

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.3655 of 2021

Date of Decision: April 6th, 2021

M/s Kaur Sain Spinners Limited & others

..... PETITIONER(S)

VERSUS

Debts Recovery Tribunal-III, Sector 17, Chandigarh through its Presiding Officer & others

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. Aalok Jagga, Advocate alongwith Ms. Supriya Garg,
Advocate, for the petitioners.

Mr. C.S. Pasricha, Advocate with Mr. V.M. Malik,
Advocate, for respondent No.3.

[The aforesaid presence has been recorded through video
conferencing since the proceedings were being conducted
in virtual court.]

. . .

Sant Parkash, J

1. The present writ petition has been preferred under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of certiorari for setting aside order dated 24.07.2019 (Annexure P-14) and order dated 02.03.2020 (Annexure P-16) passed by respondent Nos.1 and 2, vide which petitioners have been proceeded *ex- parte* and recovery certificate issued. Further prayer is to issue a writ in the nature of

mandamus, directing respondent No.1 to allow the petitioners to join the proceedings; allow them to file written statement and contest Original Application No.3000/2018 filed by respondent No.3 under Section 19 of the Recovery of Debts & Bankruptcy Act, 1993 (for short, '1993 Act'); as also to stay further proceedings emanating out of impugned order dated 02.03.2020.

2. Petitioner No.1 is a private limited company incorporated under the provisions of the Companies Act, 1956 and running the business of spinning, having registered office at Village Arrincha, Post Office Doraha, Tehsil Payal, District Ludhiana. Petitioner Nos.2 to 5 are close relatives and reside in Village Arrincha, Post Office Doraha, Tehsil Payal, District Ludhiana except petitioner No.3 – Sanjay Mittal, who resides in House No.510-11 B, Aggar Nagar, Ludhiana. Petitioner No.2 – Pawan Kumar, is one of the Directors of M/s Kaur Sain Spinners Limited. Petitioner No.3 – Sanjay Mittal, is the son of late Rajinder Kumar (defendant No.3 in OA No.3000/2018 before the Debts Recovery Tribunal-III, Chandigarh). Petitioner No.4 – Urmila Rani, is widow of late Rajinder Kumar and petitioner No.5 – Suman Rani is wife of petitioner No.2 (Pawan Kumar).

3. Succinctly, petitioners set up a Spinning Mill at Ludhiana and approached respondent No.3 – Central Bank of India, for availing credit facilities, which were granted, renewed and enhanced from time to time. On 29.12.2017, respondent No.3 declared the loan account of petitioners as Non Performing Asset (NPA) on account of defaults in repayment of loan.

4. On 11.12.2018, respondent No.3 – Central Bank of India filed a recovery suit viz. Original Application No.3000 of 2018 (Annexure

P-1) titled 'Central Bank of India vs. M/s Kaur Sain Spinners Limited & others' before respondent No.1 – Debts Recovery Tribunal – III, Sector – 17, Chandigarh (for short, 'DRT'), under Section 19 of 1993 Act, claiming an amount of ₹ 49,44,65,248/-, allegedly due on 10.12.2018 alongwith *pendent lite* interest. The petitioners were arrayed as defendant Nos.1, 2 and 4 to 8. Notice in the OA was issued on 31.12.2018. On 24.05.2019, defendant Nos.1 and 10 appeared through counsel, and defendant Nos.2 and 4 to 8 were proceeded *ex parte*. On 01.06.2019, Bank (respondent No.3 herein) filed one IA alongwith death certificate of deceased defendant No.3 and list of legal heirs which was taken on record and applicant – Bank was directed to supply complete copy of paper book to counsel for defendant Nos.1 and 10 to enable them to file written statement on the next date of hearing i.e. 01.07.2019. On 01.07.2019, none appeared on behalf of defendant Nos.1 and 10. Their right to file written statement was closed and they were proceeded against *ex parte*. However, IA No.360 of 2019 was filed on behalf of Oriental Bank of Commerce seeking setting aside of *ex parte* order, which was allowed.

