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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2641 OF 2018

Rambo Fashion Limited

.. Petitioner

Vs.

Board of Directors State Bank of
India and ors.

.. Respondents

Mr. Mathews Nedumpara i/b. Rohini M. Amin for the
petitioner.

Mr. Rakesh L. Singh i/b. M.V. Kini & Co. for respondent
nos.1 to 3 (SBI).

Mr. S.B. Gore a/w Mr. Rajiv Mane, AGP for the State.

Mr. Dhaval Patil a/w Mr. Sushant Yadav i/b. M/s. K. Ashar
and Co. for respondent no.6.

Mr. R.V. Govilkar a/w Mr. Ashutosh Misra for respondent
nos.7 and 8 (Union of India).

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : SEPTEMBER 9, 2021

P.C. :

1. This writ petition dated July 30, 2018 contains as
many as 21 (twenty-one) main prayers and another 3
(three) for interim relief. The main prayers are extracted
below: -

“(b) declare that the bar of jurisdiction of the Civil Court as contemplated under Sections 34, 35 and 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and under Sections 17 and 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is not absolute, but is limited to an inquiry as to the correctness or otherwise of the measures taken under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and where the entire proceedings are vitiated by fraud and violation of the principles of natural justice and statutory provisions and thus a nullity, the Civil Court has undoubted jurisdiction;

(c) To declare that the common law is the law of the land in terms of Article 372(1) of the Constitution of India and all disputes of the civil nature could only be adjudicated by civil courts except for the Tribunals which could be created in terms of Article 323(B) of the Constitution and the Company Law Tribunal, DRT, DRAT, Authorised Officer under the SARFAESI Act, none of them come within the Seven categories of Tribunal enumerated in the Sub Article (2) of Article 323(D) and therefore are Ultra Vires the Constitution, incompletely instituted non est in law;

(d) To declare that access to justice, namely where a person, be it an animate one or an inanimate, artificial

legal entity is an inalienable fundamental right, nay, very birthright and howsoever laudable could be a legislative objective, the said right cannot be taken away, that all legislations by which Tribunals or Forums are created in substitution of the Civil Court is liable to be construed as one invested of the jurisdiction to embark upon an enquiry for which alone it was created in substitution of the Civil Court and it cannot be so construed, nay, such Forums and Tribunals are indeed incapable of discharging the functions of the Civil Court in substitution whereof they are created, the Civil Court jurisdiction is not barred;

(e) Declare that the Tribunals and Forums created in substitution of the Tribunals and Forums created in substitution of the Civil Courts, namely the National Company Tribunal under the Act of 31 of 2016. The DRT under the Banking Laws of the Recovery of Debt due Acts, the Authorized Officer under Section 13(10) of the SARFAESI Act, so too the mechanism for insolvency resolution/liquidation contemplated under the Insolvency Code of 2016 or only constitute to be Tribunals/Forums by recourse to which remedies entail in creditors and in particular secured creditors as against the Borrowers/Debtors, all, the said Acts/Forums created there under contemplate an enquiry which is wholly one sided, that under none of the aforesaid enactments a Borrower or debtor could

institute a Suit/Proceeding whereby he could seek the enforcement of remedies in the province of declaratory, equitable and common law;

(f) Without prejudice to relief Clause (e) above, nay, in supplemental in furtherance thereof declare that the Respondent Bank have non-enforceable right against the Petitioner, for, the remedies of compensation and damages and set off which the Petitioner has against the Respondent far exceed the claim of the Respondents;

(g) Declare that the Petitioner, the purported borrower stands completely discharged of the obligation in terms of the Contract which the Petitioner had entered into with the Respondent Banking Institutions since the gross breach of contract, culpable and malicious actions at the hands of the Defendants and its officers and agents which has entailed in remedies in the realm of compensation and damages, set off and counterclaim to the principle debtor, hence completely discharges the Petitioner of its obligation in terms of the Section 134 of the Indian Contract Act;

(h) direct Respondent Nos.1 to 4 to state on affidavit the manner in which the Petitioner's account was classified as NPA, stating in particular whether any opportunity of hearing was afforded to the Petitioner prior thereto and further to produce the entire minutes

and proceedings by which the Account was classified as N.P.A.;

