IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17554 of 2013

==

Smt. Satya Singh W/O Shri Pradeep Kumar Singh R/O Village Parasawan, P.O. Mayurhand, P.S. Itkhori, District- Chatra Jharkhand

... ... Petitioner/s

Versus

1. Authorized Officer Cum Asst. General Manager and Ors 2nd Floor, Patna Main Branch Building, West Gandhi Maidan, Patna- 800001
2. The Chairman, Reliance Industries Limited, Office At 3rd Floor, Maker Chamber-Iv, 22 Nariman Point, Mumbai- 400021
3. Authorized Representative, Reliance Industries Ltd., Branch Office At Gr. Floor, Hotel Chandra Comp Opp. Sagar Hotel, New Kalimati Road, Sakchi, Jamshedpur
4. Sri Abhay Kumar Singh S/O Sri Rb. Singh R/O Suresh Colony, P.S. Hazaribagh Sadar, District- Hazaribagh, Jharkhand
5. Chairperson, Debt Recovery Appellate Tribunal, 147a-58/1, Jawahar Lal Nehru Road, Tagore Town, Allahabad

... ... Respondent/s

==

with

Civil Writ Jurisdiction Case No. 24742 of 2013

==

Smt. Satya Singh W/O Shri Pradeep Kumar Singh R/O Village Parasawan, P.O. Mayurhand, P.S. Itkhori, District - Chatra Jharkhand

... ... Petitioner/s

Versus

1. AUTHORIZED OFFICER CUM ASST. GENERAL MANAGER, State Bank of India, Stressed Assets Management Branch, 2nd Floor, Patna Main Branch Building, West Gandhi Maidan, Patna - 800001
2. The Chairman, Reliance Industries Limited, Office At 3rd Floor, Maker Chamber -Iv, 222, Nariman Point, Mumbai -400021
3. Authorized Representative, Reliance Industries Ltd., Branch Office At Gr. Floor, Hotel Chandra Complex, Opp. Sagar Hotel New Kalimati Road, Sakchi, Jamshedpur,
4. Sri Abhay Kumar Singh S/O Sri R.B. Singh R/O Suresh Colony, P.S. Hazaribagh Sadar, District - Hazaribagh, Jharkhand
5. Chairperson, Debt Recovery Appellate Tribunal, 147-A-58/1, Jawahar Lal Nehru Road, Tagore Town, Allahabad

... ... Respondent/s

==

with

Civil Writ Jurisdiction Case No. 24768 of 2013

==

Smt. Satya Singh W/O Shri Pradeep Kumar Singh R/O Village Parasawan, P.O. Mayurhand, P.S. Itkhori, District - Chatra Jharkhand

... ... Petitioner/s

Versus

1. AUTHORIZED OFFICER CUM ASST. GENERAL MANAGER STATE BANK OF INDIA and ORS Stressed Assets Management Branch, 2nd Floor, Patna Main Branch Building, West Gandhi Maidan, Patna - 800001
2. The Chairman, Reliance Industries Limited, Office At 3rd Floor, Maker Chamber -Iv, 222, Nariman Point, Mumbai -400021
3. Authorized Representative, Reliance Industries Ltd., Branch Office At Gr. Floor, Hotel Chandra Complex, Opp. Sagar Hotel, New Kalimati Road, Sakchi, Jamshedpur
4. Sri Abhay Kumar Singh S/O Sri R.B. Singh R/O Suresh Colony, P.S. Hazaribagh Sadar, District - Hazaribagh, Jharkhand
5. Chairperson, Debt Recovery Appellate Tribunal, 147-A-58/1, Jawahar Lal Nehru Road, Tagore Town, Allahabad

... ... Respondent/s

==

Appearance :

(In Civil Writ Jurisdiction Case No. 17554 of 2013)

For the Petitioner/s	:	Mr. Arbind Kumar Jha, Advocate
For the Respondent Bank	:	Mr. Sanjiv Kumar, Advocate
For the Respondent Nos. 2 and 3	:	M/s Manoj Kumar Ambastha Santosh Kumar Mishra Divit Vinod, Advocates
For Respondent No. 4	:	M/s S.D.Sanjay, Sr. Advocate Alok Kumar Agrawal, Advocate

(In Civil Writ Jurisdiction Case No. 24742 of 2013)

For the Petitioner/s	:	Mr. Arbind Kumar Jha, Advocate
For the Respondent Bank	:	Mr. Sanjiv Kumar, Advocate
For the Respondent Nos. 2 and 3	:	M/s Manoj Kumar Ambastha Santosh Kumar Mishra Divit Vinod, Advocates
For Respondent No. 4	:	M/s S.D.Sanjay, Sr. Advocate Alok Kumar Agrawal, Advocate

(In Civil Writ Jurisdiction Case No. 24768 of 2013)

For the Petitioner/s	:	Mr. Arbind Kumar Jha, Advocate
For the Respondent Bank	:	Mr. Sanjiv Kumar, Advocate
For the Respondent Nos. 2 and 3	:	M/s Manoj Kumar Ambastha Santosh Kumar Mishra Divit Vinod, Advocates
For Respondent No. 4	:	M/s S.D.Sanjay, Sr. Advocate Alok Kumar Agrawal, Advocate

==

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

CAV JUDGMENT

Date : 26-11-2024

1. These three Writ petitions are interlinked and interconnected were heard together and disposed of by a

common order.

2. For better appreciation of the case, the reliefs prayed for in each of the Writ petition are quoted herein below:

<u>Re. CWJC No. 17554 of 2013</u>

> *"That the Writ petition is being filed for issuance of Writ of certiorari for quashing the order dated 9.7.2013 passed by Hon'ble Chairperson Debt Recovery Appellate Tribunal, Allahabad by which Learned Chairperson was pleased to quash the order dated 11.9.2012 passed by Learned Presiding Officer, Debt Recovery Tribunal, Patna, in ignorance of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'Act) and Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as 'Rule), without correctly stating the facts of the case, law governed the case declared by Apex Court and without considering the pleading/submissions made by counsel of the petitioner.*

The petitioner further prays for issuing Writ of mandamus to the respondents concerned from proceeding further and give effect to order passed in Appeal (T) 7/2013 (In Appeal No. 162/12) dated 9.7.2013.

The petitioner further prays for declaration of law that unless the appeal is admitted after due compliance of the deposits U/s 18(1) second proviso of the Act, the Appeal cannot be heard and decided on merit.

The petitioner further prays for issuance of any other appropriate Writ /Writs order/orders and/or direction/ directions for which petitioner may be found entitled."

Re. CWJC No. 24742 of 2013

"That the Writ petition is being filed for issuance of Writ of certiorari for quashing the order dated 9.7.2013 passed by Hon'ble Chairperson Debt Recovery Appellate Tribunal, Allahabad by which Learned Chairperson allowed the Appeal (T) No. 12 of 2013 (In Appeal No. 173/12) preferred by auction purchaser on the sole ground that "the counsel appearing for

Reliance Industries Limited has undertaken that since the property has already been sold in auction therefore he will vacate the premises within 30 days from today." The final order was passed without adhering to Section 18(2) of the SARFAESI Act, 2002 which prescribe that Appellate Tribunal shall as far as may be, dispose of appeal in acordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rule made thereunder and in the present appeal without any notice of the case as require by Act/Rule and opportunity to explain the case allowed the appeal on the submission of counsel for Reliance Industries Limited.

The petitioner further prays for issuing Writ of mandamus to the respondent concerned from proceeding further and give effect to order passed in Appeal (T) No. 12/2013 (In Appeal No. 173/2012).

The petitioner further prays for declaration of law that unless scrutiny of memorandum of appeal as per Rule 6 of Debt Recovery Tribunal (Procedure) Rule, 1994, a copy of memorandum of appeal and *paper book shall be served on petitioner as per Rule 13 by Registered Post further one month time is given to reply the appeal from the date of service of notice under Rule 14 and date and place of hearing is notified as per Rule 16 and only after the completion of above formalities the appeal can be decided by the appeal is admitted after due compliance of the deposits U/s 18(1) second proviso of the Act, the Appeal cannot be heard and decided on merit.*

The petitioner further prays for issuance of any other appropriate Writ /Writs order/orders and/or direction/ directions for which petitioner may be found entitled."

Re. CWJC NO. 24768 of 2013

" That the writ petition is being filed for declaration that in view of dismissal of Appeal (T) 11 of 2013 (In Appeal No. 13/2013) order dated 11th Sept., 2012 passed in SA 84 of 2011 has become final and the measures taken by the Secured Creditor Bank under SARFAESI Act, 2002 is bad in law as declared by Learned Presiding Officer, Debt Recovery Tribunal, Patna.

The petitioner further prays for

declaration that the decision given by the Appellate Tribunal in Appeal (T) No. 11/2013 (In Appeal No. 13/2013) dismissing appeal on the ground of limitation operate as res judicata between the parties to appeal and binding on Appellate Tribunal in all the proceeding arising out of same order and between the parties.

The petitioner further prays for issuance of any other appropriate writ /writs order/orders and/or direction/ directions for which petitioner may be found entitled."

3. The brief facts culled out of these petitions are that on 18.01.2005 a Letter of Intent (in short "LOI") for appointment of Dealer for Reliance Retail Outlet was issued in favour of the petitioner with a condition (i) to provide an initial non interest bearing security deposit of Rs. 20 lakhs and (ii) to construct at the cost of the petitioner a Retail Outlet and lease the land with retail outlet construed thereon to Reliance for 20 years and other conditions.

4. It is submitted by the petitioner that in terms

of LOI a Registered Lease Deed dated 18.1.2006 demised in favour of Reliance all piece and parcel of land or ground admeasuring 3400.59 sq.mt. together with building and other structures erected and constructed. It is further submitted that on the same day i.e. on 18.1.2006, a dealership agreement was entered between the petitioner and respondent No.3 mentioning therein that in pursuant to lease deed dated 18.1.2006 dealer demised in favour of respondent No. 3 all that piece of or parcel of land together with building and other structure for a term of twenty years commencing from 18.1.2006 and on or before the execution, the Dealer paid Reliance a sum of Rs.3,00,000/- as non-refundable signing fee towards expenses and the other terms were as follows:

(i) The agreement shall remain in free for period of 20-years.