5. On 09.07.2019, defendant/petitioner No.1 filed IA No.384 of 2019 (Annexure P-4) seeking extension of time to file written statement beyond the period of 30 days in view of provisions of Section 19 (5)(i) of 1993 Act, according to which, time could be extended by another period of 15 days. On 09.07.2019 itself, IA Nos.382, 383, 385, 387, 388 and 389 of 2019 were filed on behalf of defendant Nos.2 and 4 to 8 seeking setting aside of *ex parte* order dated 24.05.2019, taking a plea that they had appointed a counsel to represent them before the Tribunal and further, copy of paper book i.e. Original Application had not been supplied, as provided

under Rule 11 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (for short, '1993 Rules').

6. Though respondent – Bank contested the aforesaid IAs, filed by the petitioners, by filing replies (Annexure P-11), however, no objection was given to allow Oriental Bank of Commerce to join the proceedings (in IA No.360 of 2019).

7. On 06.12.2019 (Annexure P-13), application filed by defendant/ petitioner No.1 was dismissed on the ground that sufficient opportunity had been granted to file written statement but same was not filed. Accordingly it was proceeded *ex parte* and there was no reason to recall order dated 01.07.2019. Similarly, identical applications were also dismissed on the ground that Tribunal did not feel satisfied with the reasons given.

8. Thereafter, respondent No.1 relying upon judgment dated 24.07.2019 (Annexure P-14) passed by respondent No.2 – Debts Recovery Appellate Tribunal (DRAT), Delhi, in Appeal No.468 of 2018 in OA No.385 of 2017, without even permitting the petitioners to lead evidence, Original Application was reserved for judgment.

9. Aggrieved against the illegal action, petitioners preferred CR No.1072 of 2020 challenging orders dated 01.07.2019 (Annexure P-3), 06.12.2019 (Annexure P-13) and order dated 24.07.2019 (Annexure P-14) which is pending adjudication. During pendency of aforesaid revision petition, respondent No.1 passed final order dated 02.03.2020 (Annexure P-16) allowing the case filed by respondent No.3 by passing a non-speaking order.

10. Learned counsel for the petitioners has vehemently contended that on 31.12.2018, notice was issued by D.R.T. to the defendants for 24.05.2019 whereupon defendant Nos.1 & 10 appeared, whereas other Defendants were proceeded *ex parte*. On 01.06.2019, the Bank was directed to provide paper book to the defendants and the matter was adjourned to 01.07.2019. On 01.07.2019, it was noticed that defendant No.1 & 10 did not appear, so, their right to file written statement was closed and they were proceeded against *ex parte*. The matter was adjourned to 04.11.2019.

11. Since 15 days' time period is available under Section 19 (5) of the 1993 Act, on 05.07.2019, I.A. No.384 of 2019 was filed by defendant No.1/petitioner No.1 herein, seeking extension of time under the said provision, to file the written statement which was declined vide order dated 06.12.2019.

12. Learned counsel for the petitioner submits that a bare perusal of Section 22 of the 1993 Act would reveal that principles of natural justice are required to be complied with, even though, CPC is not applicable *stricto sensu*. It is settled law that even where CPC is not applicable, principles of natural justice cannot be given complete go-bye. Once the defendant had filed an application within the prescribed period of 15 days, for which extension of time could have been granted by the Tribunal to file the written statement, it was unreasonable and violative of principles of natural justice, not to grant an opportunity to file Written Statement.

13. Learned counsel has contended that procedural law is handmaid of justice. Substantial rights cannot be defeated, merely on account of procedural technicalities, especially when it is not that there is no discretion to grant extension beyond 30 days under the 1993 Act. Once there

is discretion available, D.R.T. erred in not granting an extension of 15 days, to the defendant, to file the written statement, thus, approach of D.R.T. is highly technical and virtually frustrates the very reason as to why the Proviso under Section 19(5)(i) of 1993 Act was added.

