

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No. 23351 of 2018**

**Date of decision: April 12, 2019**

**Amiti Gupta and others**

**.....Petitioners**

**Vs.**

**State Bank of India and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL  
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Saurabh Goel, Advocate for the petitioners.

Mr. Anupm Gupta, Sr. Advocate with Mr. Gaurav Goel,  
Advocate for respondent No.1

Mr. Ashwani Chopra, Sr. Advocate with Mr. Ashutosh Jerath,  
Advocate for respondents No. 2 and 3.

**Ajay Kumar Mittal,J.**

1. The petitioners through the instant writ petition pray for a writ in the nature of certiorari for quashing the impugned sale notice dated 06.03.2018, Annexure P.1 and all proceedings and actions taken by respondent No.1-State Bank of India consequent and pursuant thereto, including auction proceedings dated 20.04.2018, Annexure P.2, sale confirmation letter dated 23.04.2018, Annexure P.3, qua house No.315, Sector-9, Panchkula being wholly, arbitrary, illegal, unfair and unjust, thereby causing undue loss to them. Direction has also been sought to respondent No.1-Bank to consider the offer of a much higher price of ₹ 2.05 crore than the auction price of ₹ 1,81,50,000/- for the house in question.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Petitioners No.1 and 2

were owners of residential house No. 315, Sector-9, Panchkula which was mortgaged as collateral security for availing loan from respondent No.1-bank. The loan was availed by M/s Swami Automobiles Private Limited in which son of the petitioner No.2 and brother of petitioner No.1 is one of the Directors. M/s Swami Automobiles Private Limited defaulted in re-payment of the loan. Respondent No.1-bank in exercise of powers under the provisions of Securitization and Reconstruction of Financial Assets Enforcement of Securities Interest Act, 2002 ("SARFAESI Act") issued the notice under Section 13(2) and Section 13(4) of the said Act and also took symbolic possession. Thereafter, part physical possession of the house in question was also taken by respondent No.1-bank. Since, the borrower-M/s Swami Automobiles Private Limited who had entered into one time settlement with respondent No.1-bank and had failed to honour the terms thereto, the bank had put the properties to sale, including the only residential house i.e. House No. 315, Sector-9, Panchkula where the petitioners were residing. In pursuance to the sale notice, auction proceedings took place on 20.04.2018 and for the property situated in the prime location/sector of Panchkula. Respondents No.2 and 3 jointly were the sole participants and were the only bidder. Against the reserve price of ₹ 1,81,00,000/-, a bid of ₹ 1,81,50,000/- was received. According to the petitioners, despite having received only one bid for the residential house in question, the sale was confirmed by the bank vide sale confirmation letter dated 23.04.2018. The petitioners allege that respondent No.1-bank acted in collusion with the bidder and wrongly confirmed the sale. According to the petitioners, the market value of the residential house in question with latest design and construction is much higher than the reserve price fixed by respondent No.1-Bank or the price offered by the bidder. Respondents No.

2 and 3-auction purchasers, who had made an offer of ₹ 1,81,50,000/-, had paid only 50% of the said amount. Against the cancellation of one time settlement by the bank, M/s Swami Automobiles Private Limited had filed CWP No. 7559 of 2018 in this Court on 20.03.2018. During the pendency of the said writ petition, respondent No.1-bank carried out the auction proceedings vide notice dated 06.03.2018. Since the petitioners were residing in the said residential house and had no other place to go, respondent No.1-bank had filed CWP No. 16811 of 2018 in this Court seeking directions to the Tehsildar, Panchkula to help in getting possession of the said house. Upon notice, petitioners No. 1 and 2 appeared. The petitioners offered to pay a sum of ₹ 2 crore as against the offer of ₹ 1,81,50,000/- made by respondent No.2-auction purchaser. The petitioners had arranged the draft for a sum of ₹ 2 crore and the said amount was paid to the bank in Court. CWP No. 16811 of 2018 filed by bank came up for hearing on 06.09.2018 alongwith CWP No. 7559 of 2018 filed by M/s Swami Automobiles Private Limited against the cancellation of one time settlement. CWP No. 7559 of 2018 was withdrawn by M/s Swami Automobile Private Limited with liberty to avail remedy in accordance with law. Since CWP No. 16811 of 2018 was filed by the bank for possession of the secured asset and petitioners No. 1 & 2 were respondents in the said writ petition, they could not have questioned the validity of the auction proceedings. As the auction proceedings had taken place during the pendency of CWP No. 7559 of 2018 filed by M/s Swami Automobiles Private Limited, it was considered appropriate by petitioners No. 1 and 2 to seek refund of ₹ 2 crores and to hand over keys of the house in question in CWP No. 16811 of 2018 filed by the bank as no relief could have been sought by them in the said proceedings. According to petitioners, the action