(i) Declare that the Respondent Bank is guilty of gross breach of contract, culpable and malicious actions, nay, fraud and that the Petitioner is entitled to mandatory and prohibitory injunction to compel the Respondent Bank to perform their contracts, obligations so too restraining them from in any manner interfering with the peaceful conduct of the business, enjoyment of its assets and properties;

(j) Declare that the various Guidelines which the RBI has purportedly issued from time to time by recourse to which the accounts of the Petitioner has been classified as NPA as unconstitutional and void, without authority of law, arbitrary and illegal.

(k) To declare that Guidelines titled "Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances" the RBI Guidelines No. RBI/2013-14/62 DBOD. No. BP.BC.1/21.04.048/2013-14 dated July 1, 2013 issued by the Reserve Bank of India, and RBI Circular bearing No.RBI/2014-15/73DBR.No.CID.BC.57/20.16.003/2014 -15 dated 01.07.2014, are void *ab initio*;

(l) declare that declaration of the Petitioner as a wilful defaulter is one involving adverse civil consequences and thus one involving a lis, which

function could never be invested upon the executive Government/a statutory body like the Reserve Bank of India, but could only be invested in a Court or Tribunal duly constituted and by virtue of a procedure which requires observance of the principles of natural justice;

(n) To declare that the properties which the bank falsely claims to be the secured assets at its hands, of the Petitioner, and especially the assets of the Company and its promoters of which the said persons are the absolute owners entitled to ownership, title and possession; that their right, title and interest in respect of the said properties should not be disturbed in any manner whatsoever; and that the proceeding under Section 13(2) & 13(4) so too Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 in the purported exercise of the powers vested in the Respondent Banks/Respondents 1 to 04, under the SARFAESI Act, 2002 are nullity, and 'non est' in the eyes of law, not merely for violation of the principles of natural justice, but vitiated by fraud and other illegalities;

(o) declare that the Petitioner's account was not liable to be declared as NPA except by authority of a circular or guideline which has the force of law, namely, one which is framed/issued by the Reserve Bank of India in exercise of the powers conferred on it by an Act

of Parliament;

(p) to declare that the notice purportedly under section 13(2) of the SARFAESI Act, 2002, the notice purportedly under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as null and void, being in gross violation of the principles of natural justice and statutory provisions;

(q) declare that the entire proceedings at the hands of the Respondent Bank, beginning with the notice purportedly under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, and other steps and, in particular, the forcible dispossession of the properties, which the Bank falsely claims to be a secured asset at its hands so too the sale by E-Auction and Private treaty are null and void, one rendered without authority of law, in gross violation of the principles of natural justice and malicious and, therefore, one which will entail in the Petitioner/Petitioner common law, equitable remedies like compensation, damages, injunction etc.

(r) To declare that the Respondent banks which are guilty of breach of contract, civil breach of trust, culpable negligence, and malicious and tortuous action and therefore no right or title has inured in them to

invoke sections 5,6, & 7, much less sections 13(2) & 13 (4) and 14 of the SARFAESI Act, 2002, and that in any scenario the Respondent banks are duty bound to afford an opportunity of being heard to the Petitioner/ the Company and its promoters before an assignment of the 'security interest' as defined in section 2(zf) of the SARFAESI Act, which it falsely claim to be existing in its favour to any securitization companies and further that such an obligation, to observe the principles of natural justice, is liable to be read into sections 5, 6 & 7 of the SARFAESI Act, 2002 and in particularly section 6 thereof.