14. Leaned counsel has further submitted that the Tribunal, vide impugned order dated 24.07.2019 (Annexure P-14), while rejecting the application filed by the petitioners, has not even dealt with the reasons given by them, seeking extension. It was mandatory for the Tribunal to have considered atleast the reasons given in the application, i.e. firstly, complete copy of the paper book had not been made available, to the petitioners, which disabled them to file the written statement. Secondly, there was a death in the family i.e. defendant No.3 had expired which has been noticed in order dated 24.05.2019. The written statement could not have been filed, as various family issues had cropped up after the death of a senior most member in the family. Without considering the reasons, application has been dismissed, which is not only violative of Section 22, but also is in violation of the Judgment of Hon'ble Supreme Court in the case of **Balraj Taneja Versus Sunil Madan, 1999(8)-SCC-396**, wherein while interpreting Section 2 (9) of the CPC, the word "Judgment" has been interpreted to mean that it must contain atleast the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders and the Judge cannot merely say that the suit is decreed or dismissed until and unless whole process of reasoning is set out for deciding the case one way or the other. Since in the cited case, there was no reasoning, the judgment was not sustained by the Supreme Court.

Identical is the case in hand, as Tribunal has given no reasons to reject the application.

15. Learned counsel for the petitioners has further contended that the Tribunal had decreed the main O.A. filed by the Bank vide another impugned order dated 02.03.2020 without any reasoning or without even considering the case of the Bank, that too, while relying upon order dated 24.07.2019 (Annexure P-14) wherein D.R.A.T. has directed that where written statement is not filed, it must be presumed that defendant has nothing to say and in a way, entire claim of the Bank, stands admitted. This is contrary to the settled position of law that merely non-filing of written statement is not punitive for the defendant, as plaintiff is still required to prove his own case. Not only this, even if defendant has not filed written statement, he still has a right to argue his case. Reliance is placed on the Judgment in the case of **Modula India Versus Kamakshya Singh Deo, 1998(4)-SCC-619**, wherein the Supreme Court has held that there is nothing in these Rules, which makes it mandatory for the Court to pass a decree in favour of the plaintiff straightaway, because written statement has not been filed. Not only this, it says that even if no Written Statement has been filed, the defendant would still have the right to cross-examine the plaintiff's witness and to address arguments on the basis of the plaintiff's case. The finding of the D.R.A.T. is in direct contravention of the aforesaid two judgments, especially in the case of **Modula India (supra)**, which has not been considered and hence, the judgment of DRAT, is *per incuriam* contrary to the available law laid down by the Supreme Court.

16. Per contra learned counsel for the respondent – Bank has contended that there is no illegality in the impugned orders. Petitioner No.1

is the judgment debtor. Order dated 06.12.2019 was passed after hearing counsel for the parties. This order was never challenged by the petitioners and final judgment was pronounced on 02.03.2020 holding the petitioners and guarantors liable for payment of an amount of ₹ 49,44,65,248/- alongwith *pendent lite* interest @ 13.60% per annum from 12.12.2018 till realization and recoverable dues of respondent No.3 – Bank alone as 04.01.2021 were ₹ 63,28,28,811/-. The petitioners have not paid a single penny and recovery officer had proceeded to issue notice under Rule 53 of 1993 Rules for sale of property, for which notices were issued on 06.01.2021 for 03.03.2021.

17. Learned counsel for the respondent – Bank has pointed out that the petitioners intended to delay the proceedings. Petitioners were served with demand notice for 19.12.2020, still they prefer not to appear in recovery proceedings on 06.01.2021. Petitioner No.1 had appeared on 01.06.2019 and written statement was to be filed by 01.07.2019 which was not filed, though paper book was supplied on 01.06.2019 itself.

