

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 14-08-2020****Delivered on 28-08-2020****WA No. 328 of 2020**

(Arising out of order dated 5.8.2020 passed by learned Single Judge  
in WPC No.1687/2020)

1. Jigeshwar Prasad Deshmukh, S/o Dev Singh Deshmukh, aged about 42 years, R/o Kotgaon, Tahsil Gunderdehi, District Balod (CG)
2. Dev Singh, S/o Ramhokormi Deshmukh, aged about 80 years, R/o Kotgaon, Tahsil Gunderdehi, District Balod (CG)

**---- Appellants****Versus**

1. Authorized Officer, Bank Of Baroda ,Padmanabhpur Branch , District Durg (CG)
2. District Magistrate Balod, District Balod.

**---- Respondents**


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|---------------------|---|----------------------------------------------|
| For Appellants      | : | Shri T.K. Jha, Advocate                      |
| For Respondent No.1 | : | Shri Ankit Singhal, Advocate                 |
| For Respondent No.2 | : | Shri Sudeep Agrawal, Dy. Advocate<br>General |

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**Hon'ble Shri PR Ramachandra Menon,CJ****Hon'ble Shri Parth Prateem Sahu, J****CAV Order****Per Parth Prateem Sahu, J**

1. Interference declined by learned Single Judge in writ petition filed by appellants challenging the order dated 25.3.2019 passed by the District Magistrate, Balod under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (henceforth 'the Act of 2002') and the order dated 11.6.2019 passed by the Commissioner, Durg Division, Durg is put to challenge in this appeal.

2. Facts of the case, in brief, are that the petitioners/appellants herein availed credit facility of Rs.12,00,000/- from the respondent Bank and as a security towards repayment of loan, the petitioners/appellants deposited with the respondent Bank, the title document of their property bearing Khasra No.261, area 0.05 hectare, situated at Village Kondagaon, District Balod (CG). Petitioners/ appellants defaulted in making payment of outstanding debts to the respondent Bank, their account was declared as 'Non-performing Asset (NPA)' and a notice under Section 13 of the Act of 2002 was issued to them as also the person who stood guarantor for them on 2.2.2017, asking them to make payment of outstanding debts within the period of sixty days. On petitioners/appellants' failure to make good the defaults by making deposit of loan amount within stipulated time, action under Section 13 (4) of the Act of 2002 was taken by the respondent Bank with respect to the secured assets and a notice was issued on 15.5.2017 taking symbolic possession of the property mortgaged towards security of loan advanced. A publication in two daily newspapers was also made on 19.5.2017 & 20.5.2017 informing general public that symbolic possession of the secured assets has been taken. Even after publication of notice of symbolic possession, the petitioners/appellants failed to make any deposit towards outstanding debts to the respondent bank or challenge the proceeding under Section 13 (4) of the Act of 2002. Thereafter, the respondent bank made an application before

the Collector-cum-District Magistrate, Balod under Section 14 of the Act of 2002 for physical possession of the property. The District Magistrate issued notice to the petitioners/appellants, but they did not take part in the proceeding. The Collector-cum-District Magistrate passed the order dated 25.3.2019 (Annexure P-4) directing the Tahsildar, Gunderdehi to take physical possession of the secured assets and documents relating thereto, and to forward the same to the Authorized Officer of the respondent bank.

3. Feeling aggrieved by the order dated 25.3.2019, the petitioner/appellant herein preferred WPC No.1687/2020 before the High Court seeking for following reliefs:-

“10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records relating to this case.

10.2. That, this Hon'ble Court may kindly be pleased to allow the petition and quash the impugned orders dated 25.03.201 passed by the Distt. Magistrate Balod (ANNEXURE P/4) and order dt. 11.06.2019 passed by the Commissioner Durg division (ANNEXURE P/5) in the interest of justice.

10.3 That, any other relief, which this Hon'ble Court may deem fit and proper together with cost of the petition.”

4. The learned Single Judge after hearing learned counsel for the petitioners and learned counsel for respondent bank, dismissed the writ petition vide order 5.8.2020 holding it to be hit by delay and laches and that an efficacious alternative remedy under Section 17 of the Act of 2002 is available to the petitioners/appellants.