of respondent No.1-bank in accepting the solitary bid of ₹ 1,81,50,000/- as against reserve price of ₹ 1,81,00,000/- for the property capable of fetching much higher price is arbitrary and unfair. The petitioners assert that they have a buyer ready to put the secured asset for a sum of ₹ 2,05,00,000/- and the entire payment could be made as and when directed by this Court. Hence the instant writ petition by the petitioners.

3. A written statement has been filed on behalf of respondent No.1 – State Bank of India wherein it has been inter alia stated that one M/s Swami Automobiles Private Limited through its directors namely Sh.Pradeep Mittal and Smt.Monika Mittal had availed the loan facility from the respondent Bank to the tune of ₹ 12 crores in the year 2015. The petitioners stood as guarantors for the loan availed by the borrower. The property i.e. H.No.315, Sector 9, Panchkula was mortgaged as security with the Bank by the petitioners. The borrower did not adhere to Financial Discipline and thus the loan was classified as NPA on 23.10.2015. Notice under Section 13(2) of the SARFAESI Act was issued by the Bank to the borrower. Thereafter, the Bank issued notice under Section 13(4) of the SARFAESI Act for certain amount including interest and other charges which were due and payable by the borrower. Some property was sold on 29.11.2017 and sale proceeds were adjusted towards the outstanding amount. In order to recover its dues, the Bank filed an application under Section 14 of the SARFAESI Act before the District Magistrate, Panchkula for taking possession of the mortgaged property. In spite of orders of the District Magistrate, the Bank was not able to take physical possession of the mortgaged properties. Even one time settlement was arrived with the Bank but the petitioners defaulted in payment. CWP No.7559 of 2018 was filed by the petitioners for extension/revival of one time settlement. The

properties were put on auction on 20.4.2018. The properties were sold. During the hearing of CWP No.7559 of 2018, a direction was issued to the borrower to bring any buyer paying more than the highest bid received by the Bank. The borrower did not bring any buyer. The proposals given by the borrower were rejected by the Bank. Thereafter, respondent Nos. 2 and 3 deposited the balance payment and the bank issued sale certificate to them. On these premises, prayer for dismissal of the petition has been made.

4. In the written statement filed on behalf of respondent Nos. 2 and 3, it has been inter alia stated that the petitioners have filed the present writ petition at the behest of Shri Pardeep Mittal, Director of M/s Swami Automobiles Private Limited, Chandigarh who after having failed to get any relief in CWP No.7559 of 2018 propped up the present petitioners to assail sale notice dated 6.3.2018 and all consequent proceedings thereto with the sole objective of negating the outcome of auction conducted by respondent No.1. It has been further stated that respondent No.1 has already issued sale certificate after having received the entire payment of sale price from respondent Nos. 2 and 3. A replication to the written statement on behalf of respondents No.2 and 3 has been filed by the petitioners inter alia controverting the averments made in the written statement and reiterating the contents of the writ petition.