(ii) The Dealer shall built, construct, develop and maintain said property.

(iii) Reliance shall supply the product, to dealer at prices that may determined by

Reliance.

(iv) Reliance will have absolute discretion to increase or stop or suspend the quantity of product to be supplied.

(v) In the event of termination of agreement security deposit shall be refunded.

5. It is contended that the lease deed using word demise "means absolute covenant on the part of the lessor for the lessee" and for quiet enjoyment during the term of 20 years commencing from 18.1.2006 and the relevant clause-4 specifically states that lessee quietly had and enjoy the Demised premises during the said term hereby granted without any interruption or disturbance by the lessor or any person or persons lawfully or equitably claiming from under or in trust for him/her/them. Further, on execution of lease deed, the lessor has put the lessee in actual, physical, peaceful, vacant and exclusive possession of the demised premise. It is further contended that after completion of formalities of lease, LOI and dealership agreement, a Tripartite Agreement dated 19.01.2006 (Annexure-4 in

all the three Writ petitions) was reached between State Bank of India, Reliance Industries Limited (in short "RIL") and the petitioner.

6. It is further contended by the petitioner that on representation made by borrower petitioner and RIL, the Bank agreed to grant credit facilities to borrower on terms and conditions mentioned therein. The relevant clauses are;

> - *AND WHEREAS the borrower has executed lease deed dated 18.1.2006 for the Retail Outlet i.e. the said Land and the structure constructed or to be constructed thereon in favour of RIL. And Whereas the Borrower has requested the Bank to provide it with the credit facility in a sum of Rs. 68,70,000/- (Indian Rupees Sixty eight lakh seventy thousand)only in the form of a term loan and an overdraft facility towards working capital in a sum of Rs. 13,30,000/- (Indian Rupees Thirteen lakh thirty thousand only) (hereinafter collectively called the "Credit Facilities") for the purpose of construction over the said Land, making the*

security deposit to RIL and meeting the working capital requirements for setting up and running of the Retail Outlet. It is further contended that various clauses of T.P.A. was depending upon certain events, on the move of the RIL, petitioner and bank. Such type of contract are dealt in Chapter-III of the Contract Act, 1872 deals with contingent contracts. Contingent contract has been defined in Section 31 of the Contract Act, 1872 and the method of enforcement is stated in Section 32 of the Contract Act, 1872. The petitioner has quoted Sections 31 and 32 of the aforesaid Act, which reads as follows:

> *"31. "Contingent contract" defined.—A "contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.*
>
> *32. Enforcement of contracts contingent on an event happening.—Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.*
>
> *If the event becomes impossible,*

such contracts become void.”

7. It is further contended that in the present case also TPA is a contingent contract and can be enforced by law on happening of certain event like; *(i) RIL shall pay all amounts due and payable by RIL to the borrower, (ii) RIL shall not terminate the dealership agreement, with the borrower for Retail outlet unless Written notice of such intention to terminate the dealership agreement has been given to Bank, (iii) RIL in the event of termination from dealership with borrower pay the amount of rent, the Bank shall be entitled to appropriate this amount towards the outstanding amount due in respect of credit facilities, (iv) Raise Debit Notes on the borrower with each sales quantity, (v) Pay the amount collected from the borrower towards Debit Notes to the Bank, (vi) Upon termination of dealership under the Credit facilities:- (a) All amounts outstanding under the credit facilities shall forthwith become dues. (b) RIL shall pay all the amounts payable by RIL to borrower (inclusive of*

security deposit) till the date of termination or beyond directly to the bank. (c) RIL agrees to purchase retail outlet at value not less than outstanding under the credit facilities.

(vii) It was agreed that enforcement/ fore closure of the mortgage shall be through Court of Law/DRT,

Besides there are may other contingent clauses upon happening of which bank could take recourse to law.

8. It is submitted by the petitioner that with effect from 15.2.2006, the operation of the retail dealer started at the aforesaid place. But due to some problem of price disparity, the Reliance Industries Ltd. took a decision to close the entire venture of Retail Outlet in the year 2006 and the retail outlet dealership of the petitioner was also closed from the month of May, 2006. After closure of the entire venture of retail outlet business, the RIL prepared a Dealer Support Scheme dated 13.09.2006 (Annexure-5), in which options were

sought from the Dealers including the petitioner. Pursuant to the aforesaid scheme, by letter dated 25.09.2006, the petitioner opted for option 2 under which "ROI amount" equal to 12.5% per annum of (normative capital expenditure + actual security deposit) and also requested to the COO East RIL through Annexure-7 that in view of the interest on Bank Loan and interest on capital inserted by petitioner the total cost of retail outlet is of Rs. 178.10 lacs and under dealer support scheme option -2, petitioner will be in position to pay the Bank regular EMI.

9. It is further contended that as per option-2, Reliance Industries Limited was supposed to give Rs. 85,000/- per month under Dealer Support Scheme since May, 2006 or in terms of Tripartite Agreement RIL was obliged to deposit the same in borrower's loan account. It is further contended that the petitioner in terms of Tripartite Agreement requested in Writing to RIL that aforesaid Dealer Support Amount may be deposited in Bank's loan account so that amount of loan may be

liquidated and under Dealer Support Scheme petitioner was entitled to Rs. 50.15 lacs or RIL may deposit the same in petitioner loan account which was sufficient to keep the account operational. It is contended on behalf of the petitioner that the RIL did not bother to comply the terms of Tripartite Agreement and instead of depositing the amount of Dealers Support Scheme in Borrower's account, allow the account to become NPA.

10. It is further contended by the Learned counsel for the petitioner that the petitioner could not liquidate the loan amount of the Bank because of the reason of closure of retail outlet by Reliance Industries Limited, in such circumstances RIL vide letter dated 16.3.2007 (Annexure-8) requested the Branch Manager with reference to Tripartite Agreement to Supply interest calculation to enable RIL to pay the same. It is also contended that since default started in May 2007 and due to closure of retail Outlet by RIL no business operation was continuing, RIL was obliged to pay to the Bank as per Dealer Support Scheme and Bank was

obliged to adjust the same towards the amount out standing under the credit facilities. To that extent petitioner by letter dated 16.5.2008 requested the RIL to deposit the amount directly to T.L. Account and CC Account. It is further submitted by the Learned counsel for the petitioner that in terms of Tripartite Agreement RIL was obliged to buy the demised premises. By letter dated 31.10.2008, petitioner requested to RIL to buy the demised premise in order to liquidate the dues of the Bank as well the petitioner investment in business.

11. It is further submitted that even after the specific request to implement the terms of Tripartite Agreement, RIL did not respond to petitioner's letter dated 31.10.2008 (Annexure-10). In the mean time Bank served a notice to the petitioners dated 22.5.2009 advised to pay the amount,

(a). Term Loan A/c Reliance Petro = 73,79,421.58 + Intt.

(b). Term Loan Account personal Loan - 1,87,646.00+ Intt.

(c). Car Loan Account 4,97,181.00 + Intt.

(d). Cash Credit Account 16,27,099.83+ Intt.

12. It is further submitted by the Learned

counsel for the petitioner that the respondent Bank proceeded to enforce security interest under the provisions of SARFAESI Act, 2002, and gave a notice U/s 13(2) (Annexure-12) which was received by petitioner on 12.8.2009 to pay Rs. 96,93,460.71 as on date. The notice further give the details of the amount payable under different credit facility in 'Schedule-A', details of security documents in 'Schedule-B' and details of property hypothetical and mortgaged with Bank in 'Schedule-C'. The respondent Bank secured another notices to the State Head (Bihar) Reliance Industries Ltd. dated 26.5.2010 referring to M/s Satya Singh Loan account under Reliance Petro Scheme and stated that unit stopped its operation due to closure of the Reliance Petroleum unit and the account became NPA. It was further asserted that under the aforesaid scheme, the Reliance Company has to make ROI Payment of the Term Loan instalment, which is not being done and requested to release ROI Payments.

13. It is contended by the Learned counsel for

the petitioner that notice u/s 13(2) of the SARFAESI Act is a statutory notice and must be strictly in accordance with the statutory provisions. Section 13(2) of the SARFAESI Act reads as follows:

> *"13(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)."*

14. The Learned counsel for the petitioner contended that from perusal of section 13(2) of the SARFAESI Act, it is apparent that for issuing SARFAESI notice U/s 13(2) the requirements are; (a). borrower is under liability under security agreement,

(b). Borrower's account in respect of such debt is classified as NPA, (c). Secured creditor serve notice to discharge in full his liability within sixty days from then date of the notice, (d). Failing which secured creditor shall be entitled to exercise rights under sub-section (4). It is further contended that from the perusal of notice it is apparent that notice is undated and period of sixty days commences from the date of the notice and besides term loan and CC account, the amount includes Personal Loan and Car Loan which were liquidated after receipt of notice, accordingly, the demand raised u/s 13(2) of the SARFAESI Act, notice was amended and demand notice became infructuous.

15. It is further contended that 'Schedule-C' property can be enforced in pursuance of Tripartite Agreement dated 19.1.2006 which is deemed sold to RIL for a minimum amount of Bank's dues on the date of notice. The payment of dues outstanding is guaranteed by RIL and on default notice to RIL. The contract was contingent contract as defined under

Section 31 of the Contract Act and is enforceable U/s 32 of the contract Act i.e.; "That as per Tripartite Agreement, Bank was required to enforce foreclosure and on successful foreclosure through court of law/ DRT, if the retail outlet is to be sold in pursuance of enforcement of mortgage, the RIL purchases the same." It is contended on behalf of the petitioner that, admittedly, in the present case neither successful foreclosure was enforced through court of law/ DRT nor there was any occasion to sell the properties of Retail Outlet even though defective notice U/s 13(2) was issued by Authorized Officer. Section 13(2) empowers the Authorized Officer to enforce 'Security agreement' as define in Section-2 sub-section (zb).

Section 2 sub section (zb) reads as follows:

> *"2(zb) security agreement means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;"*

i.e. property which can be proceeded against are those in which 'security interest' is created. Security interest is defined in section 2(zf) which reads as follows:

"2(zf) 'security interest means right title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31"

16. The Learned counsel for the petitioner further contended that the security interest which are enforceable are subject to exceptions specified under Section 31. The relevant portion of it, reads as follows:

"31. Provision of this Act not to apply in certain cases - The provisions of this Act shall not apply to -

31(e) Any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created,

It is contended that admittedly in case of lease provisions of securitization legislation shall not apply.