18. Learned counsel has contended that petitioner had an effective remedy under Section 20 before Debts Recovery Appellate Tribunal by challenging order dated 06.12.2019 which was not done. Limitation period for challenging order dated 06.12.2019 has also expired on 21.01.2020 and petitioners made no effort to make any payment to the respondent – Bank.

19. We have heard learned counsel for the parties and perused the record.

20. Before proceeding further on merits of the present writ petition, it would be utmost necessary to reproduce the zimni orders (Annexure P-2) passed by the Tribunal:-

“30.12.2018:

This is fresh OA filed by the applicant bank. Let the notices be issued to all the defendants. Defendants be served notices by way of electronic media as well as by personal service and registered post. If defendants are served personally, then bank is directed to bring all the original documents on next date. The concerned clerk is directed to issue notices within three days from the date of this order.

The concerned Patwari is directed not to register any instrument regarding the mortgaged property of this case without the permission of this Tribunal.

Defendants are directed to disclose their moveable as well as immovable assets alongwith affidavit at the time of filing their WS.

The case is fixed for service report on next date 24.05.2019.”

XX XX XX XX XX

“24.05.2019

Bank has filed service report and as per service report, Sh. Madhur Pawar Proxy Adv., appeared on behalf of Ms. Supriya Garg Adv., for Defendant No.1 & Sh. Sunil Salhotra Proxy Adv., appeared on behalf of Sh. KPS Dhillon Adv., for Allahabad Bank (Def. No.10). The counsel for bank has stated that defendant no.3 has expired. Bank is directed to file death certificate alongwith list of legal heirs on next date. No one appeared on behalf of defendant no.2 & 4 to 8 despite service. Therefore, they are proceeded ex-parte. Bank is directed to supply paper book to defendant no.1 & 10 on next date.

The case is fixed for next date 01.06.2019.”

XX XX XX XX

“01.06.2019

Bank has filed one IA alongwith death certificate of deceased defendant no.3 and list of legal heirs which is taken on record. Amended memo of parties has been filed. Other defendants are ex-parte. Bank is directed to supply paper book to the counsel for defendant no.1 & 10 today and

counsel for defendants is directed to file their WS on next date.

The case is fixed for filing WS on next date 01.07.2019.

Notices be issued to legal heirs of deceased defendant no.3.

The case is fixed for filing service report regarding service of legal heirs of deceased defendant no.3 on next date 04.11.2019.”

XX XX XX XX XX

“01.07.2019

Counsel for defendant No.9 has filed one IA, No.360/19 on behalf of OBC Bank for setting aside ex parte order.

Counsel for applicant has stated that since defendant No.9 is a Performa defendant. Therefore, he has no objection if ex parte order against defendant No.9 is set aside.

Therefore, this IA is allowed.

Counsel for applicant has stated that defendant Nos.5 and 7 are legal heirs of defendant No.3 and no fresh notice is required and they have already proceeded ex parte.

No one is present on behalf of defendant Nos.1 and 10 today.

Therefore their right to file written statement is closed and they are proceeded ex parte.

Case is fixed for bringing original documents for admission and denial on next date of hearing.

Bank is directed to bring all the original documents on the next date of hearing.

List on 04.11.2019.”

XX XX XX XX XX

“09.07.2019

Counsel for defendant Nos.1,2,4 and 8 has filed different IAs, one IA on behalf of defendant No.1 for recalling order in which right to file written statement was closed and other IAs on behalf of defendant Nos.2,4 to 8 for setting aside ex parte order.

Copy be supplied to bank for filing reply these IAs on next date of hearing.

List on 04.11.2019.”

XX XX XX XX

“04.11.2019

Bank is directed to file reply to the IAs for setting aside ex parte order on next date of hearing.

List on 25.11.2019.”

XX XX XX XX

“25.11.2019

In this case, defendant Nos. 2, 4, 5 to 8 were proceeded ex parte and they have filed one IA for setting aside ex parte order.