5. The SARFAESI Act was enacted to regulate securitization 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. Section 17 of the SARFAESI Act has been amended w.e.f 1.9.2016, whereby the words “Application against measures to recover secured debts” are substituted in place of “Right to appeal”. Sub-section (1) of Section 17 of the SARFAESI

Act entitles a person to file an application within 45 days to the Tribunal against any of the measures referred to in Section 13(4) thereof. By the use of the expression “aggrieved by any of the measures”, Section 17(1) makes it clear that the measures contemplated under Section 13(4) provide continuity to the cause of action. An Explanation has been added to [Section 17\(1\)](#) clarifying that the communication of reasons to the borrower in terms of [Section 13\(3-A\)](#) shall not constitute a ground for filing application under [Section 17\(1\)](#). Sub-section (2) of [Section 17](#) casts a duty on the Tribunal to consider whether the measures taken by the secured creditor for enforcement of security interest are in accordance with the provisions of the Act and the Rules made thereunder. If the Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that the measures taken by the secured creditor are not in consonance with sub-section (4) of [Section 13](#), then it can direct the secured creditor to restore management of the business or possession of the secured assets to the borrower. On the other hand, if the Tribunal finds that the recourse taken by the secured creditor under sub-section (4) of [Section 13](#) is in accordance with the provisions of the Act and the Rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor can take recourse to one or more of the measures specified in [Section 13\(4\)](#) for recovery of its secured debt. Sub-section (5) of [Section 17](#) prescribes the time-limit of sixty days within which an application made under [Section 17](#) is required to be disposed of. The proviso to this sub-section envisages extension of time, but the outer limit for adjudication of an application is four months. If the Tribunal fails to decide the application within a maximum period of four months, then either party can move the Appellate Tribunal for issue of a

direction to the Tribunal to dispose of the application expeditiously. Sub section (7) makes the provisions of the 1993 Act applicable to the DRT while dealing with an application under Section 17 of the SARFAESI Act.

6. Admittedly, in the present case, the petitioners were owners of the residential house in question i.e. H.No.315, Sector 9, Panchkula. The said house was mortgaged as collateral security for availing loan from respondent No.1 Bank. The loan was availed by M/s Swami Automobiles Private Limited in which son of petitioner No.2 and brother of petitioner No.1 was one of the Director. M/s Swami Automobiles Private Limited defaulted in repayment of the loan. Respondent No.1 in exercise of the powers under the provisions of the SARFAESI Act issued notice under Section 13(2) and 13(4) of the said Act and took symbolic possession. Thereafter, part physical possession of the house was also taken by the Bank. Since M/s Automobiles Private Limited who entered into one time settlement with the Bank, failed to honour the terms thereof, the Bank put the properties to sale including the residential house in question in which the petitioners were residing. Thereafter, M/s Automobiles Pvt. Limited filed CWP No.7559 of 2018. During the pendency of the said writ petition, auction proceedings took place in which respondent Nos. 2 and 3 were the only bidder. Against the reserve price of ₹1,81,00,000/-, a bid of ₹1,81,50,000/- was received. Despite having only one bid, the respondent Bank confirmed the sale. The market value of the house in question was much higher than the reserve price. Respondent Nos. 2 and 3 paid only 50% of the said amount. Since the petitioners were residing in the said house and had no other place, respondent bank filed CWP No.16811 of 2018 before this court seeking directions to the Tehsildar, Panchkula to help respondent No.1 in getting possession of house. Upon notice, the petitioners appeared

and offered to pay a sum of ₹ 2 crores which was paid in court. When CWP No.16811 of 2018 came up for hearing alongwith CWP No.7559 of 2018 on 6.9.2018, M/s Automobiles Pvt. Limited withdrew its writ petition with liberty to avail remedy in accordance with law. Since in CWP No.16811 of 2018, the petitioners were respondents, they could not have questioned the validity of auction proceedings. Thus, the petitioners decided to seek refund of ₹ 2 crores and to hand over keys of the house to the Bank.

7. Section 17(1) of the SARFAESI Act makes it clear that the measures contemplated under Section 13(4) of the Act provide continuity to the cause of action. In the present case, against the action of the respondent Bank in accepting the only bid and confirming the sale, the petitioners have an alternative effective remedy of filing an application under Section 17 of the SARFAESI Act.