17. The Learned counsel for the petitioner submitted that the reason for excluding the lease from the purview of securitization proceeding are;

i. That by virtue of lease deed the RIL acquire interest to property and possession thereof mentioned in Schedule-C.

ii. That by virtue of lease deed right to property under Art. 300A of the constitution was created in favour of RIL and cannot be taken away except by process of law.

iii. That as soon as the registered lease agreement is executed confirming interest to lessee RIL including building constructed thereon, it is title under section 58(1) of T.P. Act and title of lessor is defective title during the subsistence of lease as held by Hon'ble Apex Court in ***Kalyanpur Lime Works Vs. state of Bihar & Ors [AIR 1954 SC 165]***

iv. That under section 108(j) of the T.P. Act lessee i.e. RIL may transfer absolutely or by way of *mortgage, sub lease, the whole or any part of his interest in property.*

v. Registered lease deed are documents of title within the meaning of section 58 (f) of the T.P. Act.

18. It is contended that in pursuance of above mentioned legal position, it was agreed between all the three contracting parties i.e. Applicant, RIL and Bank to enforce mortgage by foreclosure and after successful foreclosure if need arisen to sale the mortgaged property, RIL shall buy the same at value not less than the debt due of the Bank. So there was no occasion for Bank to enforce section 13(2) of SARFAESI Act, 2002.

19. Further, it is submitted by the petitioner that on 27.10.2009 possession notice under Rule 8(1) of Security Enforcement Rule (Annexure-14) was issued for payment of Rs. 96,93,460.71 mentioning therein the lease hold property which is part of the Tripartite Agreement and hence, the action of Authorized Officer to take possession from the Petitioner is without

jurisdiction as the actual possession of the same is lying with the RIL, the lessee. It is further submitted that subsequently, a settlement was reached between the borrower and the bank for Rs. 96.00 lacs on payment of upfront Rs. 5 lacs and the balance was payable by 31.12.2010, which was communicated by the Bank to the petitioner vide letter dated 19.10.2010 (Annexure-16)

20. It is submitted by the petitioner that due to non-cooperation of RIL, the petitioner could not liquidate the debt due. But surprisingly in term of Tripartite Agreement it was never enforced against the RIL, but a sale notice was published in Hindustan Daily on 02.01.2011 (Annexure-17) for sale of lease hold Demised Premise which was deemed sold to RIL for liquidation of debt due. After issuance of sale notice dated 2.1.2011 under SARFAESI Act,2002, the RIL raised objection in pursuance of Tripartite Agreement dated 19.1.2006. The objections in brief are:

a. the subject land is leased to RIL as per lease *deed dated 18.1.2006.*

b. SBI has entered into Tripartite Agreement dated 19.1.2006 in respect of above retail outlet.

c. RIL should be noticed about taking possession of the RO property, since the said property is under lease to RIL and Bank is very much aware of lease hold rights.

d. Public notice is not disclosing the true fact. Public notice states that only encumbrance owner property known to Bank is the mortgage to bank,whereas the property is leased to RIL by virtue of Registered lease deed dated 18.1.2006 and is also well within the knowledge of the Bank and the same is mentioned in Tripartite Agreement.

21. It is submitted by the Learned counsel for the petitioner that the objection raised by the RIL after aforesaid letter dated 1.2.2011(Annexure-18) are:

(a) RIL shall be absolved of obligation and responsibilities under the Tripartite Agreement with immediate effect.

(b) RIL lease hold right as per the aforesaid lease deed dated 18.1.2006 shall continue and the sale by the Bank of the above mentioned property will be subject to lease hold right.

22. That action of Bank i.e., the Auction Notice dated 02.01.2011 was challenged by the petitioner by way of filing CWJC No. 2765 of 2011 on 7.2.2011 and during the pending of the same, sale was conducted and confirmed illegally by the respondent bank.

23. It is submitted by the petitioner that after hearing the parties, CWJC No. 2675 of 2011 was disposed of by a co-ordinate Bench of this Court and the operative portion of the order reads as follows:

> *"Heard Learned counsel for the petitioner and Learned counsel for the respondents.*
>
> *2. This Writ petition has been filed by the petitioner challenging Auction Notice dated 02.01.2011 issued by the Authorized Officer, State Bank of India, SAM Branch, Patna to the effect that the property of the Writ petitioner as mentioned at serial no. 2 shall be auctioned on 02.02.2011.*
>
> *3. Learned counsel for the petitioner submits*

that the auction sale has already been effected and decision has already been taken by the authorities concerned and hence he wants to withdraw this petition in order to file a statutory appeal before the authority concerned.

4. Accordingly, this Writ petition is disposed of as withdrawn with the aforesaid liberty. However, if any such appeal is filed with requisites by the petitioner within 15 days along with a copy of this order as well as an interlocutory application for condoning the delay the said authority shall consider the delay caused due to filing of this Writ petition and shall decide the appeal on merit in accordance with law expeditiously."

24. It is further submitted by the petitioner that after disposal of Writ petition dated 19.5.2011, the petitioner preferred statutory appeal U/s 17 of the SARFAESI Act, 2002 on 27.5.2011, raising all procedural irregularities and declaring the entire proceeding under the Act initiated from Section 13(2) till the issuance of sale certificate as *void-ab-initio* and without jurisdiction. In SARFAESI Appeal No. 84 of 2011, RIL came out with main objection that they are neither borrower nor guarantor and hence they are not a

necessary party to the proceeding.

25. It is submitted on behalf of the petitioner that the petitioner replied to the counter affidavit filed by the RIL and brought to notice of the Tribunal, the judgment of Apex Court in the **Eureka Forbes Ltd. Vs. Allahabad Bank** reported in **(2010) 6 SCC 193** in which it was held that the SARFAESI Proceeding is not only confined to Borrower/Guarantor but to any other person who acquired the property from the borrower and is governed by Section 13(4)(d) and Section 13(5) of the SARFAESI Act. The relevant paragraphs 50, 51 and 52 are reproduced herein below:

> *"50. In this background, let us reads the language of section 2(g) of the Recovery Act, 1993. The plain reading of the section suggests that the legislature has used a general expression in contradistinction to specific, restricted or limited expression. This obviously means that, the legislature intended to give wider meaning to the provisions. Larger area of jurisdiction was intended to be covered under this provision so as to ensure*

attainment of the legislative object i.e. expeditious recovery and providing provisions for taking such measures which would prevent the wastage of securities available with the banks and financial institutions.

51. We may notice some of the general expressions used by the framers of law in this provision;

(a) any liability;

(b) claim as due from any person;

(c) during the course of any business activity undertaken by the bank;

(d) where secured or unsecured;e) and lastly legally recoverable.

52. All the above expressions used in the definition clause clearly suggest that, the expression 'debt' has to be given general ad wider meaning; just to illustrate, the word 'any liability' as opposed to the word 'determined liability' or 'definite liability' or 'any person' in contrast to 'from the debtor' The expression 'any person' shows that the framers do not wish to restrict the same in its ambit or application. The legislature has not intended to restrict to the relationship of a creditor or debtor, alone, General terms, therefore, have *been used by the legislature to give the provision a wider and liberal meaning. These are generic or general terms. Therefore, it will be difficult for the Court, even on cumulative reading of the provision, to hold that the expression should be given a narrower or restricted meaning. What will be more in consonance with the purpose and object of the ct is to give this expression a general meaning on its plain language rather tan apply unnecessary emphasis or narrow the scope and interpretation of these provisions, as they are likely to frustrate the very object of the Act."*

26. It is submitted by the Learned counsel for the petitioner that the words used in SARFAESI Act are:

(a) any liability;

(b) claim as due from any person;

(c) during the course of any business activity undertaken by the bank;

(d) where secured or unsecured;

(e) and lastly legally recoverable.

27. It is submitted by the Learned counsel for the petitioner that the assumption of RIL that they are not the necessary party cannot be accepted in the light of the judgment of Hon'ble Apex Court in the case of **Eureka Forbes Ltd. V. Allahabad Bank (2010) 6 SCC 193**. Further, RIL failed to explain that in case of **State Bank of India, Stressed Assets Management Branch (SAMB), Patna Vs. M/s Sushan Automobiles & Lis**., the Bank filed an OA Application No. 64 of 2008 for recovery of Rs. 71,10,583.94 against the sanctioned financial assistance to the tune of Rs. 79.00 under Petro Credit Scheme in Terms of Tripartite Agreement dated 24.2.2006, containing same clauses 6(i), (ii), (iii), (iv), (v) and (vi) released

"(a) Security Deposit of Rs. 25 lacs (by letter dated 14.7.2011) (Annexure 21/A).

(b) Demand Raised by SAMB from Proprietor as well as RIL of Rs. 48,50,344/- as on 13.8.2011 (Annexure-21/B).

c) RIL liquidated the dues of the Bank to the *tune of Rs. 46,88,000/- by two cheques dated 27.8.2011 (Annexure-21/C)*

(d) RIL letter dated 21.9.2011 (Annexure-21/D) to SAMB to issue TPA discharge Certificate (Annexure 21/E) that the retail outlet land and all assets of M/s Sushant Automobiles under TPA dated 24.2.2006 has been made free from mortgage/ charge/ encumbrances.

(e) Letter of the Bank that Tripartite agreement dated 24.2.2006 entered with RIL and M/s Sushant Automobiles stands terminated. The assets mortgage/hypothecated to us for the said loan are free from charges."

28. It is further submitted on behalf of the petitioner that Tribunal considering all the facts and circumstances stated above quashed the action of the Authorised Officer, holding it bad in law and directed the RIL to liquidate the dues of the Bank in terms of Tripartite agreement.

