judge was invited to the provisions of section 17 of the SARFAESI Act and two judgments of the Hon'ble Supreme Court of India in the case of *Mardia Chemicals Limited vs. Union of India*[1] and in the case of *United Bank of India vs. Satyawati Tandon*[2]. In dealing with the above contention and finding that going by the wording of section 17 of the SARFAESI Act it will not be permissible for the tribunal to take note of these judgments that the learned Single Judge held that the writ petition was maintainable. This view of the High Court of Patna has not been accepted by this court.

8. We do not think that we have such an issue before us. We have an argument before us after all the measures under section 13(4) of the SARFAESI Act are admittedly taken and even assistance and aid of the learned Chief Metropolitan Magistrate,

1 (2004) 4 SCC 311
2 (2010) 8 SCC 110

by virtue of section 14 of the SARFAESI Act, obtained. We do not have a situation of the above argument which the High Court of Patna was dealing with. There, the argument was that the measures are not under challenge, but the refusal to consider the representation or objection to the notice under section 13(2) of the SARFAESI Act was in issue. After those measures are taken, the recourse to section 17 was permissible. We are not concerned with such an issue. The order passed by the learned Single Judge is otherwise clearly distinguishable on facts.

9. As a result of the above discussion, we uphold the preliminary objection raised to the maintainability of this petition and dismiss it on the ground of availability of an alternate equally efficacious remedy. We clarify that we have not expressed any opinion on the legality and validity of the measures under section 13(4) of the SARFAESI Act. All contentions with regard thereto and of both sides are kept open.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**