8. Examining the case law on the subject, reference is made to pronouncements of the Apex Court and various High Courts. In *Agarwal Tracom Private Limited vs. Punjab National Bank and others*, (2018) 1 SCC 626, the question before the Apex Court was as to whether the High Court was justified in holding that the remedy of the auction purchaser lies in challenging the action of the secured creditor in forfeiting the deposit by filing an application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal or the remedy of the auction purchaser is in filing writ petition under Articles 226/227 of the Constitution of India to examine the legality of such action? After considering the relevant statutory provisions of the SARFAESI Act and the case law on the point, it was held that the writ court was justified in dismissing the writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of the SARFAESI Act before the Tribunal concerned to

challenge the action of the secured creditor in forfeiting the auction purchaser's deposit under Rule 9(5) of the Security Interest (Enforcement) Rules, 2002. The relevant paras of the judgment read thus:

“17. The short question that arises for consideration in this appeal is whether the High Court was justified in holding that the remedy of the appellant (auction purchaser) lies in challenging the action of the secured creditor (PNB) in forfeiting the deposit by filing an application under Section 17 of the SARFEASI Act before the DRT or the remedy of auction purchaser is in filing the writ petition under [Articles 226/227](#) of the Constitution of India to examine the legality of such action?

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33. In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under [Section 17\(1\)](#) of SARFAESI Act before the Tribunal concerned to challenge the action of the PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court.”

8. In ***K. Chidambara Manickam vs. Shakeena and others***, AIR 2008 Madras 108, it was held by the Madras High Court that on the date of filing of the writ petitions, the entire proceedings under Section 13(4) of the Act had come to an end and become final by issuance of sale certificate under sub rule (7) of Rule 9 of the Security Interest (Enforcement) Rules, 2002 on 6.1.2006. The writ petitions had been prepared and signed by the parties only on 19.1.2006. In such circumstances, it was held that the proper course for the borrowers would be to prefer an appeal before the appellate Tribunal against the order of the Tribunal under the provisions of the Act.

9. In *Sales Officer Vinubhai Rabhai Patel & 1 others vs. State of Gujarat and 2 others*, 2018(1) Guj LH 13, the property in question was purchased by the auction purchaser in auction sale and sale certificate was also issued to him. The necessary entries of mutation were made after the registered sale deed was executed in favour of auction purchaser. Then the borrower challenged the auction sale by filing a revision. The borrower had not exercised the right of appeal before the Tribunal against the award of the Board. It was held by the Gujarat High Court that when the borrower had not taken recourse to appeal as provided in the statute, he cannot have resort to revision as normally the revisional power can be exercised only when no appeal is provided as against the order or award. The borrower also did not challenge the sale certificate issue in favour of the auction purchaser.

10. In *GM Sri Siddeshwara Cooperative Bank Limited and another vs. Sri Iqbal and others*, 2013(8) SCR 532, the borrower had been chronic defaulter in repayment of the loan amount. The immovable property was put up for auction more than six months after the notice under Section 13(2) of the Act was given to him by the bank. The borrower did not avail of that remedy and further remedies from that order and instead directly approached the High Court. It was held by the Apex Court that where an effective remedy was available to the aggrieved person, the High Court must insist that before availing the remedy under Article 226, the alternative remedies available to him under the relevant statute are exhausted.

11. In *Union Bank of India vs. Satyawati Tondon*, 2010(8) SCC 110, the Court was concerned with an argument of alternative remedy

provided under [Section 17](#) of SARFAESI Act. Dealing with this argument, the Court had observed that where an effective remedy was available to the aggrieved person, the High Court must insist that before availing the remedy under [Article 226](#) the alternative remedies available to him under the relevant statute are exhausted. In paragraphs 43, 44 and 45, the Court stated as follows:

“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.”