29. It is contended by the petitioner that being aggrieved by order dated 11.9.2012 passed by Presiding

Officer DRT, Patna, RIL preferred Appeal No. 162 of 2012 before the Debt Recovery Appellate Tribunal, Kolkata. The Appeal No. 162 of 2012 was taken up for hearing on 28.01.2013, for interim stay which was opposed by the Petitioner and the Chairperson refused the prayer for interim relief at the stage. Thereafter, the petitioner filed an affidavit in opposition with a service of copy to RIL on 6.2.2013 under Sub-section 1 of Section 18 and prayed that in the absence of deposit under Sub-section (1) of Section 18 appeal is liable to be dismissed with exemplary cost as the RIL (Appellant before the Tribunal) did not file any separate application to waive pre-deposit, hence appeal is not maintainable. After filing application by petitioner before Tribunal for dismissal of appeal for non- compliance of Statutory Provision under Section 18(1) the RIL (Appellate) came out with a waiver application on 8.2.2013. It is further stated that hearing before the Tribunal was concluded and the matter was fixed for 14th March, 2013 under the caption "For Order". The Tribunal, in view of other two appeals i.e. Appeal 13 of 2013 and Appeal 173 of 2012 directed to fixed next date for Application U/s 18(1) of SARFAESI seeking waiver to be listed on 3rd April, 2013 "For Orders". However, in view of notification dated 6^{th} / 8^{th} March, 2013, the cases disposed of by DRT, Patna were to be assailed before DRAT, Allahabad and accordingly appeal was transferred to Allahabad.

30. It is submitted on behalf of the petitioner that notice was issued by Registrar DRAT, Allahabad dated 15.4.2013, by fixing date as 8.7.2013 for hearing. On 8.7.2013 appeal was adjourned to 9.7.2013 with a direction to list along with other two appeals arising out of the same order.

31. It is further submitted that on 9.7.2013 the Chairperson without disposing of the 18(1) application for waiver of deposit, which was statutory requirement for admission of appeal proceeded to hear and without referring to earlier proceeding or objections filed on behalf of petitioner and noticing the oral argument or issues raised in appeal set aside the judgement passed

by Tribunal.

32. From the judgment dated 9.7.2013 it is apparent that; (1) The appeal was allowed even without admission of appeal. (ii) It is beyond the authority of Chairperson to admit the appeal without pre-deposit U/s 18(1) of SARFAESI Act [Reference **(2011) 4 SCC 548 and [2010] 4 BBCJ (SC) 164**. (iii) The Chairperson failed to appreciate the meaning of borrower, debt and interpretation thereof, by Apex Court in Eureka Forbes Case, (iv) That Learned Chairperson failed to appreciate that though admitting that possession is with RIL as lessee, and possession can be taken only in accordance with law. In present case/ SARFAESI Act prescribed for procedure but secured creditor without following the procedure proceeds U/s 13(4) (v), The Chairperson failed to appreciate Section 13(4)(d) Section 13(6) as well as 31(e) of the SARFAESI Act, (vi) The Chairperson failed to appreciate contingent contract and enforcement thereof, (vii) The Chairperson failed to appreciate the effect of Tripartite Agreement and the

Chairperson failed to appreciate that if mortgagor does not have interest in land, the mortgagee can not deal with such interest or as much as he can not claim better interest than the mortgagor.

33. In such circumstances, petitioner was left with no remedy, but to approach before this Hon'ble Court for declaring that part of the order dated 9.7.2013 passed in Appeal (T) 7/2013 in Appeal No. 162 of 2012 passed by Dr. R.P. Gupta, Chairperson, Debt Recovery Appellate Tribunal, Allahabad as in excess of his jurisdiction and violative of provisions under the SARFAESI Act.

34. A detailed counter affidavit was filed on behalf of the respondent No. 1 / The State Bank of India. It is averred in the counter affidavit that in order to running retail outlets for selling the petroleum products, the Reliance Industries Limited' issued the LOI appointing the petitioner as dealer at the retail outlet on NH-2 between Barhi Chauparan. Accordingly, dealership agreement was executed on 18.01.2006

between RIL and the petitioner. For the purpose of construction over the said land, furnishing the security deposit to RIL and meeting the working capitals requirements, for setting up and running the retail outlet, the petitioner approached the respondent Bank to grant certain credit facilities, which was accordingly sanctioned by the Bank. After execution of various loan securities documents on 16.01.2006 by the petitioner, being the borrower, and her husband namely, Sri Pradeep Kumar Singh, being the guarantor, loan amount was disbursed. The petitioner also created equitable mortgage, by depositing her original title deeds in favour of the Bank on 19.01.2006 against the loan facilities on her immovable properties, including the land over which retail outlet- was to be run. Before enjoying the said credit facility, a Tripartite agreement (Annexure - 4 of the Writ petition) was also executed amongst the Bank, RIL. and the petitioner on 19.01.2006. The main purpose of executing said Tripartite agreement by the Bank was, *inter alia*, to bind

RIL to the effect that the later can't make any payment due and payable to the petitioner (borrower) directly to her till realization of entire Bank's dues, as a major part of the income of the dealer was to be routed through the RIL. Secondly RIL can't make any claim / objection / hurdle in case Bank enforce its security interest or foreclose the mortgage over the retail outlet or other security. The liability of the RIL against the present loan facility was limited only to the terms and conditions of this Tripartite agreement.

35. It is further averred in the counter affidavit that according to the petitioner, commercial business of retail dealership was started on 15.02.2006 but due to heavy loss in the business of all retail outlets, due to price disparity in the market, RIL took decision to close all retail outlet venture and thus, dealership of the petitioner was also closed from the month of May 2006. Thereafter, behind the back of the Bank, RIL issued dealer support scheme dated 13.09.2006 (Annexure - 5 of the Writ petition), which was earlier accepted, vide

letter dated 25.09.2006 (Annexures - 6 and 7 of the Writ petition) in his own way, but later on it could not be materialized, reasons best known to the petitioner and RIL and the petitioner did not make any repayment of loan amount, due to closure of the business activities of the retail outlet. The petitioner has also committed other financial irregularities in the loan account and breached the term and condition of the agreement between her and the Bank, which compelled the Bank to declare the said account as non- performing assets on 29.04.2008, as per guidelines of the Reserve Bank of India. When the petitioner was not able to repay the loan amount as per fixed equally monthly installment, she persuaded for long time with RIL by requesting them (RIL), vide her letters dated 16.05.2008 (Annexure 9 of the Writ petition) and 31.10.2008 (Annexure 10 of the Writ petition), to support in repaying the Bank's dues as per term and condition of the tripartite agreement or otherwise and once, the petitioner made an offer to the RIL to purchase the mortgaged land including constructed retail outlet. It is further stated that the said persuasion of seeking support and making offer of purchase was done behind the back of the respondent Bank and the respondent Bank came to know about all these facts from the pleading made by the petitioner before the Debts Recovery Tribunal, Patna in S.A. 84 of 2011. It is submitted that the respondent Bank also requested many times through letters and telephonic conversations to RIL to make repayment of the Bank's dues in the loan account of the petitioner as per tripartite agreement dated 19.01.2006. But RIL never shown any interest in such repayment. The fact is self-evident from perusal of letters dated 22.05.2009 (Annexure 11 of the Writ petition) and 26.05.2010 (Annexure 13 of the Writ petition) sent by the Bank to RIL. When no repayment of loan amount was made either by the petitioner or by RIL, the Bank decided to enforce its security interest and issued a demand notice under section 13(2) of the SARFAESI Act on 28.07.2009 (Annexure - 12 of the Writ petition), which was duly received by the petitioner and her husband, Sri Pradeep Kumar Singh (guarantor) on 12.08.2009 and no one ever filed any objection/representation before the Authorized Officer or the Bank under section 13(3-A) of the SARFAESI Act, pursuant to said demand notice. When Bank's dues was not liquidated by the borrower / guarantor even after the lapse of 60 days the Bank was constrained to take possession (symbolic) on 28.10.2009 (Annexure 14 of the Writ petition) under section 13(4) of the SARFAESI Act in accordance with law over the mortgaged property including the land over which the retail outlet was constructed. It is further submitted that vide sale notice dated 11.07.2010, the date for sale through public auction under the SARFAESI Act was fixed by the Bank on 12.08.2010. The guarantor, Sri Pradeep Kumar Singh, i.e. the husband of the principal borrower (petitioner), came forward with a compromise proposal on 05.08.2010 (Annexure 15 of the Writ petition) making an offer to pay Rs. 96 Lacs on or before 31.12.2010. His compromise proposal was accepted by the Bank and communication to this effect was also made to the borrower / guarantor by the Bank vide, letter dated 19.10.2010 (Annexure - 16 of the Writ petition). However, the said compromise failed, as after payment of upfront amount of Rs. 5 Lacs, not a single penny out of rest Rs. 91 Lacs was paid by the borrower/guarantor. After failure of said compromise, again a public notice for sale by public auction under the SARFAESI Act was published and the date of auction was fixed as on 02.02.2011. The sale was successfully carried out on 02.02.2011 as per the laws. After following the prescribed procedures, the sale certificate (Annexure 19/A of the Writ petition) was issued on 08.02.2011 in favour of the successful bidder, Sri Abhay Kumar Singh (respondent No. 4), after getting full and final sale proceeds amounting to Rs. 96,66,000/-.

