

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 294 OF 2021

SEVEN OCEAN FOREX TOURS
AND TRAVELS PVT. LTD., REP. BY
ITS AUT. REP., SHEIKH GAUSE ...PETITIONER

Versus

RESERVE BANK OF INDIA, BY ITS
CHIEF GENERAL MANAGER
BANKING AND OPERATIONS
AND 2 ORS ...RESPONDENTS

Mr. Gideon Noronha, Advocate *for the Petitioner.*

**CORAM: M.S. SONAK &
M. S. JAWALKAR, JJ.**
DATED: 27th September 2021.

P.C.:

1. Heard Mr. Noronha, the learned Counsel for the petitioner.
2. In paragraph 8H of this Petition, the petitioner, has quite fairly accepted that it is settled law that action under the SARFAESI Act needs to be assailed before the Debt Recovery Tribunal (DRT). However, it is the case of the petitioner and as articulated by his Counsel Mr. Noronha that jurisdiction of this Court under Article 226 of the Constitution of India is not and cannot be excluded in the matter of such nature.

3. While we agree with the contention that the jurisdiction of this Court under Article 226 of the Constitution of India is not excluded, that by itself means that we are not bound to exercise such jurisdiction when an alternate and efficacious remedy is clearly available to the petitioner. At least, in this case, nothing is pointed out to us as to why we should deviate from the normal rule. The issue as to whether the classification of the petitioner as a non-performing asset was correct or not, can as well be agitated before the DRT. Similarly, the proposal of the petitioner about the OTS facility can also be effectively agitated before the DRT.

4. Having regard to the aforesaid and also there being several decisions by the Hon'ble Apex Court on the subject, we do not deem to entertain this Petition. However, liberty is granted to the petitioner to take out appropriate proceedings before the DRT. If such proceedings are indeed instituted, we have, no doubt, that the DRT will take into account the period spent by the petitioner in taking out this Petition.

5. With the aforesaid observations, we dispose of this Petition.

M. S. JAWALKAR, J.

M. S. SONAK, J.