12. Further, the Apex Court in *Commissioner of Income Tax and others vs. Chhabil Dass Agarwal*, (2013) 357 ITR 357, considered the question of entertaining writ petition where alternative statutory remedy was available. After examining the relevant case law on the point, it was recorded as under:-

“14. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under [Section 148](#) of the Act in exercise of its jurisdiction under [Article 226](#) when an equally efficacious alternate remedy was available to the assessee under the Act.

15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under [Article 226](#) despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under [Article 226](#). (See: *State of U.P. vs. Mohammad Nooh*, AIR 1958 SC 86;

*Titaghur Paper Mills Co. Ltd. vs. State of Orissa*, (1983) 2 SCC 433; *Harbanslal Sahnia vs. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107; *State of H.P. vs. Gujarat Ambuja Cement Ltd.*, (2005) 6 SCC 499).

16. The Constitution Benches of this Court in *K.S. Rashid and Sons vs. Income Tax Investigation Commission*, AIR 1954 SC 207; *Sangram Singh vs. Election Tribunal, Kotah*, AIR 1955 SC 425; *Union of India vs. T.R. Varma*, AIR 1957 SC 882; *State of U.P. vs. Mohd. Nooh*, AIR 1958 SC 86 and *K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras*, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

(See: *N.T. Veluswami Thevar vs. G. Raja Nainar*, AIR 1959 SC 422; *Municipal Council, Khurai vs. Kamal Kumar*, (1965) 2 SCR 653; *Siliguri Municipality vs. Amalendu Das*, (1984) 2 SCC 436; *S.T. Muthusami vs. K. Natarajan*, (1988) 1 SCC 572; *Rajasthan SRTC vs. Krishna Kant*, (1995) 5 SCC 75; *Kerala SEB vs. Kurien E. Kalathil*, (2000) 6 SCC 293; *A. Venkatasubbiah Naidu vs. S. Chellappan*, (2000) 7 SCC 695; *L.L. Sudhakar Reddy vs. State of A.P.*, (2001) 6 SCC 634; *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra*, (2001) 8 SCC 509; *Pratap Singh vs. State of Haryana*, (2002) 7 SCC 484 and *GKN Driveshafts (India) Ltd. vs. ITO*, (2003) 1 SCC 72).

17. In *Nivedita Sharma vs. Cellular Operators Assn. of India*, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the

statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

“12. In *Thansingh Nathmal v. Supdt. of Taxes*, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under [Article 226](#) trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under [Article 226](#) of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11)

“11. ... It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford*, 141 ER 486 in the following passage: (ER p. 495) ‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to

cases of the second class. The form given by the statute must be adopted and adhered to.’ The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.*, 1919 AC 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.*, 1935 AC 532 (PC) and *Secy. of State v. Mask and Co.*, AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”

14. In *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

“77. ... So far as the jurisdiction of the High Court under [Article 226](#)—or for that matter, the jurisdiction of this Court under [Article 32](#)—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under [Article 226/Article 32](#), the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.” (See: *G. Veerappa Pillai v. Raman & Raman Ltd.*, AIR 1952 SC 192; *CCE v. Dunlop India Ltd.*, (1985) 1 SCC 260; *Ramendra Kishore Biswas v. State of Tripura*, (1999) 1 SCC 472; *Shivgonda Anna Patil v. State of Maharashtra*, (1999) 3 SCC 5; *C.A. Abraham v. ITO*, (1961) 2 SCR 765; *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433; *H.B. Gandhi v. Gopi Nath and Sons*, 1992 Supp (2) SCC 312; *Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1; *Tin Plate Co. of India Ltd. v. State of Bihar*, (1998) 8 SCC 272; *Sheela Devi v. Jaspal Singh*, (1999) 1 SCC 209 and *Punjab National Bank v. O.C. Krishnan*, (2001) 6 SCC 569)

18. In *Union of India vs. Guwahati Carbon Ltd.*, (2012) 11

SCC 651, this Court has reiterated the aforesaid principle and observed:

“8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in *Munshi Ram v. Municipal Committee, Chheharta*, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

“23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.””