Bank has filed reply to this IA.

Bank has placed service report regarding legal heirs of deceased defendant No.3.

Ms. Bhavna proxy appeared on behalf of legal heirs of deceased defendant No.3 today. Paper book already supplied to legal heirs of deceased defendant No.3 for filing written statement.

Counsel for applicant has clarified that defendant Nos.5 and 7 who have already been proceeded ex parte, they are the legal heirs. Since, they have already been made party and since also proceeded ex parte.

Therefore, they cannot be given any further opportunity for filing written statement.

Defendant No.1 did not file written statement within 30 days and their right to file written statement was closed on 01.07.2019 thereafter defendant No.1 has filed one IA for extension of time for filing written statement.

Bank has filed reply to this IA.

The case is fixed for arguments on IA filed by defendant No.1 for extension of time for filing written statement and for arguments on IA for setting aside ex parte order against defendant Nos.2,4,5 to 8 on next date of hearing.

List on 05.12.2019.”

XX XX XX XX

“05.12.2019

In this case, defendant Nos.1 and 10 were proceeded ex parte on 01.07.2019.

Heard arguments on IA filed by defendant Nos.1,2,4 to 8 for setting aside ex parte order and on IA filed on behalf of defendant No.1 for recalling order by which right to file written statement was closed.

The case is fixed for orders on next date of hearing.

List on 06.12.2019.”

21. The validity and sanctity of the aforesaid zimni orders is to be adjudged in the light of the relevant provisions of Section 19 of the 1993 Act, which reads as under :-

"19. Application to the Tribunal.-(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-

(a) the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or

(aa) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

xxx xxx xxx

(4). On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons with following directions to the defendant-

(i) to show cause within thirty days of the service of the service of summons as to why the relief prayed for should not be granted;

(ii) direct the defendant to disclose the particulars of properties or assets other than properties and assets specified by the applicant under clauses (a) and (b) of sub-section (3A); and

(iii) to restrain the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section (3A) pending the hearing and disposal of the application for attachment of properties.

(4A). Notwithstanding anything contained in section 65A of the Transfer of Property Act, 1882 (4 of 1882), the defendant, on service of summons, shall not transfer by way of sale, lease or otherwise except in the ordinary course of his business any of the assets over which security interest is created and other properties and assets specified or disclosed under sub-section (3A), without the prior approval of the Tribunal:

Provided that the Tribunal shall not grant such approval without giving notice to the applicant bank or financial institution to show cause as to why approval prayed for should not be granted:

Provided further that defendant shall be liable to account for the sale proceeds realised by sale of secured assets in the ordinary course of business and deposit such sale proceeds in the account maintained with the bank or financial institution holding security interest over such assets.

(5) (i) The defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence;

xxx xxx xxx

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and every effort shall be made by it to complete the proceedings in two hearings, and to

dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

Emphasis Supplied.

22. A careful reading of the afore reproduced provisions would show that it is a complete code providing for a Forum for adjudication of claim of the secured creditors and also to the procedure to be followed by the Adjudicating Authorities under the Act. Sub-Section (4) of Section 19 of 1993 Act provides for a show cause notice within 30 days of service of summons as to why relief prayed for should not granted. In terms of sub-section (5), the defendant has to file written statement in his defence within a period of 30 days, including claim for set-off under sub-section (6) or a counter claim under sub-section (8). The first proviso contemplates that the Presiding Officer in exceptional cases and in special circumstances, can extend the period for filing of written statement, but not exceeding 15 days. In other words, the time prescribed for filing of written statement is normally 30 days, but can be extended in certain exceptional circumstances by another 15 days.