5. Mr. Jha, learned counsel representing the appellants would submit that the Single Judge erred in dismissing writ petition on the ground of delay & laches ignoring the explanation offered by appellants for such delay in preferring writ petition. He submits that the appellants are poor persons residing in remote area of the State and they are not aware about the law of limitation. After passing of the orders, Annexure P-4 & P-5 to writ petition, the appellants got confused as to what proceeding should they institute to protect their interest and thereafter due to unprecedented global pandemic 'Covid-19' situation, the appellants could not approach the High Court. He also submits that availability of alternative remedy under the Act of 2002 will not be a bar for invoking the power under Article 226 of the Constitution in the light of catena of decisions of Hon'ble Court including in the matters of **Maharashtra Chess Association Vs. Union of India (UOI) & ors** reported in **2019 (10) SCALE 67** & **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited & ors** reported in **(2014) 6 SCC 1** that that the alternate remedy by itself may not be a bar for invoking the power under Article 226 of the Constitution of India.

On merit, it is contended by learned counsel for the appellants that Section 14 of the Act of 2002 empowers only the Chief Metropolitan Magistrate or District Magistrate to take possession or to cause step to take proceeding. But, in this

case, the proceedings were drawn under the signature of the Collector and not of District Magistrate, as is evident from the order sheets of proceeding under Section 13 (4) of the Act of 2002 placed on record as Annexure P-3 to writ petition, therefore, the entire proceeding under Section 13 (4) of the Act of 2002 is null and void. Further the provision of Section 14 of the Act of 2002 mandates the authority to pass suitable orders within a period of thirty days from the date of application, but in this case, the order dated 25.3.2019 has been passed beyond the period prescribed under Section 14 of the Act of 2002 and no explanation has been mentioned in the order for not passing the order within the period prescribed. It is further pointed out that the order Annexure P-4 is passed in violation of the principles of natural justice as no opportunity of hearing was afforded to the appellants and without recording compliance of the order of paper publication, the appellants were proceeded ex-parte and the order dated 25.3.2019 was passed in an arbitrary manner.

6. Mr. Ankit Singhal, learned counsel representing the respondent bank submits that after classification of account of appellants' as 'NPA', the proceedings under Section 13 of the Act of 2002 were drawn. However, the appellants did not turn up and made deposits to make good the defaults committed by them, forcing the respondent bank to file an application under Section 13 (4) of the Act of 2002 before the District

Magistrate concerned, who vide order dated 25.3.2019 ordered for delivery of physical possession of secured assets to the respondent bank. The order under Section 13 (4) was passed much prior to passing of order under Section 14 of the Act of 2002 but that order under Section 13 (4) of the Act of 2002 was not challenged by appellants. Proceeding under Section 14 of the Act of 2002 is only with regard to taking possession of the secured assets when borrower fails to fulfill his obligation. He further submits that in the order dated 25.3.2019, the District Magistrate has clearly recorded that notice for initiating proceeding under Section 13 (4) of the Act of 2002 dated 15.5.2017 was published in two daily newspapers and symbolic possession was already taken. He also submits that exercise of jurisdiction under Section 14 of the Act of 2002 by the District Magistrate is a ministerial function for which notice to the borrower or guarantor is not necessary. Section 14 of the Act of 2002 does not grant adjudicating power to the District Magistrate. The learned Single Judge taking into consideration all the aspects of the matter has rightly dismissed writ petition vide impugned order on the ground of delay & laches and it does not call for any interference. Even if it is accepted that due to wrong advice, the appellants have approached the Commissioner, Durg Division, Durg challenging the order dated 25.3.2019 passed by the District Magistrate under Section 14 of the Act of 2002, then also the Commissioner rejected appellants' application

on 11.6.2019, whereas writ petition before the High Court has been filed on 18.7.2020 i.e. after a lapse of about one year and no explanation has been offered for such an inordinate delay in preferring writ petition. He further submits that the statutory remedy of approaching the Debt Recovery Tribunal under Section 17 of the Act of 2002 is available to the appellants, but instead of availing such remedy, they have filed writ petition before the High Court. He submits that since statutory remedy to appellants is available under the Act of 2002, the writ petition filed by them is not maintainable. In support of aforesaid contention, learned counsel places his reliance on the decisions of Hon'ble Supreme Court in the matters of **United Bank of India vs. Satyawati Tondon & ors** reported in **(2010) 8 SCC 110**; **Kanaiyalal Lalchand Sachdev & ors vs. State of Maharashtra & ors** reported in **(2011) 2 SCC 782**.