36. It is further averred in the counter that since 29.04.2008, the date wherein the loan account became a non-performing Assets, till 02.02.2011, the date wherein

the public auction for sale in question was successfully held, neither RIL nor the petitioner came forward before the Bank with an objection challenging the SARFAESI proceeding of the Bank or showing willingness to liquidate the loan amount, despite the fact that they had full knowledge of such proceeding since the day of its initiation. On one or two occasions the petitioner has sent letter to the Bank requesting for time to repay the loan, but despite of buying time, nothing was done by her. During sale of the mortgaged property in public auction, RIL sent a letter dated 01.02.2011 (Annexure 18 of the Writ petition) to the Bank making a request that their assets installed and belonging to them are not charged in favour of the Bank hence should not be interfered or to be kept for sale by the Bank. It is contended that from perusal of the said letter, it transpires that RIL had no objection to conduct the sale by the Bank and RIL being lessee expressed their willingness to auction the property that “would-be - transferee” of such sale. After sale of the mortgaged property, the Bank, vide letter dated 03.02.2011 (Annexure R1/2), requested RIL to remove the machineries / assets lying on the sold property. In response to said letter, RIL, vide letter dated 21.02.2011 (Annexure-R1/3), shown their willingness to remove such articles. It is further submitted that after sale of the mortgaged property including the land on which retail outlet was established, RIL, vide their letter dated 12.05.2011 (Annexure R1/4), terminated the dealership agreement dated 18.01.2006 with the petitioner and, on the same day, RIL vide another letter dated 12.05.2011 (Annexure-R1/5), terminated the lease agreement dated 18.01.2006 with the petitioner. Pursuant to the sale of the mortgaged property dated 02.02.2011, the petitioner preferred a Writ petition bearing CWJC No. 2765 of 2011 on 07.02.2011 before this Hon'ble Court challenging the action of the Bank under SARFAESI Act, which was finally withdrawn on 19.05.2011 (Annexure 20 of the Writ petition) with a liberty to file a statutory appeal and the Hon'ble High Court was pleased to direct that if such appeal was filed within 15 days, the authority shall consider the delay caused due to filing of the Writ petition and decide the appeal on merit in accordance with law. Accordingly, the petitioner filed SARFAESI Application, vide S. A. No. 84 of 2011, before the Debts Recovery Tribunal, Patna on 27.05.2011. The delay in filing SARFAESI Application was condoned by Debt Recovery Tribunal, Patna on 18.11.2011. In the said SARFAESI Application, the Bank, RIL and auction purchaser also submitted their respective written statement and vehemently argued denying the contention of the applicant. RIL, in so many words, contended that they were neither the borrower nor the guarantor in the SARFAESI proceeding and as such they should not have been made a party in the SARFAESI Application and as far as tripartite agreement dated 19.01.2006 is concerned, it can't be enforced in SARFAESI proceeding, rather it should be enforced by way of specific performance of the contract. Finally, after hearing the parties, the said SARFAESI Application was disposed of on 11.09.2012 (Annexure - 22 of the Writ petition) and measures taken by the Authorized Officer were set aside and direction was given to RIL to liquidate the dues of the Bank, in pursuance of tripartite agreement and provisions of SARFAESI Act. Being aggrieved by the judgment dated 11.09.2012 passed by the Debts Recovery Tribunal, Patna, the respondent Bank filed M.A.No. 488 of 2012 for modification / review of said judgment before the Debts Recovery Tribunal, Patna itself on the grounds, inter alia, that the judgment was obtained on distorted facts and by suppressing the material and relevant facts. However, said M. A. was dismissed on 09.01.2013 (Annexure-R1/6) on the technical ground that the Bank had not filed proper application. Thereafter, the Bank preferred an appeal, vide Appeal No. 13 of 2013, before the Debts Recovery Appellate Tribunal (hereinafter referred to in short as DRAT), Kolkata challenging the judgment dated 11.09.2012 passed by the DRT in S. A. No. 84 of

2011. However, due to change in territorial jurisdiction over the Debts Recovery Tribunal at Patna from DRAT, Kolkata to DRAT, Allahabad, said appeal was transferred to DRAT, Allahabad, wherein the matter was registered as Appeal (T) No. 11 of 2013. Finally, the said appeal was dismissed on 09.07.2013 (Annexure-R1/7) on the ground that DRAT has no power to condone the delay in filing the appeal. It is further submitted that RIL and the auction purchaser also filed separate appeal, vide Appeal No. 162 of 2 012 and Appeal No. 173 Of 2012 respectively, before the DRAT, Kolkata and after transfer to DRAT, Allahabad, the said appeals were renumbered as Appeal (T) No. 7 of 2013 and Appeal (T) No. 12 of 2013 respectively. Finally, after hearing the parties, both the appeals were allowed by a common judgment dated 09.07.2013 (Annexure 31 of the Writ petition) and the judgment dated 11.09.2012 passed by the DRT in S. A. No. 84 of 2011 was set aside. The said judgment passed by the DRAT, Allahabad is under challenged in the present Writ petition.

37. It is further submitted that the respondent Bank also moved before the DRT, Ranchi, vide O. A. No. 129 of 2026, under the Recovery of Debts & Bankruptcy Act, 1993 in which, on 31.05.2016 certificate of recovery was issued by the Presiding Officer in favour of the Bank and against the petitioner and her husband for recovery of Rs. 8,52,170.50 after adjusting /deducting the sale proceeds received by the Bank, through the auction sale in question. The petitioner has preferred Regular Appeal No. 233 of 2016 before the DRAT, Allahabad, which was dismissed on 10.04.2023 for not depositing the minimum 25% of the debt as pre-deposit.

38. It is submitted in the counter that the reliefs prayed for by the petitioner in the Writ were not proper, justified and maintainable on the facts, as well as in the eyes of law. It is further stated in the counter that statements made in paragraph Nos. 4 to 21 of the Writ petition relating to Bank were incorrect and misleading,

hence it was denied by the respondent Bank. Existence of lease deed dated 18.01.2006 between the RIL and the petitioner does not and can't come as hurdle / obstruction in the way of either creating mortgage by the lessor (petitioner), in favour of the Bank or in enforcing said mortgage by the Bank under the SARFAESI Act. As per section 105 of the Transfer of Property Act, 1882, lease of immovable property is a transfer of a right to enjoy such property and nothing more. Thus, lessor by way of the lease deed only transfers his right to the lessee to enjoy and nothing more and if any, right exceeding to the right to enjoy is transferred through the lease deed that lease deed will be void. It is also submitted that the lease deed was executed on 18.01.2006 but lease was for a period of 20 years commencing from the month in which commercial business commences at/from the demised premises. As per the statement of the petitioner (paragraph 11 of the Writ petition), operation of the retail dealer started with effect from 15.02.2006. As such mortgage by the borrower was created on 19.01.2006, i.e. prior to coming into force of the lease deed. It is further averred in the counter that the statements made in paragraphs No. 22 to 27 of the Writ petition under reply relating to Bank are incorrect, and hence denied by the respondent Bank. Since, the petitioner has not raised any objection, by way of objection / representation, as provided under section 13(3-A) of the SARFAESI Act, to the demand notice issued by the Bank, she has waived her right to raise any objection to the demand notice at a subsequent stage and she can't do so. Further, the petitioner has not shown any pre-judice caused to her due to any lacuna, if so, in the demand notice. It is further averred in the counter that the statements made in paragraphs No. 28 to 29 of the Writ petition under reply relating to Bank are incorrect and misleading hence denied by the respondent Bank. It is submitted by the respondent / Bank that the petitioner has created equitable mortgage over the property by depositing the original registered sale deeds in which the petitioner had absolute right, title and interest, which falls under the definition of security interest under section 2(zf) of the SARFAESI Act. The Bank is not enforcing the lease deed executed by the petitioner in favour of RIL as security interest, as such section 31(e) of the SARFAESI Act is not applicable in the facts and circumstances of the present case. Herein, neither the lease deed is the security interest nor RIL is the secured debtor of the Bank as per the SARFAESI Act. Clause 18 of the Tripartite agreement (Annexure - 4 of the Writ petition) also states in the term that "The provisions of this agreement are without prejudice to any right that the Bank has/may have, to recover its dues outstanding under the Credit facility from the Borrower and/or to enforce the security created/ that may be created in favour of the Bank, in accordance with the credit facility documents and/or in law." It is also not in dispute that the petitioner, completely independent of the tripartite agreement dated 19.01.2006, executed various security documents on

16.01.2006 and created equitable mortgage over the immovable property in question on 19.01.2006 in favour of the Bank which was enforced by the Bank in the SARFAESI proceeding.

39. It is further averred in the counter that the statements made in paragraph No. 30 of the Writ petition under reply relating to Bank are incorrect, hence denied by the respondent Bank as Section 13(4)(a) read with section 13(6) of the SARFAESI Act states that Bank may take possession of the secured asset of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset. Hence, the Bank is always required to take possession (symbolic) from the borrower being secured debtor and not from any lessee or tenant of the secured asset. Secondly, said lessee (RIL) never raised any objection to the action of the Bank in taking possession over the secured asset in question of the borrower (petitioner) being the lessor. Further, it is averred in the counter that the statements made in paragraphs No. 31 to 45 of the

Writ petition under reply relating to Bank are incorrect, hence denied by the respondent Bank as SARFAESI Act would prevail over the tripartite agreement. As per section 35 of the SARFAESI Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any of the law for the time being in force or any instrument having effect by virtue of any such law. Secondly, after going through the letter dated 01.02.2011 (Annexure 18 of the Writ petition) issued by RIL, it can be safely said that RIL had no objection to the SARFAESI action of the Bank, in selling the mortgaged property but they, being lessee, only wanted to attorn the would-be - transferee after such sell of the mortgaged property. As per Section 109 of the Transfer of Property Act, 1882, the lessor has to transfer his right and interest by way of sale or creating mortgage even during the existence of the lease deed and the lessee to attorn such transferee. Moreover, clause 8 of the lease deed (Annexure-2 of the Writ petition) also says so in the following words:

"8. In the event the Lessor at any time during the period of this lease sells and/or transfers / assigns his/her / its rights in the demised premises as a whole or any part or parts thereof to any one person or more than one person, then and in such an event the Lessee shall have the option to attorn such transferee or transferees on the same terms and conditions as are contained herein or to forthwith terminate the lease hereby granted. However, a letter shall be issued by the prospective new owner in favour of the Lessee confirming that the terms herein contained shall be binding on the new owner."

40. It is further submitted on behalf of the respondent Bank that so far enforcement of the provision as prescribed under section 13(4)(d) of the SARFAESI Act by the Bank is concerned, it is stated that on perusal of section 13(4) including sections 13(4)(a) and 13(4)(d), it is crystal clear that SARFAESI Act has given ample discretion to the Bank, to take one or more recourses to recover their secured debts, i.e., either to take possession of the secured asset under section 13(4)(a) for the purpose of selling out the same or to

give notice under section 13(4)(d) to any person other than the borrower from whom any money is due to the borrower to pay such money. Having such discretion to the Bank, the borrower (petitioner) can't say that instead of taking measure under section 13(4)(a), the Bank should have issued notice to RIL, under section 13(4)(d) to go into the lengthy and time taking process of the recovery of the loan amount. Nonetheless, the Bank has made several requests even in Writing to RIL to pay the dues as per tripartite agreement (Annexure - 4 of the Writ petition), as is self-evident from perusal of the letters dated 22.05.2009 and 26.05.2010 (Annexures 11 & 13 of the Writ petition) sent by the Bank to RIL. When the SARFAESI Act has given discretion to the Bank to avail benefit Section 13(4)(a) or 13(4)(d) or both for realizing its debts, then the Learned DRT is not correct in holding that the Bank should have realized its debts from RIL by enforcing the tripartite agreement (Annexure 4 of the Writ petition). The said judgment of the DRT was obtained by the petitioner by placing the wrong facts and misinterpretation of the law of the land. Under the SARFAESI Act, the Bank has only an option to enforce its security interest, i.e. the mortgaged property, and nothing more. There is no provision under the SARFAESI Act to recover the loan amount from any borrower / guarantor, who has not created any security interest in favour of the Bank, just like RIL. SARFAESI Act is only meant for speedy recovery of the loan amount by enforcing the security interest. The purpose and motive of the SARFAESI Act is to provide the Bank and financial institution a weapon for speedy recovery of its debts by selling its security interest, after taking possession without the intervention of the court and the principal borrower or mortgager has no authority to direct / suggest the Bank to take some other measures foreign to the SARFAESI Act, for recovery of its debts after postponing the measures as provided in the SARFAESI Act for quick recovery of its dues in the way of reducing the quantum of its non-performing assets. The tripartite agreement itself reads as follows:

"3. The entire amount of the credit facility provided by the Bank to the Borrower along with interest, fees, charges and expenses duethereon shall be repayable by the Borrower to the Bank in accordance with the provisions of the credit facility Documents.

4. Notwithstanding anything to the contrary contained in this agreement and / or any other agreement executed / that may be executed between the Bank and the Borrower, and / or the credit facility Documents, the credit facility and all amounts outstanding there under are / shall always be payable by the Borrower to the Bank forthwith on demand being made by the Bank which the Bank shall be entitled to make, without any cause or reason or default by the Borrower, at its sole and absolute discretion."

41. That it is not and can't be a case of the petitioner that in view of the tripartite agreement dated 19.01.2006 (Annexure 4 of the Writ petition), she, being borrower, can't create mortgage over the land in question and Bank can't enforce / foreclose the said mortgage. Rather, she undertook clause (5) of the

tripartite agreement to execute agreement by way of mortgage. Further, in clauses 12(iii) and 10 of the tripartite agreement Borrower undertook the following:

"12-iii. The Borrower shall create mortgage over the said land and all construction and improvements made thereon and machinery affixed to the earth thereat from time to time shall also stand mortgaged in favour of the Bank. However, such mortgage shall not extend to any equipment belonging to RIL. In the event, the Borrower has committed a default under the credit facilities Documents and/or in repayment of any amount due and/or payable under the credit facility and/or termination or expiry of dealership agreement, the Bank shall be fully and duly entitled to enforce the mortgage over the retail outlet as well any and all other security that may be provided for the Credit Facilities by the Borrower and / or any other person and RIL will assist the Bank in enforcement of such security."

42. It is further averred in the counter that the

statements made in paragraph Nos. 46 to 56 of the Writ petition under reply is related to RIL (Respondent Nos. 2 and 3) and Auction Purchaser (Respondent No. 4), hence, it would be better to make reply of these paragraphs by them. However, it is clarified here that said second proviso of section 18(1) of the SARFAESI Act, which says that "Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less", is not applicable in either in the case of RIL (respondents No. 2 and 3) or in the case of the auction purchaser (respondent No. 4) for the simple reason that none of them is the borrower of the Bank as per the definition of borrower provided in section 2(f) of the SARFAESI Act and said second proviso is only and only meant for the borrower, who is required to deposit 50% of debt due.

43. Lastly the Learned counsel for the

respondent Bank submits that Writ petition is devoid of any merit and may be dismissed by this Hon'ble Court at the stage of admission itself.

44. A detailed counter affidavit was also filed by the respondent No. 3. It is submitted in the counter that Reliance Industrial Limited (hereinafter Industries Limited RIL) and Reliance BP Mobility Limited (hereinafter RBML) entered into a petroleum retail Business Transfer Agreement (BTA) dated 5th March 2020 that governs the transfer of RIL'S business of owning, operating and/or conducting petroleum and retail marketing activities related (including the in India assets and liabilities related to such business, as set out in the BTA) to RBML on going basis by way of slump sale. Pursuant to the BTA, RIL has transferred to RBML its rights, entitlements liabilities, covenants and obligation under the dealership agreement such that RBML shall: (i) replace RIL under the dealership agreements, and (ii) assume all rights, entitlements, liabilities, covenants and obligations of RIL under the

dealership agreement. To this affect RIL and RBML will issue/have issued a letter of intimation and assignment to the dealers. To facilitate the same RIL and RBML entered into an Assignment agreement dated 6.5.2020 (Annexure R3-1). That pursuant to the assignment agreement RBML has replaced RIL with respect to petroleum retail marketing and related activities and in view of the submissions made hereinabove this counter affidavit is filed on behalf of Reliance BP Mobility Limited (RBML) as RBML has replaced RIL (Reliance Industries Ltd) with respect petroleum retail marketing and related activities and hence this affidavit by RBML.

45. That it is averred in the counter affidavit by respondent No. 3 that the respondent No. 3 was neither a “borrower” nor "guarantor" under the credit facility documents executed between the Bank and the Writ petitioner. It is admitted by the respondent No. 3 that a Tripartite Agreement was executed between the Respondent No. 3, the respondent Bank and the Writ petitioner on 19.01.2006 (Annexure-4).

46. It is submitted by the Learned counsel for the respondent No. 3 that the assailment of the impugned order (Annexure-31) by the Writ petitioner on the ground of non-compliance of second/third proviso to Section 18 of SARFAESI Act is misconceived and misdirected on account of the following:

"(a) That on a conjoint reading of Section 18 of the SARFAESI Act 2002 and Rule 13 of the Security Interest Enforcement) Rules 2002 it is abundantly clear that only a "borrower" is supposed to pre-deposit fifty percent of the amount claimed by the bank or twenty five percent of the said amount if reduced by DRAT to avail the benefit of appeal. The answering respondent is neither a "borrower" nor a "guarantor" as defined in Section 2(f) of the SARFAESI Act 2002 and hence is under no obligation to pre-deposit the amount as mandated under Section 18 of the SARFAESI Act. Reliance for the said proposition of law is made on a Division Bench Judgement/Order dated 04.01.2017/ 18.04.2015 passed by the Hon'ble Bombay High Court in ***Writ Petition No 3995 of 2015-***

M/s Anchor Electricals Pvt. Ltd Vs Canara Bank and Anr.

(b) That it is further submitted that reliance placed by the Writ petitioner in the case of ***Narayan Chandra Ghosh Vs UCO Bank and Ors*** *reported in* ***AIR 2011 SC 1913*** *for the purposes of pre-deposit for filing appeal is totally misconceived and misdirected as the said judgement does not apply in the facts of the instant case as the answering respondent is neither a "borrower" nor a "guarantor" as defined in Section 2(f) of the SARFAESI Act 2002 and hence is under no obligation to pre-deposit the amount as mandated under Section 18 of the SARFAESI Act 2002. It is further stated that Narayan Chandra Ghosh has not mandated that any third party even if not a "Borrower" or "Guarantor", is still required to make a pre-deposit while preferring appeal under Section 18 of the SARFAESI Act 2002.*

(c) That the answering respondent is neither a "borrower" nor a"guarantor" in respect of the credit facilities obtained by the Writ petitioner and hence there was no obligation on the part of the answering respondent to pay the pre- deposit amount.

(d) That there was no privity of contract between the answering respondent and the bank as the bank had not granted any assistance to the financial assistance to the answering respondent. Hence there was no obligation on the part of the answering respondent to pay the pre- deposit amount.

(e) That there is absolutely no material to show on record that the answering respondent was either the "borrower"or "guarantor" in respect of the credit facilities by the Writ petitioner and hence there was no obligation on the part of the answering respondent to pay the pre- deposit amount."

47. It is further submitted by the Learned counsel of the respondent No.3 that there is no infirmity in the order of the DRAT-Allahabad as far as its findings on the liability under the Tripartite Agreement is concerned. The DRAT has rightly held that there is no privity of contract between the answering respondent and the Bank for liquidation of dues payable by the Writ petitioner/original borrower, and that in the absence of the same the answering respondent could not have been

directed to liquidate the liability of the Writ petitioner. The terms and conditions mentioned in the Tripartite Agreement reads as follows:

> *(a) The Writ petitioner agrees and undertakes to execute all credit facility documents in the form and manner as may be required by the bank from time to time.*
>
> *(b) The entire amount of credit facility provided by the bank to the borrower along with interest, fees charges and expenses due thereon shall be repayable by the borrower to the bank in accordance with provisions of the credit facility documents.*
>
> *(c) Notwithstanding anything contrary contained in this agreement and/or any other agreement that may be executed between the bank and the borrower and/or the credit facility document, the credit facility and all amounts outstanding thereunder are/shall always be payable by the borrower to the bank forthwith on demand being made by the bank, which the bank shall be entitled to make, without cause any or reason default by the borrower, at its sole and absolute discretion.*

48. It is submitted by the Learned counsel for

the Respondent No. 3 that reliance of the petitioner on the definition of"Financial Assistance" as defined u/s 2(k) of the SARFESI Act 2002 to fasten liability on the answering respondent for liquidation of the bank's dues is totally misconceived and misdirected as the said clause will apply only if "Financial Assistance" has been extended by any bank or financial institution. The answering respondent is neither a bank nor a financial institution. Further, there is no agreement/contract under which answering respondent is obliged to liquidate the dues of the petitioner. It is further submitted that other submissions of the petitioner under SARFESI Act 2002 (with respect to section 13(4), 13(6) and section 31) and under Transfer of Property Act 1882/with respect to Section 58 (f) section 106) are either totally misconceived or misdirected or are related to other respondents. The judgment of **Kalyanpur Lime Works (supra), Eureka Forbes (supra) and Sushant Automobiles (supra)** cited by the petitioner are misconceived and misdirected as they are not applicable to the facts of the present case.

49. Lastly, the Learned counsel appearing for the respondent No. 3 prayed to dismiss the Writ petition against the Respondent No. 3.

