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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 05.04.2023**

% **LPA 225/2023**

SATPAL SINGH KOHLI & ANR.

..... Appellants

Through: Mr. Deepak Biswas and Mr. Manohar
Malik, Advocates.

versus

CANARA BANK

..... Respondent

Through: Mr. Arjun Malik, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SATISH CHANDRA SHARMA, CJ. (ORAL)

CM APPL. 16120/2023

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

LPA 225/2023 & CM APPL. 16119/2023

3. The present Letters Patent Appeal (LPA) is arising out of judgment dated 22.02.2023 delivered by learned Single Judge of this Court in W.P.(C.) No. 13530/2022 titled *Satpal Singh Kohli & Another Vs. Canara Bank*.
4. The facts of the case reveal that the Appellants have availed various

loans/ cash credit facilities from Respondent/ Canara Bank since 2013. In total, six loan accounts were being operated with the Respondent Bank. Out of the six loan accounts, four were in respect of cash credit facilities, working capital. The remaining two housing loans were in the joint name of the Appellants.

5. It has been stated by the Appellants that on account of financial crisis from 01.04.2022, the accounts in respect of M/s Pal Enterprises became irregular, and finally, they were classified as Non-Performing Asset (NPA). The Appellants before this Court, being aggrieved by declaration of accounts as NPA and against the action of the bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'the SARFAESI Act, 2002'), came up before this Court praying for the following reliefs:

“a) issue writ/ order/ direction quashing and setting aside the action of Respondent bank declaring and classifying all the six accounts of the Petitioners and M/s Pal enterprises as NPA along with quashing and setting aside of the impugned Notices issued under Section 13 (2) of the SARFAESI Act, 2002 dated 08.08.2022 and 17.08.2022 by the Respondent Bank; and

b) issue writ/ order/ direction to the Respondent Bank to regularize all the six accounts of the Petitioners and M/s Pal Enterprises; and/ or

c) pass any other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

6. An interim order dated 19.09.2022 was passed in the matter restraining the Respondent Bank from taking further action. Thereafter, an application was preferred by the respondent Canara Bank being C.M. No.1648/2022 for vacating the stay order dated 19.09.2022.

7. The learned Single Judge declined to interfere with the notices dated 08.08.2022 and 17.08.2022 issued under Section 13(2) of the SARFAESI Act, 2002 giving liberty to the Appellants to prefer an appeal under Section 17 of the SARFAESI Act, 2002. The learned Single Judge was of the view that the Appellants have a remedy to raise their grievances in terms of Section 13(3A) of the SARFAESI Act, 2002 – which has, admittedly, not been availed of.

8. Liberty has been granted to the Appellants to raise their grievances under Section 13(3A) of the SARFAESI Act, 2002, and in case the Appellants have any further grievance in the matter, then they are given a liberty to avail appropriate remedy available is under Section 17 of the SARFAESI Act, 2002.

9. Learned Counsel for the Appellants has vehemently argued before this Court that the Appellants does not have any remedy against the order declaring the account of the Petitioners as NPA, and therefore, the petition could not have been disposed of with liberty to the Petitioners to raise their grievances under Section 13(3A) of the SARFAESI Act, 2002 and thereafter, under Section 17 of the SARFAESI Act, 2002.

10. Learned Counsel for the Appellants has submitted that the Respondent Bank has not granted any opportunity to the Appellants. There were various anomalies, and in case a notice was issued to the Appellants, the Appellants would have clarified the issue and there would have been no necessity to proceed under the statutory provisions of the SARFAESI Act, 2002.

11. It has been vehemently argued by the Appellants before this Court

that in the case of *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*, (2022) 5 SCC 345, the Hon'ble Supreme Court has held that in appropriate cases, the writ Court can still entertain the writ petition under the SARFAESI Act, 2002.

12. On the other hand, reliance has been placed upon the judgment in *The Fabworth Promoters Private Limited and Ors. v. Reserve Bank of India and Ors.*, MANU/WB/0676/2021, wherein in similar circumstances, the Calcutta High Court has held that the remedy under writ jurisdiction is discretionary and can be granted by the writ court in appropriate cases to do justice, which is based on the principle of equality under the SARFAESI Act, 2002.

13. Learned Counsel for the Appellants has argued that as per the decision of the Calcutta High Court, a writ petition can be entertained even prior to any action under section 13(4) of the SARFAESI Act, 2002.