Mr. Singhal further submits that after declaration of account of the borrower as NPA, the respondent bank has followed the procedure prescribed under Section 13 (2) & 13 (4) of the Act of 2002 and only thereafter proceeding under Section 13 (4) of the Act of 2002 was initiated. He points out that methods to take possession of secured assets from the secured creditor are discussed by Hon'ble Supreme Court in case of **Standard Chartered Bank v. V. Noble Kumar & ors** reported in **(2013) 9 SCC 620**. He strongly submits that

unless and until the proceeding under Section 13 (4) of the Act of 2002 is challenged, the appellant cannot challenge the proceeding under Section 14 of the Act of 2002. It is contended that reliance placed by learned counsel for the appellants on the judgment of Hon'ble Supreme Court in Harshad Govardhan Sondagar's case (supra) is not applicable to the facts of present case. The said judgment was passed prior to amendment in Section 17 of the Act of 2002 which was brought into force w.e.f. 1.9.2016.

7. We have heard learned counsel for the parties and perused the record.
8. Learned Single Judge has considered the period of limitation for approaching the High Court for exercising the extraordinary jurisdiction under Article 226 of the Constitution of India and has rightly held that no satisfactory explanation has been offered for delay in filing writ petition. The order under Section 13 (4) of the Act of 2002 was passed by the District Magistrate on 25.3.2014 and thereafter the appellants approached the wrong forum i.e. the Court of Commissioner, Durg Division, Durg, by filing an application, which was also rejected vide order dated 11.6.2019. Plea of outburst of Covid-19 pandemic is not available to the appellant as lock-down was ordered only from 25.3.2020.
9. Submission made by learned counsel for appellants that alternative remedy will not bar filing of writ petition under

Article 226 of the Constitution of India by placing reliance in case of Maharashtra Chess Association (supra) is misconceived. The aforementioned judgment passed by Hon'ble Supreme Court is on issue of ousting of jurisdiction of the Court under Clause 21 of the Constitution and bye-laws applicable to that case and the issue of alternative remedy of appeal has not been considered. Appellants will not get any benefit from the said judgment.

10. So far as reliance placed on the judgment of Hon'ble Supreme Court in Harshad Govardhan Sondagar's case (supra) is concerned, the same is also of no help of the appellants as the judgment passed by the Apex Court in the said case is entirely on different facts where the lessee of the borrower has approached the Court by way of filing writ petition and the Supreme Court considering the provision of Section 17 of the Act of 2002, as applicable in that period of time, has passed the order. Now the provision of Section 17 of the Act of 2002 has been substantially amended by the Act No.44 of 2016 and came into effect on 1.9.2016.

11. In the case of Satyawati Tandon (supra) Hon'ble Supreme Court has considered the issue of alternative remedy available under Section 17 (1) of the Act of 2002 where the petitioner instead of invoking provision of Section 17 (1) of the Act of 2002, has filed writ petition under Article 226 of the

Constitution of India in which Hon'ble Supreme Court has held

thus:-

“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. Similarly, Hon'ble Supreme Court in Kanaiyalal Lalchand Sachdev's case (supra) has held considering the same issue of challenging proceeding under Sections 14 & 13 (4) of the Act of 2002 by way of filing writ petition and held thus:-

“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.”

13. In view of above law laid down by Hon'ble Supreme Court in the case of Satyawati Tandon (supra) & Kanaiyalal Lalchand Sachdev's case (supra), the learned Single Judge has not

committed any error in refusing to entertain writ petition in view of the alternative efficacious statutory remedy available to appellants of filing an appeal under Section 17 of the Act of 2002.

14. As we have affirmed the reasoning given by learned Single Judge for not exercising extraordinary jurisdiction under Article 226 of the Constitution of India, we are not considering other submissions made by learned counsel for appellants on merits of the case otherwise it will cause prejudice and may affect appellants' case while pursuing appeal.

15. For the foregoing reasons, we do not find any merit in the appeal, it is liable to be dismissed and is hereby dismissed.

Sd/-  
(P.R. Ramachandra Menon)  
Chief Justice

Sd/-  
(Parth Prateem Sahu)  
Judge

roshan/-