50. A counter affidavit was also filed on behalf of the Respondent No. 4. It is submitted in the counter that Writ petition under reply is not maintainable on law as well as on fact as the petitioner did not come before this Hon'ble Court with clean hands. The petitioner did disclose the factual position with regard to the matter in hand and has whimsically distorted material facts, to mislead this Hon'ble Court. The petitioner has not stated in the present Writ petition that the compromise settlement offered by the husband of the petitioner vide letter dated 05.08.2010 (Annexure- 15) and approved by the Respondent State Bank of India vide letter dated 19.10.2010 failed due to the fact that the petitioner or her husband in the capacity of the guarantor did not make timely payment in accordance with the settlement which explicitly

shows the recalcitrant attitude of the petitioner towards his dues and other statutory obligations with the respondent Bank.

51. It is submitted by respondent No. 4 that the Respondent/State Bank of India has filed its counter affidavit and the same is adopted to the extent that they are matter of record and anything sans the record is denied and objected.

52. In the counter, the respondent No. 4 submits that he is the auction purchaser of the property which is the subject matter of the present Writ petition and the Respondent State Bank of India issued a public notice dated 02.01.2011 for sale by public auction under the SARFAESI Act on "as is where is basis" and the auction sale was successfully held on 02.02.2011 in accordance with the prescribed procedures and law and the sale certificate dated 08.02.2011 was issued in favour of the respondent No. 4 being the successful bidder that too after payment of sale amount i.e. Rs. 96,66,000/-. Respondent No. 4 was in peaceful

possession of the said property and made an application pursuant to an advertisement dated 11.10.2014 by M/s Hindustan Petroleum Corporation Ltd. for award of MS/HSD Retail Outlet Dealership on NH-2, from KM Stone 1064 to 1069 on RHS towards Kolkata, District Hazaribagh (Jharkhand) and the same was eventually offered to respondent No. 4, by M/s HPCL vide letter dated 24.06.2015 (Annexure- R-4/A) for opening of Retail Outlet Dealership of HPCL at Khata No. 54, Plot No. 1317/2657, Khata No. 66, Plot No. 2657/ 2658 and 1315 which are also the subject matter of the present Writ petition. It is stated that requisite approvals and no objection certificate with reference to the proposed Diesel/Petrol Retail Outlet at the said property was also granted by Ministry of Road Transport and Highways, Government of India vide letter dated 09.07.2015 (Annexure- R-4/B) and, thereafter a lease agreement was also entered between the respondent No. 4 and HPCL vide lease agreement dated 12.09.2015 (Annexure- R-4/C) for the purpose of setting of Retail

Outlet at Khata No. 54, 66 and 31, Plot No. 1317/2657, 2657/2658, 1317, District Hazaribagh (Jharkhand) for a period of 30 years and renewal thereafter in accordance with the terms and conditions of the said lease agreement and on 30.09.2015, a memorandum of agreement was also entered between HPCL and the answering respondent, Sri Abhay Kumar Singh for carrying the business in the name and style of M/s Bhadrakali Fuels and the he was appointed as the dealer of HPCL for retail sale or supply of Petrol/Diesel/Motor Oil etc. at the said premises. It is also averred in the counter that the respondent No. 4 also obtained license under the prescribed Form-IV as is required under law for carrying on business as dealer of Motor Spirit of High Speed Diesel Oil bearing License No. 03/2015 dated 14.10.2015 was renewed by the concerned authority from time to time till date and since then the answering respondent is running the Petrol Pump situated at the said property successfully, without any objection or hindrance from anyone.

53. It is further submitted on behalf of the respondent No. 4 that third party right of the answering respondent was already created in the year 2011 itself and that the answering respondent from then on is in peaceful possession of the said property for more than than 12 years.

54. Lastly, respondent No. 4 prays to dismiss the Writ petition.

55. The petitioner filed a consolidated reply for counter affidavits of Respondent Nos. 1 to 4. In the reply more or less statements made in the Writ petition were reiterated by the petitioner.

56. It is submitted by the petitioner in reply affidavit that the SARFAESI Action taken by respondent bank concluded in proceeding instituted under section 17(1) of the SARFAESI Act, 2002 with a finding of the Tribunal in SA 84 of 2011 [Smt. Satya Singh Vs. A.O. cum Asst. General Manager, State Bank of India & Ors.] that:

"Possession of secured assets from lessee in

lawful possession under a valid lease is not required to be taken under the provisions of SARFAESI Act, 2002.

Secured Assets is in possession of lessee Reliance Industries Ltd. under the valid lease made prior to creation of mortgage.

In cases where the secured creditor is unable to take possession of the secured assets after the expiry of period of 60 days of the notice to the borrower of the intention of the secured creditor to enforce the secured assets to realise the secured debt, the secured creditor will have the right to receive any money due or which may become due including the rent from lessee to the borrower, as is apparent from clause (d) of sub- section (4) of Section 13, which provides that in case the borrower fails to discharge his liability in full within the notice period, the secured creditor may require, at any time by notice in Writing, any person who has acquired any of the 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."*

57. It is further submitted by the petitioner in reply that the Tribunal after discussing the legal provisions held that measure taken by Authorized Officer is bad in law and quashed the measure taken u/s 13(4) and directed Reliance Industries Ltd. (lessee) to liquidate the dues of the bank in terms of Tripartite Agreement [Annexure-22 of Writ petition]. It is further stated that the order dated 11.09.2012 passed by Learned Presiding Officer Debt Recovery Tribunal Patna passed in SA 84 of 2011 was challenged by Respondent Bank, Respondent Reliance Industries Ltd. and Respondent Auction Purchaser Shri Abhay Kumar Singh. It is further submitted that in the event the Bank intimates to RIL that the borrower has committed a default under the Credit Facilities Documents and/or in repayment of any amount due and/or payable under the Credit Facility and such default has not been rectified for a period of 3 (three) months and the Bank requests RIL to terminate the dealership agreement, RIL, not

later than 30 (thirty) days from the date of receipt of notice in this regard from the Bank (such notice the "Default Notice"), shall stop supplying the Products to the Borrower and shall terminate the dealership agreement with the Borrower. The decision of the Bank as to whether the borrower has defaulted or not shall be final and binding on RIL and the borrower. That upon the termination or expiry of the dealership agreement/dealership of the borrower, for any reason, including in terms of Clauses 8 and/or 9. It is submitted that on 28.07.2009 the Bank issued 13(2) notice for enforcement of Security Interest without complying the term of Tripartite Agreement i.e. before termination of lease as agreed between RIL, Bank and borrower. The 13(2) notice was served to borrower on 12.08.2009 and on 28.10.2009 Bank took possession of lease hold property under Rule 8(1). It is submitted by the petitioner that the tenant is protected from any ejectment proceeding under SARFAESI Act, 2002 as settled by Apex Court in case of H**arshad Govardhan Sondagar**

Vs. International Assets Reconstruction Co Ltd. reported in **(2014)6 SCC1** and **Vishal N. Kalsaria Vs. Bank of India (2006)3 SCC 762** Wherein it was held that: "*If lawful possession of secured assets is not with borrower, but with lessee under a valid lease, the secured creditor can not take possession of the secured assets until lawful possession of the lessee get determined.*"

58. It is further submitted in reply by the petitioner that after dismissal of Appeal (T) 11/2013 (In Appeal 13/2013) the order dated 11.09.2012 passed by DRT, Patna has attained finality and petitioner filed Writ petition CWJC No. 24768 of 2013 (Smt. Satya Singh Vs. Authorized Officer cum Assistant General Manager, SBI, SAMB) for declaration that order passed in SA 84 of 2011 passed by DRT, Patna has become final and order dated 09.07.2013 will operate as res-judicata between the parties to appeal and is binding on Appellate Tribunal in all subsequent proceeding arising out of the same order and between the parties as held by

Hon'ble Apex Court in case of **Sheodan Singh Vs. Daryo Kumar** reported in **1966 SC 1332** wherein Hon'ble Apex Court rejected the contention that dismissal of appeal on the ground of limitation does not operate as res-judicata as the appeal can not be considered to have heard and finally decided. The reason given by the Apex Court is that "dismissal of appeal by appellate Court has effect of confirming the decision of trial court on merit and that it amount the appeal being heard and finally decided on merit whatever may be ground for dismissal of appeal". That respondent bank prefer not to contest CWJC No. 24768 of 2013 filed for prayer mentioned therein and law is settled by Hon'ble Apex Court in the order of the Tribunal passed in SA 84 of 2011 dated 11.09.2012 has attained finality and dismissal of section 18 Appeal will operate as *res-judicata* in subsequent proceeding.

59. The petitioner has submitted in reply to the counter affidavit filed by Reliance B.P.Mobility Limited that the counter affidavit field by Reliance B.P.

Mobility Limited through it's constituent attorney is not acceptable in the present case, since the assignment agreement dated 06.05.2020 can not have retrospective effect and Reliance BP Mobility Limited is not a party to: Lease agreement, Dealership agreement and Tripartite Agreement and the present proceeding is confined to the period from year the 2005 till the year 2011 and parties to the concluded proceeding can not be changed in the proceeding by assignment agreement entered after expiry of 9 years. It is further submitted by the petitioner that the only issue to be replied by petitioner of the counter affidavit is Whether the Tripartite Agreement is binding between the parties, Whether the petitioner is entitled for Dealer Support Scheme and Whether the Lease was subsisting as on 27.10.2009 when symbolic possession was taken without determination of same. In this connection it is submitted by the Petitioner that default was incurred from very beginning, due to the closure of the retail outlet by RIL but no explanation was given by the Bank as to why the account was declared NPA on 29.04.2008 and the default procedure to be followed by the Bank as per agreement reached between parties. Clause(i) RIL shall not cease operation of retail outlet unless written notice of such intention was given to bank because RIL stopped operation of retail outlet without written notice to the Bank. It is further submitted that only on termination of dealership RIL shall pay all amounts payable by RIL to the Borrower (including security deposit) and amount payable under Dealer Support Scheme and Security deposit of Rs. 20 lacs was not paid to Bank by RIL. It is further submitted that the RIL agrees that lease deed shall stand terminated in the event of failure of RIL to remedy breach under the clause within a period of thirty days from the date of notice in writing from Bank informing RIL of any breach of this agreement or default of RIL observing any of the above terms and conditions of agreement and only on termination of lease deed the Bank would be entitled to enforce mortgage free from any encumbrances or right created in favour of RIL and sale of the said land, building and equipment/ machinery owned by borrower will be without lease hold right in favour of RIL and purchaser will get good title to the said land, building, machinery/ equipment when the said mortgage is enforced by bank. It is further submitted that admittedly, mortgage right can be invoked free from encumbrances only on termination of lease as per Tripartite Agreement. The law with regard to invocation of security interest over which valid lease was created is settled by Hon'ble Apex Court in; **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co Ltd. (2014)6 SCC1 Vishal N. Kalsaria Vs. Bank of India (2006)3 SCC 762**.