14. The learned Single Judge has disposed of the writ petition vide judgment dated 22.02.2023. Paragraphs 7 to 17 of the said judgment passed by the learned Single Judge read as under:

“7. If one of the impugned notices in the instant case is perused, it would indicate that as per the bank from April 2022, the operation and conduct of the financial assistance/credit facilities became irregular. The secured creditor classified the account of the petitioner as a NPA as on 29.07.2022. The petitioner seeks to place reliance on RBI circular dated 12.11.2021 to state that the same has not been followed. According to the petitioner, before the account becomes NPA, it should be first categorised as ‘out of order’ in case of CC/OD account, if there is no credit in the account continuously for 90 days to cover the interest debited during the same period.

Various other averments have been made to indicate that the RBI circular has not been followed in declaring the petitioner's account as NPA.

8. *The petitioner is essentially challenging the aspect of declaring and classifying its six accounts as NPA.*

9. *The Hon'ble Supreme Court in the case of Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311, addressed the question of adjudication under Article 226 of the Constitution of India in cases relating classification of NPA wherein it was held that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debts Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground alone, the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in the growth of the economy of the country and welfare of the people in general which would subserve the public interest.*

10. *In view of the aforesaid case, the High Court, in the exercise of its power under Article 226 of the Constitution of India should not enter into the domain to adjudicate as to whether the particular account has rightly been declared as NPA or whether the concerned financial institution or the bank has committed an illegality while taking recourse of the law. All those issues will have to be left for consideration by the appropriate forum created under the SARFAESI Act, 2002. If this court starts entertaining the writ petition at the stage of declaring a particular account as NPA and granting a stay on one ground or the other, the ultimate effect would be to halt the entire recovery proceeding and frustrate the object of the SARFAESI Act, 2002.*

11. *No doubt this court can entertain a petition under Article 226 of the Constitution of India as the borrower can only challenge the action of a secured creditor under section 13(4) of the SARFAESI Act, 2002, by filing an application under*

section 17(1) of the SARFAESI Act, 2002, when there is an action taken by the secured creditor and not otherwise. Writ remedy is a discretionary one and the High Court always has the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate efficacious remedy elsewhere. In the case in hand as per the stand taken by the bank, the limit was overdue since 30.04.2022 and the CC limit of the borrower was 'out of order' in terms of RBI circular as per point 6 (i) i.e., outstanding balance in the CC/OD account remains continuously in excess of the sanction limit and the drawing power was 90 days. In short, the respondent-bank claims to have complied with RBI circular.

12. In the decision in the matter of Fabworth (supra) by the High Court of Calcutta relied upon by the petitioner, the facts and situation was that without declaring borrower as NPA a notice under section 13(2) of the SARFAESI Act, 2002 was issued. The said decision would, therefore, have no application under the facts of the present case. Paragraph No.28 of the decision of Fabworth (supra) is reproduced as under:-

“28. In the instant case, having regard to the discussion above, and in consideration of submission made on behalf of the petitioners, this Court clearly finds that the notice under Section 13(2) of the Act on the threshold is bad in law in the sense that the notice has been issued without classifying the petitioner's account as NPA rather in the same notice the declaration has been made for classifying the account of the petitioner as NPA. This is no doubt in derogation of the directives of the Reserve Bank of India and so also the directives given by the Hon'ble Supreme Court as discussed above.”

13. The Hon'ble Supreme Court in its various pronouncements such as United Bank of India v. Satyawati Tandon, (2010) 8 SCC 110, has clearly held that the recovery proceeding, such as for loan, tax, etc., should not be halted by exercising power under Article 226 of the Constitution of India.

14. *The petitioner has a remedy to raise his grievances in terms of Section 13(4) (a) of the SARFAESI Act, 2002, which admittedly has not been availed of.*

15. *In view thereof and under the facts of the present case, this court is not inclined to entertain the instant writ petition at this stage leaving it open for the petitioner to raise his grievances in terms of Section 13(4)(a) of the SARFAESI Act, 2002 and if in case the petitioner has grievance thereafter the appropriate remedy would be under Section 17 of the SARFAESI Act, 2002.*

16. *In view of the aforesaid case writ petition against impugned notices under section 13(2) of the SARFAESI Act, 2002 dated 08.08.2022 and 17.08.2022 by the respondent-bank is not entertained.*

17. *The petition itself stands disposed of alongwith pending applications with liberty to avail appropriate remedy in the aforesaid terms.”*

15. This Court has heard learned Counsel for the Parties at length and perused the record.

16. The undisputed facts of the case reveal that the accounts of the Appellants became irregular and they were declared as NPA; the Respondent Bank has issued notices dated 08.08.2022 and 17.08.2022 under Section 13(2) of the SARFAESI Act, 2002, and; a writ petition was preferred before this Court.

