IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.546 of 2024

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M/s Ganesh Ram Dokania APartnership firm, incorporated under the Partnership Act, having its registered office at Dokania Market Aliganj Banka, P.O. Banka, P.S. - Banka, District - Bhagalpur, Pin - 813102, and Branch Office at Flat No. 207, Basudeo Vihar Apartment, Parmanand Path, Nageshwar Colony, Boring Road, Patna - 800001 through its Partner namely, Krishna Kumar Dokania, Aged About 57 Years (male) S/o Late Ganesh Ram Dokania residing at Aliganj Banka, P.O.- Banka, P.S.- Banka, District-Banka, Pin - 813102

... ... Petitioner/s

Versus

1. UCO Bank having its Head Office at No. 10, BTM Sarani Radha Bazar, B.B.D Bagh, Kolkata-700001.
2. The Authorized Officer, UCO Bank, Safdar Road, Koilaghat, Adampur Chowk, Bhagalpur - 812001.
3. The Zonal Manager, Safdar Road, Koilaghat, Adampur Chowk, Bhagalpur - 812001
4. The Chief Manager, UCO Bank, Banka, Dokania Market, Banka-813102

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sanjay Singh Thakur
For the Respondent/s : Mr. Ranjeet Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
CAV JUDGMENT
Date : 07-10-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following relief(s):-

> *"(a) A writ of and/ or in the nature of Mandamus do issue commanding the Respondents, particularly the Respondent nos. 2 to 4 that the classification of the account of the Petitioner as NPA as on 31.07.2021 is violative of compliance of Clause 2.1.2 of the Master Circular of the Reserve Bank of India dated July 1, 2015, on prudential norms on income recognition and asset classification and provisioning pertaining to advances.*
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> *(b) A Writ of and/or in the nature of Mandamus do issue commanding the Respondents,*

particularly the Respondent nos. 2 to 4 to effect removal of the account of the Petitioner firm from the relegated status of NPA in pursuance to the executed letter dated 25th October 2022 being Annexure "L" to the instant writ application.

(c) A Writ of and/or in the nature of Mandamus do issue commanding the Respondents, particularly the Respondent nos. 2 to 4 to regularize the accounts of the Petitioner and quash and/or set aside the classification of the Petitioner's account as Non-Perform Asset dated 31.07.2021 when the loan account is within limit even as on date and even on 31/07/2021 the loan account was within limit.

(d) A Writ of and/or in the nature of Mandamus do issue commanding the Respondents, particularly the Respondent nos. 2 to 4 not to give further effect to the demand notice dated 02.09.2023 being Annexure "M" hereof in any manner whatsoever.

(e) A Writ of and/or in the nature of Mandamus do issue to pass order directing Respondent bank to refund excess interest charged by capitalization of penal interest against settled law laid down by the Hon'ble Supreme Court in the case titled Punjab & Sind Bank V/s Allied Beverage Company Pvt. Ltd.& ors.;

(f) A Writ of and/or in the nature of Mandamus do issue to pass order directing Respondent bank to refund excess interest charged and such reversal was done by the Respondent bank once on 12/08/2011 of Rs.3,97,143/- and again on 06/06/2014 of Rs.33,78,451/- mentioned for the period 01/01/2014 to 31/05/2014 but even thereafter the bank kept charging excess interest as the Respondent bank is in habit of doing so;

(g) A writ of and/or order and/or direction in the nature of prohibition do issue restraining the Respondent Nos. 2 to 4 from taking any step and/or measures and/or further steps or measures and/or initiating any action and/or further action based on the classification of the account of the Petitioner as NPA as on 31.07.2021.

(h) Writ of and/or in the nature of Certiorari do issue directing the Respondent Authorities to certify and transmit all records

pertaining to the instant case before this Hon'ble Court for proper adjudication thereof.

(i) Writ of and/or in the nature of Mandamus do issue directing the Respondent Authorities as to why the Respondent Bank violated the RBI guidelines pertaining to prudential norms which required application on interest in a separate account called memorandum of account and should not debit the loan account as per norms 25.1.2.3 dated-01/07/2013.

(j) Rule NISI in terms of prayers above.

(k) Interim orders restraining the Respondents especially the Respondent nos. 2 to 4 from taking any further coercive steps and/or measures till the disposal of the Writ application.

(l) Ad interim order in terms of prayer (h) above;

(m) Such further or other order or orders be passed and/lor direction or directions be given as this Hon'ble Court may deem fit and proper."

3. Learned counsel for the petitioner has assailed the validity of the respondent-Bank in declaring the accounts of the petitioner as Non Performing Assets (NPA) and thereafter, initiating the proceedings under the SARFAESI Act, 2002 (hereinafter as the Act). Though the learned counsel has argued at length with regard to the various lapses and violations done by the respondent-Bank in declaring the account of the petitioner as NPA and has relied on various judgments of the Hon'ble Supreme Court and also the guidelines/ circulars issued by the Reserve Bank of India, this Court is not inclined to go into the merits of the case as the Bank has already issued notice under Section 13(2) & 13(4) of the Act and the subject property has been sold and the petitioner has an effective and alternate remedy of approaching the DRT under Section 17 of the Act.

4. The Hon'ble Supreme Court in the case of ***M/s South Indian Bank Ltd. & Ors. Vs. Naveen Mathew Philip & Anr. Etc. Etc***. reported in ***2023 LiveLaw (SC) 320*** has held as under;

> *"13. In view of the fair stand taken by the learned Senior Counsel appearing for the Appellants, we do not wish to interfere with the impugned orders passed. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute. We are also constrained to take judicial notice of the fact that certain High Courts continue to interfere in such matters, leading to a regular supply of cases before this Court. One such High Court is that of Punjab & Haryana.*
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> *14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel. We wish to place reliance on the decision of this Court in Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104,*

"Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in Parry & Co. v. Commercial Employees' Association, Madras [(1952) SCR 519], Veerappa Pillai v. Raman and Raman Ltd. & Others [(1952) SCR 583], Ibrahim Aboobaker v. Custodian General [(1952) SCR 696] and quite recently in T.C. Basappa v. T. Nagappa [(1955) SCR 250].