(s) To declare that putting the Petitioners properties which the Respondent Bank falsely claim to be a secure assets at its hands by recourse to an E-Auction/Private Treaty is unconstitutional and void in as much as the power conferred under section 13(4) of the SARAFESI Act and rule 8 and 9 of the Security Interest (Enforcement) Rules is a judicial function, nay, at least a statutory function distinctive a mere ministerial function and thus non-delegatable, the maximum being the Delegata potestas non potest delegari and that the e-auction as the contemplated one could be affected, only if, the legislature has expressly, empowered such delegation of the sovereign judicial administrative function;

(t) Declare that Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is unconstitutional and void inasmuch as it permits the learned Chief Metropolitan Magistrate/District Magistrate to order dispossession of the property of a borrower/tenant or third party, whatsoever be his right, on a mere application at the hands of a Bank or Financial Institution, often a simple mortgage, without notice and without hearing him, and thus in violation of Articles 14, 19 and 21 of the Constitution of India or, in the alternative, and may be more appropriately, to read into the said Section an obligation to issue a notice and afford a hearing to the borrower/tenant or third party;

(u) declare that the orders passed by this Ld. District Magistrate, Thane and 3rd Additional CMM in Securitisation Application No. 52/2012 is void *ab initio* since it has been rendered without affording an opportunity to the Petitioner to be heard without prejudice to what is stated above the said order is operative and sustains for only one month, and as the said period of one month for compliance is expired, hence the Orders are dead and *non est* in law;

(v) grant permanent mandatory injunction commanding and directing the Respondent Bank to extend to the Petitioners credit for allowing the Bank to facilities in terms of the original contract which was

mutually agreed upon and thus had culminated in the sanction letter issued by it and to release the funds which remain to be released in terms of the contract between the parties; further to restructure the credit facilities which the Respondent Bank was bound to give effect in terms of the sanction letter as also the guidelines and circulars of the RBI which are quasi-statutory and thus binding on it; and further to direct Respondent Bank to restore the full operation of the accounts so that the Petitioners could continue to carry on their business."

(underlining in original)

2. Such writ petition, containing multiple prayers, was presented before this Court admittedly when the petitioner, a 'borrower' within the meaning of section 2(f) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter 'the Act', for short), had explored the remedy provided by section 17 thereof and instituted proceedings before the Debts Recovery Tribunal-II, Mumbai (hereafter "the DRT", for short), by presenting Securitization Application No.249 of 2018 dated February 13, 2018 which, reportedly, is pending till date.

3. Mr. Nedumpara, learned counsel appearing for the petitioner has argued at length to impress upon us that the respondent no.2, a 'secured creditor' within the meaning of Section 2(zd) of the Act, has subjected the petitioner to gross injustice by declaring his account as 'non-performing asset' in contravention of the provisions of the Act as well as guidelines issued by the Reserve Bank of India from time to time in regard to the procedure to be followed for declaring an account as non-performing asset and, therefore, the measures taken by the respondent no.2 under section 13(4) are grossly illegal and arbitrary. He has further dwelled on the draconian nature of the relevant legislation and contended that the jurisdiction of the High Court to issue a writ of certiorari, which can be claimed as a matter of right as distinguished from the discretion that such court may exercise while considering a plea for issuance of a writ of mandamus, cannot be taken away by an ordinary enactment like the Act. A reference in the passing has been made to the decision reported in AIR 1955 SC 233 (**Hari Vishnu Kamath Vs. Ahmad Ishaque**) in

this regard. Also, it is his contention relying on a previous order on this writ petition dated 25th November, 2019 that the respondents ought to be called upon to answer why the entire proceedings should not be quashed for the glaring defect pointed out therein. This contention is sought to be buttressed by submitting that the remedy under section 17 of the Act before the DRT is inefficacious because the DRT has limited jurisdiction and it is only the High Court which has the power to remedy the ills.

4. The contentions urged by Mr. Nedumpara need not detain us for long. The pleaded case in the writ petition together with the nature of arguments advanced leave little doubt that this writ petition does not deserve to be entertained.