23. The above reproduced zimni orders show that OA was filed and notices were ordered to be served upon the defendants/ petitioners herein for 24.05.2019. The service report by way of affidavit of Mahendra Singh, Assistant General Manager, Central Bank of India, would show that service upon the defendants/ petitioners herein was effected dasti on 01.04.2019 and as per the mandatory provisions contained in Section 19(5) of 1993 Act, written statement was required to be filed within 30 days thereof, which admittedly was not filed. The submission of learned counsel

for the petitioners that despite filing an application for extension of time to file written statement in view of the proviso, referred to above, was preferred on 09.07.2019 i.e. within 15 days of their being proceeded against *ex parte* vide order dated 01.07.2019. It is vehemently argued that rejection on the part of DRT to grant extension of 15 days' time was arbitrary and without any cogent reason when the copies of paperbook were supplied to the counsel for defendant Nos.1 and 10 on 01.06.2019. This contention is totally mis-placed. The period of 30 days is to start run from the date of receipt of summons and in this case, as per affidavit of Mahendra Singh, Assistant General Manager, Central Bank of India, service was effected on 01.04.2019 and the written statement was required to be filed on or before 01.05.2019. The subsequent period of 15 days was to start run from 01.05.2019 and not from 01.07.2019 which is crystal clear from the language and intention of Section 19(5) of 1993 Act.

24. Admittedly, in view of zimni order dated 01.06.2019, the complete copies of the paper-book were supplied to the counsel for defendant Nos.1 and 10, and in view of the provisions, referred to above, they were required to file written statement on 01.07.2019, the date fixed by the DRT. On that date, undisputedly, none appeared on behalf of defendant Nos.1 and 10 and they were proceeded against *ex parte*. The application seeking extension of time was filed on 09.07.2019 but this proviso contemplates that it is the subjective satisfaction and discretion of the DRT either to accede or not to accede the request for extension of time depending upon the exceptional circumstances. From the act and conduct of the defendants in the OA, it was manifestly clear that only & only motive on their part was to delay the proceedings by hook or crook. In the conceded

view of learned DRT, this application seeking extension of time was totally misconceived and we do not find any reason to interfere with the discretion exercised by the DRT on that count.

25. It is also evident from Para 2 of this judgment itself that all the defendants/ petitioners herein are the close relatives and residents of same address except one i.e. petitioner No.3 – Sanjay Mittal. From this fact, it can be reasonably gathered that being members of the same family, they were well aware of the proceedings before the DRT because one of the defendants/ petitioner No.1 herein had put in appearance through Ms. Supriya Garg, Advocate. Defendant No.3, who expired during pendency of the matter before DRT, was already being represented by his legal heirs namely Sanjay Mittal and Urmila Rani (petitioner Nos.3 and 4 herein). Since the legal heirs of defendant No.3 (deceased) had already been proceeded against *ex parte*, there was no need to issue any fresh notice but DRT, as abundant caution, gave notices to legal heirs of deceased defendant No.3.

26. According to the settled proposition of law, defendants/ petitioners herein, who were already *ex parte*, could join the proceedings at any stage. From the zimni orders, it is explicitly clear that all the defendants were proceeded against *ex parte* and thereafter the case was fixed for judgment. Meaning thereby, there was more than sufficient time and it was the duty of the defendants to put their appearance at the time of arguments or even before that. There is nothing on the file to show or draw any inference that any of the defendants/petitioners appeared and tried to argue the matter and that opportunity was denied by the Tribunal. Had they appeared before the Tribunal, this aspect must have been mentioned in the impugned orders/judgments as well as in the zimni orders. It was not the duty of

learned DRT to call or to summon the defendants/present petitioners for arguing the matter. After passing the impugned order, recovery notice was issued. Petitioners have not put in appearance before the Recovery Officer also. Despite a lapse of more than one year and from the written submissions given by the bank, intentional, fraudulent act & conduct of the petitioners is well apparent on the fact of it.