19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under [Article 226](#) of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

20. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the

jurisdiction of the High Court under [Article 226](#) of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In [Ram and Shyam Co. vs. State of Haryana](#), (1985) 3 SCC 267 this Court has noticed that if an appeal is from “Caesar to Caesar’s wife” the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case.”

13. This Court in *Larsen and Toubro Limited v. The State of Haryana and others*, 2012(2) 166 PLR 345, considering the question of entertaining writ petition where alternate statutory remedy was available, had in paras 6 and 7 observed thus :-

“6.The following are the broad principles when a writ petition can be entertained without insisting for adopting statutory remedies:-

- i) where the writ petition seeks enforcement of any of the fundamental rights;
- ii) where there is failure of principles of natural justice; or
- iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

7. We are not inclined to entertain this petition against the assessment order as it does not fulfill any of the broad outlines noticed herein above.....”.

14. Adverting to the judgments relied upon by the learned counsel for the petitioners, it may be noticed that in *Valji Khimji and Company vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and*

*others*, (2008) 9 SCC 299, it was held by the Apex court that the auction is not complete and no rights accrue until the sale is confirmed by the competent authority. Once the sale is confirmed by the said authority, certain rights accrue in favour of the auction purchaser and these rights cannot be extinguished except in exceptional cases such as fraud or collusion. In *Mathew Varghese vs. M.Amritha Kumar and others*, (2014) SCC 610, the Supreme Court was considering strict compliance with the prescribed procedure and requirements under the provisions of the SARFAESI Act. Any violation of the mandatory requirements was held to be invalid. In *Vasu P.Shetty vs. Hotel Vandana Palance and others*, (2014) 5 SCC 660, it was recorded by the Apex Court that borrower's efforts to thwart the sale of the secured property cannot be taken as waiver of mandatory requirements under Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. Similar was the position in *J.Rajiv Subramaniyan and another vs. Pandiyas and others*, (2014(5) SCC 651. In *State of Punjab and others vs. Shreyans Industries Limited and others*, (2016) 4 SCC 769, the issue before the Apex Court was with regard to extension of the period of limitation under Section 11(10) of the Punjab General Sales Tax Act, 1948 for the purposes of assessment of returns filed within the prescribed period. It was held that power to extend time is to be exercised before the normal period of assessment expires. It cannot be exercised after prescribed period has expired. In *Rakesh Birani (dead) through legal representatives vs. Prem Narain Sehgal and another*, (2018) 5 SCC 543, the issue was with regard to requirement specified under Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 to deposit balance 75% purchase price within 15 days of confirmation. It was held that the day of confirmation is not the same as day of auction. The said period of 15

days would start from the day of confirmation of sale by secured creditor.

In *New India Assurance Company Limited vs. Hilli Multipurpose Cold Storage Private Limited*, (2015) 16 SCC 20, it was held that District Forum can grant maximum of 45 days to file reply/version by opposite party under the provisions of the Consumer Protection Act, 1986. The propositions of law enunciated in these judgments are unexceptionable. However, the issue involved in the present case being different, the petitioners cannot derive any advantage from the said decisions.

15. In the present case, since the action taken by the respondent-Bank in auctioning the residential house in question on account of default in repayment of the loan, was in continuation of the measures provided under Section 13(4) of the Act, the petitioners have an alternative effective remedy of filing an application under Section 17 of the Act. The petitioners instead of availing that remedy, have approached this Court under Article 226 of the Constitution of India. In view of the law laid down by the Apex Court on the point, we are unable to entertain this petition in writ jurisdiction. Consequently, the petition is dismissed. However, it will be open for the petitioners to take recourse to the alternative remedies in accordance with law. Needless to say, anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy.

**(Ajay Kumar Mittal)**  
**Judge**

**April 12, 2019**  
**‘gs’**

**(Manjari Nehru Kaul)**  
**Judge**

**Whether speaking/reasoned**  
**Whether reportable**

**Yes**  
**Yes**