5. At the outset, we ought to remind ourselves of a host of authoritative decisions of the Supreme Court which have sounded caution in no uncertain terms that the High Courts ought not to entertain writ petitions questioning actions of secured creditors under the Act for enforcement of their secured debt unless, of course, substantial prejudice is

shown to have been caused to the borrower. We may refer to the decisions in (i) (2020) 10 SCC 659 (**L&T Housing Finance Limited vs. Trishul Developers and Anr.**); (ii) (2020) 4 SCC 440 (**K. Virupaksha and Anr. vs. State of Karnataka and Anr.**); (iii) (2019) 2 SCC 198 (**Hindon Forge Private Limited and Anr. Vs. State of Uttar Pradesh through District Magistrate, Ghaziabad and Anr.**); (iv) (2018) 3 SCC 85 (**Authorized Officer, State Bank of Travancore Vs. Mathew K.C.**); and (v) (2010) 8 SCC 110 (**United Bank of India vs. Satyawati Tondon and Ors.**) in this regard. We shall consider the point of substantial prejudice a little later after consideration of the basic point as to whether the writ petition is at all maintainable.

6. Mr. Nedumpura was first asked to answer the fundamental point put to him by us as regards maintainability of the writ petition in view of the well settled principle of law that when an available statutory remedy is being pursued by an individual and proceedings initiated by him under the relevant statute are pending, a petition under

Article 226 would not lie since writ remedy cannot be pursued as a parallel remedy. The decisions of the Supreme Court reported in (2009) 16 SCC 766 (**Delhi Auto Service Station vs. B.P.C.L. Agra Th. Sr. Div. Manager and ors.**) and (2013) 8 SCC 738 (**Orissa Power Transmission Corpn. Ltd. v. Asian School of Business Management Trust**), which are authorities for the said proposition, were brought to the notice of Mr. Nedumpura. In **Orissa Power Transmission Corpn. Ltd.** (supra), while holding that the writ petition was not maintainable, the Court proceeded to impose exemplary costs on the litigant found to abuse the process of court. We had also put to him why it should not be held that the process of court has been abused by the petitioner by pursuing parallel proceedings. The failure of Mr. Nedumpura to satisfy us that the writ petition is maintainable, is the first ground for not accepting his plea to examine the petitioner's claims on merits.

7. Since much has been argued by Mr. Nedumpura on the draconian nature of the relevant legislation, we proceed to deal with the first few prayers of the writ petition. The

Supreme Court in its decision reported in (2004) 4 SCC 311 **(Mardia Chemicals Ltd. and others Vs. Union of India and others)** had the occasion to consider a challenge to the *vires* of the Act. The Act was held to be *intra vires* with only sub-section (2) of section 17 being declared *ultra vires*. Sub-section (3A) was incorporated in the Act by the Parliament after the decision in **Mardia Chemicals Ltd.** (supra) to fill up the gap pointed out by the Supreme Court. In view thereof, it is beyond our comprehension as to how this writ petition could be presented seeking to challenge the constitution of the Debts Recovery Tribunal under the Act. Omnibus prayers are also found in regard to constitutional validity of other tribunals, having no relevance to the subject matter in question. We, thus, have no hesitation to hold that such prayers for declaring that the tribunals have been illegally constituted are thoroughly misconceived and merit outright rejection.

8. Next, the contention of Mr. Nedumpara that the DRT, being a tribunal of limited jurisdiction, has no power to grant relief to the petitioner appears to us to be lacking in

substance. We have quoted the prayers at the very outset to take stock that whatever have been prayed for in this writ petition, which have not been dealt with by the Supreme Court in the decisions referred to above, are well within the power and jurisdiction of the DRT for grant of relief. Reference in this connection may be made to sub-section (3) of section 17 of the Act. For facility of convenience, the same is extracted hereunder :-

“(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order, -

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application

under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.”

9. What follows is that upon examining the facts and circumstances of the case as well as the evidence that is led before it, the DRT is empowered by the Act to declare, of course upon a satisfaction being reached, that any or all the measures taken by the secured creditor under section 13(4) of the Act is invalid and in such case, not only has the DRT the power to restore the possession of the secured asset or the management of the secured asset to the borrower or such other aggrieved person, who has approached it, but also to pass such other direction as it may consider appropriate and necessary in relation to any of the recourses taken by the secured creditor under section 13(4). Thus, wide powers have been conferred on the DRT to remedy any injustice having been caused by reason of proved illegal and arbitrary action of a secured creditor. We have not been shown how, in the present circumstances,

the DRT would be disabled from granting relief to the petitioner if at all it succeeds in proving its point that the account was classified as 'non-performing asset' in contravention of the extant law.

10. A word here about the decision in **Hari Vishnu Kamath** (supra) since, according to Mr. Nedumpura, law is laid down therein that a certiorari could be claimed as of right as distinguished from a mandamus, which is a discretionary remedy. Although **Hari Vishnu Kamath** (supra) may not have said so, the decision reported in AIR 1958 SC 86 (**State of Uttar Pradesh Vs. Mohd. Nooh**) does hold that :

"10. *** there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute ...".

It requires no emphasis that existence of an availability of an efficacious alternative speedy statutory remedy does not oust the jurisdiction of the writ court. However, as **Mohd. Nooh** (supra) says, there must exist requisite grounds for entertaining a writ for certiorari despite the existence of the

alternative remedy. However, nothing much turns on the aforesaid discussion since from the prayers, which we have quoted above, it is clear that no certiorari has been claimed. All but two of the prayers are in the nature of declaratory relief claimed by the petitioner while the other two are for a direction in the nature of mandamus and a mandatory injunction. The contention based on certiorari, we hold, is totally misplaced.

11. Although the petitioner has not claimed relief to have any notice or order or proceedings to be quashed by certiorari, yet, we wish to deal with the point of substantial prejudice, if any, caused to the petitioner. True, it can seemingly be traced to the terms of the order dated 25th November, 2019 referred to by Mr. Nedumpura. However, having read such order, we do not find any reference to the pending proceedings initiated by the petitioner under section 17 of the Act before the DRT. Since the order does not even remotely refer to such proceedings, we do not feel any hesitation in recording that such an order was made in ignorance of pendency of proceedings before the DRT

initiated by the petitioner. Be that as it may, the said order being interlocutory in nature, it is not binding. In any event, the petitioner having taken recourse to the remedy made available by the Act, we hold that it will be free to pursue such remedy according to law.

12. At this stage, Mr. Nedumpara has appealed to the Court to stay the auction of the secured asset that is scheduled tomorrow so that he may obtain appropriate orders in that regard from the Tribunal.

13. The decision of the Supreme Court reported in AIR 1952 SC 12 (**State of Orissa Vs. Madan Gopal Rungta**) stares at our face. An interim order is always made in aid of the final relief. When a party having approached the Court is found not entitled to final relief because his remedy lies elsewhere and the Court relegates the party to the appropriate forum, grant of any interim relief to be operative so long the remedy is availed of would not be permissible is how we read the law laid down in **Madan Gopal Rungta** (supra). Accepting the prayer of Mr. Nedumpara would result in making an order which would be

in the teeth of such decision. The prayer is, therefore, refused.

14. Before parting, we wish to place on record that the statements made in paragraphs 17 and 26 of the writ petition had not been noticed by us while dictating the order in open Court. In fact, in course of editing the draft, we had the occasion to look into the writ petition once again and on perusal thereof, we feel no hesitation to record that this writ petition is nothing but an abuse of the process of law as well of this Court. More than a couple of writ petitions, prior to this writ petition, had been presented by the petitioner seeking to challenge the measures taken by the secured creditor but the petitioner did not succeed in any of those writ petitions. What is most glaring is that the petitioner did not annex to this writ petition, quite deliberately, the orders passed on such writ petitions. Some of such orders have been subsequently brought on record in terms of directions passed by earlier coordinate Benches. However, the writ petition being hit by *res judicata* and/or analogous principles is an additional ground for us not to exercise

jurisdiction in this case.

15. For the reasons aforesaid, all the contentions of the petitioner fail. This writ petition, accordingly, stands dismissed. Interim order, if any, stands vacated forthwith. We would have been justified in imposing exemplary costs, but refrain from so imposing.

16. If the Tribunal is approached by the petitioner seeking relief in the proceedings pending before it under section 17, the Tribunal will proceed to decide the contentious issue(s) on merits, in accordance with law, and uninfluenced by any observations made in this order in support of dismissal of this writ petition.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)

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signed by
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MAKARAND
BHOGALE
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