

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 418 of 2019**

1. Abdul Khan Amar S/o Sayed Khan Aged About 40 Years R/o 117, Gousiya Maszid Road, Nayapara, Ward No. 05, Mahasamund District Mahasamund Chhattisgarh.
2. Smt Reshma Khan R/o Nayapara, Ward No.08, Mahasamund District Mahasamund Chhattisgarh.

---- Petitioner**Versus**

1. M/s Aadhar Housing Finance Limited (Company Registered Under Section 1956) Registered Office Mumbai ,branch Office Lalganga Midas Fafadih Road Raipur Through Authorized Mukhtiyar, Area Collection Manager, Shri Ashvin Sharma
2. Mohamad Aklash Khan, Guarantor, R/o Swami Chowk Bazar Ward No. 11, Mahasamund, Tehsil and District Mahasamund Chhattisgarh
3. State Of Chhattisgarh Through Collector District Mahasamund Chhattisgarh.

---- Respondent

For Petitioners : Dr. Shailesh Ahuja, Advocate.
 For Respondent/State : Shri Rajesh Singh, Deputy GA.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****19/02/2019 :**

1. The petitioners would call in question the order passed by the Collector cum District Magistrate, Mahasamund in exercise of powers under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act').
2. In the matter of **ICICI Bank Ltd. Etc. Etc. Vs. Umakanta Mohapatra Etc. Etc.** in Civil Appeal No.10243-10250 of 2018, decided on 5.10.2018, the

Supreme Court has observed thus :

“ Delay condoned.

Leave granted.

Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in ***Authorized Officer, State Bank of Travancore and Anr. Vs. Mathew K.C., (2018) 3 SCC 85***, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).

The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows :-

“18.We cannot help but disapprove the approach of the High Court for reasons already noticed in ***Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd. And Another, (1997) 6 SCC 450***, observing :-

“32.When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adverturism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.

The appeals are allowed in the aforesaid terms.

Pending applications, if any, shall stand disposed of.”

3. In view of the law laid down and observations made by the Supreme Court in the aforesaid judgment, appropriate remedy for the petitioners to challenge the impugned order passed by the District Magistrate in exercise of powers under Section 14 of the Act lies in preferring an Appeal before the jurisdictional DRT under Section 17 of the Act, the present Writ Petition is not maintainable. It is accordingly dismissed as not maintainable.
4. The petitioners are permitted to prefer an Appeal before the jurisdictional DRT within a period of 30 days from today. On such Appeal being filed, the DRT shall consider the same on its own merits without raising any objection as to the limitation.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve