

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2019
Delivered on : 20.02.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.24867 of 2018 and
W.M.P.Nos.28903, 28904 of 2018
and W.M.P.Nos.4411 to 4414 & 4396 of 2019

M/s.Santosh Hospitals Private Limited
rep by its Head - HR S.Madhan Kumar
No.1, 7th Avenue,
Besant Nagar,
Chennai - 600 090.

... Petitioner

Vs.

1.M/s.Muthoot Fincorp Limited,
rep by its Associate Vice President and
Authorized Officer W.F.Moses
5th Floor, Muthoot Centre,
Punnen Road,
Thiruvananthapuram - 695 039,
Kerala.

2.The Station House Officer,
J-5, Shastri Nagar Police Station,
Chennai.

3.The Station House Officer,
J-6, Thiruvanmiyur Police Station,
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records culminating in the order dated 12.07.2018 passed under Section 14 of the SARFAESI Act, 2002 in CrI.M.P.No.3133 of 2108 by the Chief Metropolitan Magistrate, Allikulam, Chennai - 600 003, quash the same and all acts pursuant thereto taken by the 1st respondent, restore the petitioner's possession to the premises viz., land and building situated at Commercial Plot No.1, 7th Avenue, Besant Nagar, Chennai - 600 090 comprised in Survey No.154 Part, Thiruvanmiyur

Village, Mylapore - Triplicane Taluk, measuring about 7 grounds and 963 sq.ft. and all medical equipment, movables and fixtures, etc therein and further direct the respondents not to interfere in any manner with the petitioner's peaceful enjoyment and possession of the said premises and all their medical equipment, movables and fixtures, etc therein.

For Petitioner : Mr.P.S.Raman, Senior Counsel
for Mr.N.Raja Senthoo Pandian
and Mr.Kunal Vijani

For Respondents: Mr.AR.L.Sundaresan, Senior Counsel
for Mr.T.Saikrishnan, (R1)
R2 & R3 - no appearance

O R D E R

THE HON'BLE CHIEF JUSTICE
AND
M.DURAI SWAMY, J.

The above Writ Petition has been filed by the petitioner to issue Writ of certiorarified mandamus to call for the records culminating in the order dated 12.07.2018 passed under Section 14 of the SARFAESI Act in Crl.M.P.No.3133 of 2108 by the Chief Metropolitan Magistrate, Chennai and to quash the same and all acts pursuant thereto taken by the 1st respondent, restore the petitioner's possession to the premises viz., land and building situated at Commercial Plot No.1, 7th Avenue, Besant Nagar, Chennai - 600 090 comprised in Survey No.154 Part, Thiruvanmiyur Village, Mylapore - Triplicane Taluk, measuring about 7 grounds and 963 sq.ft. and all medical equipments, movables and fixtures, etc therein and further direct the respondents not to interfere in any manner with the petitioner's peaceful enjoyment and possession of the said premises and all their medical equipments, movables and fixtures, etc therein.

2.It is the case of the petitioner that they availed loan from the 1st respondent and as the borrower committed default in repaying the loan amount, the 1st respondent declared the petitioner's loan account as irregular and classified the same as a Non Performing Asset. Thereafter, the 1st respondent issued a notice dated 08.08.2017 under Section 13(2) of the SARFAESI Act calling upon the petitioner and their guarantors to discharge the outstanding loan amount of Rs.44,36,67,947/- along with future interest.

2.1.According to the petitioner, they sent a reply dated 03.12.2017, as contemplated under Section 13(3-A) of the SARFAESI Act, however, the 1st respondent, without considering the reply, issued the possession notice dated 11.10.2017 under

Section 13(4) of the SARFAESI Act. Later, the petitioner came to know that the 1st respondent took physical possession of the Hospital premises pursuant to an order dated 12.07.2018 passed by the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act in Crl.M.P.No.3133 of 2018. Challenging the order passed by the Chief Metropolitan Magistrate dated 12.07.2018, the petitioner has filed the Writ Petition.

3.The 1st respondent filed a counter denying the averments stated in the affidavit filed in support of the petition. Further, the 1st respondent contended that the Writ Petition challenging the Section 14 order is not maintainable and the parties will have to avail the alternate remedy of approaching the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. Further, the 1st respondent has stated that the present Writ Petition seeking to regain possession of the secured asset, the possession of which has been taken over by the respondent in accordance with law pursuant to the order passed by the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act in Crl.M.P.No.3133 of 2018, is nothing but a delaying tactics adopted by the petitioner.

3.1.That apart, the respondent has also stated that the petitioner undertook to settle the entire amount due to the respondent within a period of 45 days and also filed an affidavit of undertaking on 17.10.2018, which was also taken on record by this Court, but did not take even the least of the steps towards the same and now comes out with prayers which are beyond the scope of the Writ Petition and by making new averments purely by way of after-thought.

3.2.Further, in the counter it has been stated by the respondent that the respondent is only interested in getting back the money which they have lent to the petitioner and the moment the monies are repaid, the possession will naturally be handed over to the petitioner and therefore, there is no impediment, whatsoever, for the petitioner to get back possession of the secured asset by repaying the amounts due to the respondent and starting the Hospital thereafter for which ample and sufficient opportunities have been given not only by the respondent, but also by this Court and the petitioner has still got such opportunity, till such time the sale notice is issued to them as per the provisions of the SARFAESI Act.

3.3.With regard to the reply dated 03.10.2017 sent by the petitioner, the respondent has stated that in their reply the petitioner admitted the demand made by the 1st respondent and has stated that they are taking earnest steps to settle the outstanding amount at the earliest and requested the 1st respondent to grant three months time for settling the outstanding dues, therefore, the petitioner has not disputed the

demand made by the 1st respondent and has only sought for time to settle the outstanding dues. In these circumstances, the 1st respondent prayed for dismissal of the Writ Petition.

4. Heard Mr.P.S.Raman, learned Senior Counsel appearing for Mr.N.Raja Senthoo Pandian and Mr.Kunal Vijani, learned counsel on record for the petitioner and Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.T.Saikrishnan, learned counsel on record for the 1st respondent.

5. The only contention raised by Mr.P.S.Raman, learned senior counsel appearing for the petitioner is with regard to the non consideration of the reply dated 03.10.2017 sent by the petitioner to the 1st respondent to Section 13(2) notice dated 08.08.2017. The learned senior counsel submitted that since the 1st respondent has not considered the reply as per the provisions of Section 13(3-A) of the SARFAESI, the entire proceedings are liable to be set aside.

6. With regard to the contention raised by Mr.AR.L.Sundaresan, learned senior counsel for the 1st respondent as to the maintainability of the Writ Petition, the learned senior counsel appearing for the petitioner submitted that the remedy available to the petitioner - borrower as against the order passed under Section 14 of the SARFAESI Act by the Chief Metropolitan Magistrate is only by way of a Writ Petition and not by way of an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

6.1. In support of his contentions, the learned senior counsel relied on the following judgments:

(i) (2014) 6 SCC 1 [Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others] wherein the Hon'ble Supreme Court held as follows:

"...

29. Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of Section 14 shall be called in question in any Court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any Court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of an other authority or Court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution or because a statutory

provision cannot take away a power vested by the Constitution. To quote, the observations of this Court in *Columbia Sportswear Co. vs. Director of Income Tax* [(2012) 11 SCC 224]:

"17.Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245-S of the Act insofar as it makes the advance ruling of the authority binding on the applicant, in respect of the transaction and on the Commissioner and Income Tax Authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution of the jurisdiction of the High Court under Article 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the authority."

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Article 226 and 227 of the Constitution by any aggrieved party and if such challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law."

(ii)2018 (6) CTC 1 [Bharath Post Graduate College, through its Authorized Signatory, SPE Trust, through its Authorized Signatory, Bhaskar, No.8, Karpagambal Nagar, Mylapore, Chennai - 4 Vs. Indiabulls Housing Finance Limited, rep by its Manager, Old No.60-A, New No.20/3, 1st and 3rd Floors, Apex Chambers, Thiyagaraya Road, T.Nagar, Chennai - 17 and another] wherein the Division Bench of this Court held as follows:

"...

37.We therefore hold, that under Section 13(3-A) of the SARFAESI Act, 2002, that in the event that a borrower makes a representation under Section 13(3-A) of the Act, the Secured Creditor, must communicate reasons for accepting or rejecting the representation of the borrower, within 15 days from the receipt of the representation, failing which, the notice under Section 13(2) would be rendered invalid. The Secured Creditor, would therefore have to issue a fresh Notice under Section 13(2), and start the process again."

7.Countering the submissions made by the learned senior counsel appearing for the petitioner, Mr.AR.L.Sundaresan, learned senior counsel appearing for the 1st respondent submitted

that the petitioner admitted the liability and only sought three months time in their reply dated 03.10.2017 and when no dispute has been raised by the petitioner, the provisions of Section 13 (3-A) shall have no application. Further, the learned senior counsel submitted that the present Writ Petition is not maintainable for the reason that the petitioner has got alternate remedy by way of an appeal under Section 17 of the SARFAESI Act.

7.1. In support of his contentions, the learned senior counsel relied upon the following judgments:

(i) 2018 (2) CTC 569 [ITC Limited Vs. Blue Coast Hotels Ltd., & others] wherein the Hon'ble Supreme Court held as follows:

"...

34. In these circumstances, we have no doubt that the failure to furnish a reply to the representation is not of much significance since we are satisfied that the Creditor has undoubtedly considered the representation and the proposal for repayment made therein and has in fact granted sufficient opportunity and time to the Debtor to repay the debt without any avail. Therefore, in the fact and circumstances of this case, we are of the view that the Debtor is not entitled to the discretionary relief under Article 226 of the Constitution which is indeed an equitable relief.

...

55. As held, we are of the view that non-compliance of sub-section (3-A) of Section 13, cannot be of any avail to the Debtor, whose conduct has been merely to seek time and not repay the loan as promised on several occasions."

(ii) 2018 SCC OnLine Mad 2560 [SPN Krishnamurthy Vs. 1. IDBI Bank Limited, rep by its Deputy General Manager, N. Venkateswaran, NPA Management Group, No. 115, Annasalai, Saidapet, Chennai - 15 and 5 others] wherein we have held that the remedy open to the petitioner for challenging the order passed by the District Collector under Section 14 of the SARFAESI Act is by way of an appeal under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal.

8. On a careful consideration of the materials available on record, the submissions made by the learned senior counsel on either side and also considering the judgments relied upon by the learned senior counsel on either side, it is not in dispute that the petitioner had availed loan from the 1st respondent and that a notice dated 08.08.2017 was issued under Section 13(2) of the SARFAESI Act, calling upon the petitioner to pay a sum of Rs. 44,36,67,947/- along with future interest within sixty days. Thereafter, the petitioner contended that they sent a reply

dated 03.10.2017 to the 1st respondent, however, the same was not considered, which is a clear violation of provisions of Section 13(3-A) of the SARFAESI Act. However, the 1st respondent, in their rejoinder dated 19.10.2017, have stated that the reply dated 03.10.2017 was received by them only on 12.10.2017 (i.e) beyond the sixty days time granted in Section 13(2) notice dated 08.08.2017.

9. On a perusal of the reply dated 03.10.2017, it could be seen that though the reply was addressed to Shri W.F.Moses, the Authorized Officer of the 1st respondent, it was sent to one N.S.Bose on 03.10.2017. The learned senior counsel appearing for the 1st respondent submitted that had the petitioner sent the reply dated 03.10.2017 directly to the Authorized Officer, he would have seen the reply on the very same day, but for the reasons best known to the petitioner, they sent the reply not to the Authorized Officer, but to one N.S.Bose. The learned senior counsel for the 1st respondent further submitted that the said N.S.Bose had forwarded the e-mail to the Authorized Officer only on 12.10.2017.

10. Further, on a perusal of the reply dated 03.10.2017, it is clear that the petitioner had admitted their liability and only sought for three months time to settle the outstanding dues. It is relevant to extract the reply dated 03.10.2017, which reads as follows:

"Zimbra
cmd@santosh.ac.in
Santosh Hospitals Pvt., Ltd., 's Reply to Notice u/s 13(2) of
SARFAESI Act 2002
From : cmd@santosh.ac.in Tue, Oct
03, 2017 10:17 AM
Subject : Santosh Hospitals Pvt., Ltd., 's Reply to Notice u/s
13(2) of
SARFAESI Act 2002
To : ns bose <ns.bose@muthoot.com>, jayachandran s
<jayachandran.s@muthoot.com>, babu s
<babu.s@muthoot.com>
Cc : sant mah727 <sant.mah727@yahoo.in>, Santosh
Mahalingam <sant.mah727@gmail.com>

To
Shri W.F.Moses,
The Authorized Officer,
M/s.Muthoot Fincorp Limited,
Muthoot Centre, Punnen Road,
Trivandrum, Kerala - 695039.
Sub: Notice dated 08.08.2017 issued u/s 13(2) of SARFAESI
Act 2002.
Ref : Loan Agreement dated 16.08.2016 for a sum of

Rs.42,00,00,000/-

Sir,

We are in receipt of your notice dated 08.08.2016 cited above, We admit the demand contained in your notice and are taking earnest steps to settle the same at the earliest. We had also informed you personally on various occasions that we will be settling the entire dues at the earliest.

We request you to support us in our endeavor for abstaining from taking steps under the SARFAESI Act for 3 (three) months from today. We reiterate that within the said duration we shall settle the entire dues once for all.

Thanking you

Yours Sincerely

Dr.P.Mahalingam,
Chairman & Managing Director,
Santosh Hospitals Pvt., Ltd.,
No.1, 7th Avenue,
Besant Nagar, Chennai - 600 090.
Cell: 9811199341 / 9810203149

11.From the above reply it is also clear that the petitioner has not disputed the claim made by the 1st respondent. Infact, they specifically admitted the claim and only sought three months time to settle the outstanding. But inspite of seeking for three months time to settle the outstanding dues as early as on 03.10.2017, it is pertinent to note that even till date, the petitioner has not settled the loan account with the 1st respondent. By their rejoinder dated 19.10.2017, the 1st respondent informed the petitioner that no further time would be granted and that they have taken symbolic possession of the secured asset under the provisions of Section 13(4) of the SARFAESI Act on 11.10.2017.

12.It is also pertinent to note that even before this Court, when the matter came up on 11.10.2018, an undertaking was made by the petitioner that the entire dues payable to the respondent would be paid within a period of 45 days. To that effect, the petitioner has also filed an affidavit of undertaking dated 17.10.2018. Thereafter, without honouring the undertaking given before this Court, the petitioner filed an application seeking for extension of time and this Court also showed indulgence to the petitioner by order dated 05.12.2018 extending the time for compliance till 10.01.2019. Even then, without complying with the undertaking given before this Court, the petitioner again sought for extension of time. However, this Court declined to accept the request of the petitioner and posted the Writ Petition on 28.01.2019 for hearing on merits. Therefore, the conduct of the petitioner has been to merely seek time and not repay the loan as promised by them. Inspite of filing of an

affidavit of undertaking before this Court, so far the petitioner has not honoured their commitment. Therefore, just for the sake of prolonging the matter, they have filed an affidavit of undertaking dated 17.10.2018 before this Court stating that they would settle the entire dues within a period of 45 days.

13. In these circumstances, the ratio laid down by the Apex Court in the judgment reported in 2018 (2) CTC 569 [ITC Limited Vs. Blue Coast Hotels Ltd., & others] squarely applies to the facts and circumstances of the present case. Following the ratio laid down by the Apex Court, we are of the considered view that non-compliance of sub-section (3-A) of Section 13 cannot be of any avail to the petitioner whose conduct has been merely to seek time and not to repay the loan as promised on several occasions.

14. With regard to the maintainability of the Writ Petition is concerned, it is pertinent to note that under Section 17 of the SARFAESI Act, if the petitioner had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then he could have availed the 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 the guarantor or any other person, who may be affected by the action taken under Section 13(4) or Section 14. Both, the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within the fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

15. In the case on hand, the petitioner has not approached the Debts Recovery Tribunal, instead, he has directly filed the above Writ Petition challenging the action taken under Section 14 of the Act.

16.1. In the judgment reported in (2018) 3 Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], the Hon'ble Supreme Court has held as follows:

"...

10. In *Satyawati Tandon* [United Bank of India Vs. *Satyawati Tandon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260], the High Court had restrained [*Satyawati Tandon* Vs. State of U.P., 2009 SCC Online All 2608] further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and

the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding:-

"43.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 a 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, the 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.

* * *

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."

11.In Union Bank of India and another Vs. Panchanan Subudhi, (2010) 15 SCC 552: (2013) 2 SCC (Civ) 221, further proceedings under Section 13(4) were stayed in the writ jurisdiction subject to deposit of Rs.10,00,000/- leading this Court to observe as follows :

"7. In our view, the approach adopted by the High Court was clearly erroneous. When the respondent failed to abide by the terms of one-time settlement, there was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the respondent under Section 17 of the Act."

12. The same view was reiterated in *Kanaiyalal Lalchand Sachdev vs. State of Maharashtra*, (2011) 2 SCC 782 : (2011) 1 SCC (Civ) 570, observing:

"23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*, (2003) 3 SCC 524 : 2003 SCC (Cri) 762; *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675 and *SBI v. Allied Chemical Laboratories*, (2006) 9 SCC 252)"

13. In *Ikbal, Sri Siddeshwara Coop. Bank Ltd., Vs. Ikbal*, (2013) 10 SCC 83 : (2013 4 SCC (Civ) 638, it was observed that the action of the Bank under Section 13(4) of the 'SARFAESI Act' available to challenge by the aggrieved under Section 17 was an efficacious remedy and the institution directly under Article 226 was not sustainable, relying upon *Satyawati Tandon (United Bank of India Vs. Satyawati Tandon)*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260, observing: (*Ikbal, Sri Siddeshwara Coop. Bank Ltd., Vs. Ikbal*, (2013) 10 SCC 83 : (2013 4 SCC (Civ) 638, pp.94-95, paras 27-28)

"27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations,

statutory procedures cannot be allowed to be circumvented.

28. ... In our view, there was no justification whatsoever for the learned Single Judge to allow the borrower to bypass the efficacious remedy provided to him under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts indicated above. The Division Bench also erred in affirming the erroneous order of the Single Judge."

14.A similar view was taken in Punjab National Bank vs. Imperial Gift House, (2013) 14 SCC 622, observing:-

"3. Upon receipt of notice, the respondents filed representation under Section 13(3-A) of the Act, which was rejected. Thereafter, before any further action could be taken under Section 13(4) of the Act by the Bank, the writ petition was filed before the High Court.

4. In our view, the High Court was not justified in entertaining the writ petition against the notice issued under Section 13(2) of the Act and quashing the proceedings initiated by the Bank."

15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate

loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in United Bank of India Vs. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260), has also not been kept in mind before passing the impugned interim order:-

"46. 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 (sic will) 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 Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1 and Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

16.2. In the judgment reported in (2018) 1 Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others], the Apex Court held as follows:

"...

27. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules

8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2), (3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?

28. We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction purchaser in case the auction purchaser commits any default in paying installment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses (a) to (d) and end with measures specified in Rule 9.

29. In our view, therefore, the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).

...

32. In *United Bank of India vs. Satyawati Tondon & Ors.*, (2010) 8 SCC 110, this Court had the occasion to examine in detail the provisions of the SARFAESI Act and the question regarding invocation of the extraordinary power under Article 226/227 in challenging the actions taken under the SARFAESI Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge the actions taken under the SARFAESI Act and made following pertinent observations which, in our view, squarely apply to the case on hand:

"42. There is another reason why the impugned order should be set aside. If Respondent 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 the 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.

43. 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 a 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, the 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.

44. 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.

45. 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."

17. In the judgment reported in (2011) 2 Supreme Court Cases 782 [Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others], the Hon'ble Supreme Court held as follows:

"...

22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh Vs. Natinal Insurance Co. Ltd.*, (2003) 3 SCC 524 : 2003 SCC (Cri) 762; *Surya Dev Rai Vs. Ram Chander Rai*, (2003) 6 SCC 675 and *SBI VS. Allied Chemical Laboratories*, (2006) 9 SCC 252)."

18. Following the ratio laid down by the Apex Court, the Division Bench of this Court in the judgment reported in (2015) 5 MLJ 358 [Deccan Chronical Holdings Limited, A Company incorporated under the Companies Act, 1956, having its Registered Office at Secunderabad - 500 003, Andhra Pradesh Vs. Canara Bank, represented by its Authorized Officer, Prime Corporate Branch, TSR Complex, S.P.Road, Secunderabad - 500 003] held as follows:

“... ”

13. Section 13(4) stipulates taking over symbolic possession of the secured assets. Section 14 contemplates taking physical possession of the secured assets with the assistance of the order of the CMM or District Magistrate, as the case may be. Both actions come within the definition of measure/action under sub-section (4) of Section 13, and as such, the appeal under Section 17 SARFAESI Act against the order passed under Section 14 of the SARFAESI Act is maintainable. The handing over of possession of the borrower or taking over possession of the secured asset by the secured creditor pursuant to the order passed under Section 14 is not mandatory or pre-condition for the purpose of preferring an appeal under Section 17 of the SARFAESI Act.”

19. The ratio laid down in the judgment reported in (2014) 5 MLJ 613 (SC) : (2014) 6 Supreme Court Cases 1 [Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others] is that no remedy of appeal under Section 17 of the SARFAESI is available to the lessee/tenant, who is in lawful possession, to the Debts Recovery Tribunal against the decision of Chief Metropolitan Magistrate or the District Collector for the reason that the Tribunal is not competent and has no power to restore the possession of the property to any other person including lessees, except the borrower. However, an appeal, at the instance of the borrower or guarantor against the order passed under Section 14 of the SARFAESI by the Chief Metropolitan Magistrate or the District Collector, is maintainable under Section 17 of the SARFAESI Act. In the said judgment, the Division Bench held that an appeal preferred under Section 17 of the SARFAESI Act by the borrower as against the order passed under Section 14 of the SARFAESI Act is very much maintainable. In the instant case, since the petitioner is the borrower, they have got remedy by way of an appeal under Section 17 of the SARFAESI Act as against the order passed by the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act. In these circumstances, the present Writ Petition cannot be entertained.

20. The learned senior counsel appearing for the petitioner submitted that at the time of taking physical possession of the secured asset, the Hospital was not functioning for few months for the reason that the petitioners have temporarily closed down the entire Hospital premises for renovation work.

21.For the reasons stated above, the Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Station House Officer,
J-5, Shastri Nagar Police Station,
Chennai.

2.The Station House Officer,
J-6, Thiruvanmiyur Police Station,
Chennai.

+1 CC to Mr.T. Saikrishnan, Advocate sr 15707.

+5 Ccs to Mr.N. Raja Senthoo Pandiyan, Advocate sr 15263.

W.P. No.24867 of 2018 and
W.M.P.Nos.28903, 28904 of 2018
and W.M.P.Nos.4411 to 4414 & 4396 of 2019

SP(20/02/2019)

सत्यमेव जयते
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