27. Thus, keeping in view the object and purpose of the statute, we find that written statement was required to be filed within 30 days from the date of receipt of summons which could in exceptions cases or in special circumstances be extended by the Tribunal by another 15 days. Since, claim of the Bank is for recovery of an amount of ₹ 49,44,65,248/-, therefore, the provisions of the 1993 Act have to be assigned the meaning which is keeping in view the objective of the Act rather than to frustrate the object. So, we are of the considered view that the petitioners have lost their right to file written statement, having failed to do so within 30 days. Besides, from the material placed on the file, it is further evidently crystal clear that apart from being defaulter of the respondent – bank, the petitioners had taken loans from other banks also, to the tune of more than ₹ 240 crore and it would certainly lead to draw an irresistible and unerring conclusion that the petitioners intended to usurp the public money.

28. The petitioners have relied upon the decision in the case of **Balraj Taneja (supra)**, but we are afraid, the same is distinguishable. Under the garb of the cited judgment, petitioner had taken the plea that in judicial proceedings, there cannot be arbitrary orders and the Judge cannot merely say that the suit is decreed or dismissed until and unless whole process of reasons is set out for deciding the case on way or the other. As such, there

was no reasons in the impugned orders. However, in our opinion, the present contention raised by the petitioner is misconceived as the Tribunal dismissed IAs on the ground that sufficient opportunity had been granted to file written statement but same was not filed. Accordingly petitioners were proceeded against *ex parte*. Since IAs were not filed within the prescribed period and Tribunal did not find any exceptional cases or special circumstances to allow the same. Thus, in our view, no arbitrary orders were passed by the Tribunal and the orders being well reasoned are in compliance with procedure established by law.

29. Further, the petitioner has also relied on another judgment in the case of **Modula India (supra)** to contend that there is nothing in the Rules, which makes it mandatory for the Court to pass a decree in favour of the plaintiff straightaway because Written Statement has not been filed.

30. To determine the impact of above authority cited by the petitioner, we would like have to determine the scope of The Civil Procedure Code. The Civil Procedure Code is a general law and will not affect local or special laws which are already in force. In case of any conflict with local or special laws, the local or special law will prevail over the Civil Procedure Code. In case, if the local or special law is silent about any particular issue, then the Civil Procedure Code will apply. Accordingly in this case, Section 19(5) of the 1993 Act specifically provides for the filing of written statement within 30 days and only in exceptional and special circumstances time period can exceed 15 days to file the written statement. Therefore, Tribunal was not bound by procedure laid down by Civil Procedure Code but shall be guided by principles of natural justice and subject to other provisions of this Act and Rules. Tribunal shall have powers to regulate its own procedure.

31. Moreover, the petitioners have efficacious remedy available before the appropriate appellate authority i.e. Debts Recovery Appellate Tribunal, for challenging the impugned orders passed by the DRT. The law in this regard is very clear that when appropriate forum is provided, this Court stands injunctioned from interfering with any matter arising out of the proceedings. Therefore, no ground for interference is made out particularly, in view of the judgment of the Supreme Court in the case of **United Bank of India vs. Satyawati Tandon and others**, reported as (2010) 8 SCC 110, wherein the Apex Court held as under:-

"17. There is another reason why the impugned order should be set aside. If Respondent No.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. 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.

18. 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. 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. 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 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 Supreme Court 556, *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*, 1999(1) RCR (Civil) 220 : (1998) 8 SCC 1 and *Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others*, (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

XX

XX

XX

27. 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 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.”

32. The aforesaid finding rendered in **Satyawati Tandon (supra)** has further been reiterated by the Supreme Court in case **Authorised Officer, State Bank of Travancore and another vs. Mathew K.C.**, reported as **2018(2) R.C.R. (Civil) 1**.

33. In view of the aforesaid discussion, we do not find any merit in the instant petition and the same is hereby dismissed with liberty to the present petitioners, if so advised, to approach the appropriate authority for redressal of their grievance.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

April 6th, 2021
avin

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No