We wish to quote with profit a recent decision of this Court in Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771,

""25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar of Trade Marks (1998) 8 SCC 1, a two-Judge Bench of this Court after reviewing the case law on this point, noted: (SCC pp. 9-10, paras 14-15)

"14.The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has *been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field".*

(emphasis supplied)

26. Following the dictum of this Court in Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1], in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107], this Court noted that: (Harbanslal Sahniacase, SCC p. 110, para 7)

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks[(1998) 8 SCC 1].) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants

should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

(emphasis supplied) "

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires *the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

5. The Hon'ble Supreme Court in the case of ***Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*** reported in ***(2022) 5 SCC 345*** has held as under;

"12. Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC – appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/ actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of Praga Tools Corporation(supra) and Ramesh Ahluwalia(supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.

Applying the law laid down by this Court in the case of Mathew K.C. (supra) to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the

Constitution of India is an abuse of process of the Court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13.08.2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even theimpugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs.1 crore only (in all Rs.3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs.117 crores. The adinterim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of Court. It appears that the High Court has initially granted an ex-parte ad-interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

6. The Hon'ble Supreme Court passed in the case of ***Mardia Chemicals Ltd. Vs. Union of India*** reported in ***(2004) 4 SCC*** has held as under;

> *"80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section I7 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :-*
>
> *1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days' notice before proceeding to take any of the measures F as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.*
>
> *2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.*

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition at it may deem fit and proper to impose."

7. The Hon'ble Supreme Court in the case of ***Celir LLP v. Bafna Motors(Mumbai) (P) Ltd.*** reported in ***(2024) 2 SCC 1*** has held as under;

"105. We summarise our final conclusion as under:

(i) The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.

(ii) The confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI.

(iii) In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the

borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser.

(iv) The Bank after having confirmed the sale under Rule 9(2) of the Rules of 2002 could not have withhold the sale certificate under Rule 9(6) of the Rules of 2002 and enter into a private arrangement with a borrower.

(v) The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act.

(vi) The two decisions of the Telangana High Court in the case of Concern Readymix (supra) and Amme Srisailam (supra) do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in the case of Pal Alloys (supra) also does not lay down the correction position of law.

(vii) The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act."

8. The petitioner has approached this Hon'ble Court after a period of two and a half years after his the account was declared as NPA. A Full Bench of the High Court of Andhra Pradesh in the case of ***P.V. Narayan v. APSRTC, Hyderabad***, has held as under:

“71. On the basis of the decisions of the Supreme Court referred to above, the relevant considerations that may be taken into account in determining the issue of delay and laches may be summarized thus:

“(1) Though no period of limitation is prescribed for the writ Courts to exercise their powers under Article 226 of the Constitution of India or to file a writ petition, a person aggrieved should approach the Court without loss of time. In appropriate cases, where there is delay and the same has properly been explained with cogent reasons, Court may condone the delay as an exception to meet the ends of justice. But, it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. (2) Courts have evolved rules of selfimposed restraints or fetters where the High Court may hot enquire into belated or stale claim and deny relief to a party if he is found guilty of laches. One who is tardy, not vigilant and does not seek intervention of the Court within a reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right, is not entitled to relief under Article 226.

(3) .....

(4) .....

(5) .....

(6) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights

had emerged by the delay on the part of the petitioners.

(7) Where there is remiss or negligence on the part of a party approaching the Court for relief after an inordinate and unexplained delay, in such cases, it would not be proper to enforce the fundamental right As a general rule if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party in exercise of the extraordinary power of mandamus.

(8) There is no waiver of fundamental right But while exercising discretionary jurisdiction Court can take into account delay and laches on the part of the applicant in approaching a writ Court

(9) .....

(10) .....

(11) If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Courts have applied the rule of delay with greater rigor in service matters.

(12) The benefit of a judgment cannot be extended to a case automatically. The Court is entitled to take into consideration the fact as to whether the petitioner had chosen to sit over the matter and wake up after the decision of the Court If it is found that the petitioner approached the Court with unreasonable delay, the same may disentitle him to obtain a discretionary relief. Long Delay disentitles a party to the discretionary relief under Articles 32 and 226 and persons who had slept over their rights for long and elected to wake up then they had the impetus from the judgment of similarly placed persons.

(13) Where during the intervening period rights of third parties have crystallized, it would be inequitable to disturb those rights at the instance of a person who has approached the court after long lapse of time and where there is no cogent explanation for the delay.

(14)....."

9. Even though there is no quarrel with the propositions of law laid down by the Hon'ble Supreme Court in the various judgments relied by the petitioner, the same would not be of any avail to the petitioner as he has approached this Court after a lapse of more than two and a half years after the account was declared NPA.

10. Having regard to the above and the law laid down by the Hon'ble Supreme Court in the above mentioned cases, this Court is not inclined to entertain the present CWJC leaving it open to the petitioner to challenge the SARFAESI proceedings before the concerned DRT. It is made clear that this Court has not gone into the merits of the case and leaving all the issues open to be raised by the petitioner and to be addressed by the DRT.

11. The present writ petition is accordingly, dismissed however, without any costs.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	21.03.2024.
Uploading Date	15.05.2025.
Transmission Date	NA