17. Section 13 of the SARFAESI Act, 2002 reads as under:

“13. Enforcement of security interest. -

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of

this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The notice referred to in sub- section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub- section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d)

of sub- section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub- section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub- section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the s cured creditor, and no further step shall be taken by him for transfer or sale of that secure asset.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub- section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three- fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the

amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub- section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen' s dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen' s dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen' s dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen' s dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen' s dues, such creditor shall be liable to pay the balance of the workmen' s dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen' s dues, if any.

Explanation.- For the purposes of this sub- section,-

(a) " record date" means the date agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding on such date;

(b) " amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measured specifics in clause (a) to (d) of sub- section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub- section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.”

18. This Court has carefully gone through the judgment delivered by the learned Single Judge and has heard learned Counsels at length and is of the considered opinion that Section 13 of the SARFAESI Act, 2002 provides a complete mechanism and, in the present case, notices were issued under Section 13(2) of the SARFAESI Act, 2002, as stated earlier. If the borrower fails to pay the amount, then under Section 13(4) of the SARFAESI Act, 2002, the secured creditor is permitted to take recourse to the measures as enumerated therein.

19. Section 17 of the SARFAESI Act, 2002 is reproduced as under:

*“17. Application against measures to recover secured debts--
(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by*

the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.--For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction--

- (a) the cause of action, wholly or in part, arises;*
- (b) where the secured asset is located; or*
- (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.*

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(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.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where--

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,--

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.”

20. The aforesaid statutory provisions of law make it very clear that in case a notice is issued under Section 13(2) of the SARFAESI Act, 2002, the borrower/ account holder certainly has to submit a reply and to raise his

grievance in terms of Section 13(3A) of the Act, and thereafter, if the Appellants are having any further grievance, they can certainly prefer an appeal against the action taken under Section 13(4) by filing an appeal under Section 17 of the SARFAESI Act, 2002.

21. The learned Single Judge after placing reliance upon the judgment delivered in the case of ***Authorized office, State Bank of Travancore v. Mathew K.C.***, (2018) 3 SCC 85, wherein a writ petition was preferred in similar circumstances challenging demand notices issued under Section 13(2) of the SARFAESI Act, 2002, disposed of the writ petition. Paragraphs 15 and 16 of the said judgment read as under:-

“15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in Satyawati Tandon (supra), has also not been kept in mind before passing the impugned interim order:-

“46. 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 (sic will) 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. Antaim Zila Parishad AIR 1969 SC 556, Whirlpool Corp v. Registrar of Trade Marks (1998) 8 SCC 1 and Harbanslal Sahani v. Indian Oil Corp. Ltd. (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference."

22. In light of the aforesaid judgment, this Court is of the opinion that the learned Single Judge was justified in disposing of the writ petition by placing reliance upon the aforesaid judgment. The learned Single Judge has

also taken into account the judgments delivered in the cases of *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311; *Fabworth* (supra); and *United Bank of India v. Satyawati Tandon*, (2010) 8 SCC 110; and was justified in holding that the Petitioner has remedy to raise his grievance in terms of Section 13(3A) of the SARFAESI Act, 2002 and thereafter, to prefer an appropriate appeal under Section 17 of the SARFAESI Act, 2002.

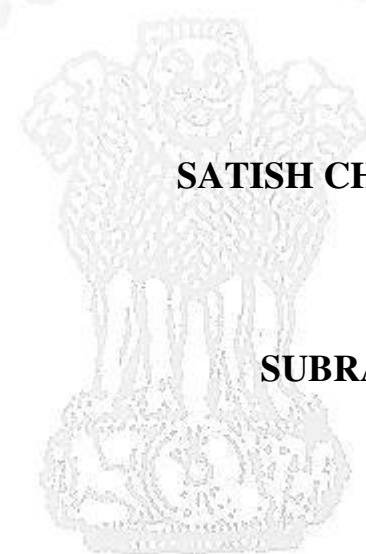
23. This Court does not find any reason to interfere with the order passed by the learned Single Judge. The admission of the writ appeal is declined.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

APRIL 05, 2023

B.S. Rohella



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