60. It is further submitted on behalf of the petitioner that that RIL and Bank failed to followed the statutory provision and proceeded with 13(4) of SARFAESI Act, without termination of lease is violative of statutory provision and is also in violation of Tripartite Agreement. Since, the right of auction

purchaser is dependent on right of the back and since bank did not followed the terms and Tripartite Agreement and proceeded with mortgage without termination of lease, no right is created in favour of auction purchaser. That since initial action of possession under Rule 8(1) is contrary to statutory provisions and Tripartite Agreement, the entire subsequent proceeding is vitiated and no right is created in favour of the auction purchaser.

61. Heard the rival contentions of the parties and perused the record.

62. On perusal of the record, it is evident that the order of the Debt Recovery Tribunal, Patna, dated 11.09.2012 and order copy was made ready by 28.09.2012 against S.A No. 84 of 2011 on the file of DRT, Patna. Appeal No. 162 of 2012 was preferred before the Debt Recovery Appellate Tribunal, Kolkata, clearly disclose that one Basudeb Mukherjee and A.K.Jha, Advocates represented the 2nd respondent i.e. the Writ petitioner. Further, the application under

Section 18(1) of SARFAESI Act, seeking waiver of pre deposit was already heard by the Debt Recovery Appellate Tribunal, Kolkata. However, the said case was also listed on 3rd April, 2013 under the heading 'For Orders', which was subsequently transferred to DRAT, Allahabad.

63. The order of appeal, which is under challenge relates to the other two appeals i.e. Appeal (T) No. 11 of 2013 arising out of Appeal No. 13 of 2013 preferred by the Bank, and Appeal (T) No. 12 of 2013 arising out of Appeal No. 173 of 2012 preferred by Auction Purchaser /Abhay Kumar Singh and Appeal (T) No. 7 of 2013 arising out of Appeal No. 162 of 2012 preferred by the Reliance Industries Limited. Therefore, it can be clearly understood that the appeals were numbered by the Debt Recovery Appellate Tribunal, Kolkata against the orders of the Debt Recovery Tribunal, Patna preferred by the Reliance Industries Ltd.

64. The order sheet of Debt Recovery Appellate Tribunal, Allahabad (Annexure-25) clearly

disclose that the appeals were received from the Appellate Tribunal, DRAT, Kolkata under the Gazette Notification dated 08.03.2012 and further the office has directed to register the case on the file of the Debt Recovery Appellate Tribunal, Allahabad and to issue notices to the parties by registered post. The record also disclose that three months time was given for service of notice and spare copies were served on 14.03.2013. Appeal (T) No. 11 of 2013 (arising out of Appeal No. 13 of 2013), which was filed by the Bank before the Debt Recovery Appellate Tribunal, Allahabad was dismissed on 09.07.2013 as it was time barred and that DRAT has no power to condone the delay. Admittedly, the Bank has not preferred any writ petition against the orders of the dismissal by the Debt Recovery Appellate Tribunal, Allahabad.

Re. CWJC No. 17554 of 2013 and CWJC No. 24742 of 2013

65. At present there are two Writ petitions on record i.e. CWJC No. 17554 of 2013 and CWJC No.

24742 of 2013 against the common order of Appeal (T) No. 7 of 2013 (arising out of Appeal No. 162 of 2012) and Appeal (T) No. 12 of 2013 (arising out of Appeal No. 173 of 2013) preferred by the Reliance Industries and the Auction Purchaser which is to be adjudicated by this Court.

66. These Writ petitions are filed to quash the order dated 9.7.2013 passed by the Chairperson, DRAT, Allahabad by which the order of the Debt Recovery Tribunal, Patna dated 11.9.2012 was set aside in ignorance of the provision of SARFAESI Act, 2002 and Security Interest Enforcement Act, 2002 without considering the facts of the case and the law governed by the decisions of the Apex Court.

67. As already stated Supra, the appeal filed by the State Bank of India was dismissed by the DRAT in Appeal (T) No. 11/13 (arising out of Appeal No. 13 of 2013, DRAT, Kolkata). Further relief is sought for issuance of Writ of mandamus to respondents concerned from proceeding and give effect to order in

Appeal (T) 7 of 2013.

68. This Court is of the considered view that the prayer to give effect to the order passed in Appeal (T) No. 7/2013 shall be rejected as the appeal was dismissed by the DRAT as barred by limitation. However, all the appeals are arising out of S.A. No. 84 of 2011 on the file of DRAT, Allahabad were disposed of on the same day. The Bank appeal alone was dismissed as time barred on 09.07.2013. The appeals preferred by Reliance Industries and of the auction purchaser were allowed setting aside the common order of DRT in S.A. No. 84 of 2011. Therefore, there is no necessity to further adjudicate CWJC No. 17554 of 2013 and it is dismissed as devoid of merits.

69. In result Writ petition No. 17554 of 2013 is hereby dismissed.

Re. CWJC No. 24742 of 2013 & CWJC No.24768 of 2013

70. In precise, the arguments and rival contentions of both the parties, it could be construed

that Smt. Satya Singh obtained loan from State Bank of India, for the purpose of business and the land belonging to Satya Singh was leased out in favour of Reliance Industries Ltd. for which Reliance Industries Ltd. gave dealership to Mrs. Satya Singh on 18.01.2006. Thereafter, Satya Singh, Relilance Industries Ltd. and the Bank entered into a Tripartite agreement dated 19.1.2006 and the said Tripartite agreement come into effect to protect / to guarantee the loan availed from the Bank and the land of Satya Singh was mortgaged in favour of the Bank in order to protect the interest of the Bank. Subsequent to 19.01.2006, the loan was disbursed to Satya Singh. As, Satya Singh defaulted the payments/ installments to the Bank, the Bank initiated proceedings under the SARFAESI Act. As per Clause 10 of the Tripartite agreement, the notice was given to the borrower and actions were held in accordance with law. In the year 2009, pursuant to sale took place and possession was handed over to the auction purchaser. Further, the auction purchaser established a retail outlet of petrol pump of Hindustan Petroleum. The limitation period for preferring an appeal is 30 days and the DRT order was passed on 11.09.2012. The auction purchaser preferred an appeal on 03.04.2013. The record also reveals that at the time of preferring the appeal, defects were noticed by the Registry and the file was returned back to the auction purchaser on 04.01.2013 giving three weeks time to represent it. Again the appeal was represented before the DRAT, Kolkata and DRAT, Kolkata, after considering the entire material on record, numbered the appeal. The Writ petitioner did not make any objection before the appellate authority, contending that the appeal is barred by limitation. For the first time he takes the defence before this Court that the appeal of auction purchaser was also barred by limitation. It is the further contention of the Learned counsel for the petitioner that without hearing the appellant, the DRAT, Allahabad disposed of the case and allowed the appeal of the auction purchaser and the Reliance Industries Ltd. reversing the judgment of DRT, Patna dated 11.09.2012.

71. But on perusal of record, it is evident that Satya Singh was represented by the Counsel before the DRAT, Allahabad and the record do not disclose that *ex parte* orders has been passed by the DRAT, Allahabad. Therefore, the contention raised by the Learned counsel for the Writ petitioner is hereby rejected.

72. However, all the appeals arising out of S.A. No. 84 of 2011 on the file of DRAT, Allahabad were disposed of on 09.07.2013. The question of *res judicata* would not be arisen as all the appeals have been disposed of on the same day. It is the specific contention of the Learned counsel for the petitioner that the appeal of the Bank dismissed as barred by limitation will act as *res judicata* for the other two appeals, therefore, the said contention is hereby rejected.

73. The record reveals that the Writ petitioner has created equitable mortgage with the Bank on 19.01.2006 which are the subject matter and is under

challenge in this Writ petitions. Admittedly, on the same day, a Tripartite agreement was entered into between the State Bank of India, Satya Singh and the Reliance Industries Limited. According to the DRT, no notice was given to the Reliance Industries Limited which were in occupation to the secured asset and the Tribunal was of the view that the auction which was conducted with regard to the provisions contained under Section 13(4)(d) of the SARFAESI Act, 2002 are illegal and, therefore, the Tribunal held that the auction has to be set aside. The Reliance Industries Ltd. is neither the borrower nor the guarantor before the State Bank of India rather the Writ petitioner was the borrower and her husband was the guarantor for the loan, obtained by the Writ petitioner. Though the Reliance Industries Ltd. was party to the Tripartite agreement but did not under took to repay the dues to the Bank and the Reliance Industries Ltd. has only lease hold rights, executed by the principal borrower i.e. Satya Singh.

74. The conditions of the Tripartite agreement

also disclose that the borrower shall repay all the dues to the Bank and not the Reliance Industries Ltd.. Clause 12.10 of the Tripartite agreement clearly disclose "that in the event, the borrower has committed a default under the Credit Facilities Documents and/or in repayment of any amount due and/or payable under the credit facility and/or on termination or expiry of the dealership agreement, the Bank shall be fully and duly entitled to enforce the mortgage over the Retail Outlet as well as any and all other security that may be provided for the Credit Facilities by the borrower and/or any other person and RIL will assist the Bank in enforcement of such security".

75. There is no privity of contract between the Bank and the Reliance Industries Ltd. in the Tripartite agreement for liquidation of dues payable by the Writ petitioner. Therefore, the Tribunal cannot fix any liability on the Reliance Industries Ltd. for repayment of the loan amount. The Tripartite agreement further indicates that Reliance Industries Ltd. had to vacate the

premises within the period of 30 days from the date of notice given by the Bank informing the Reliance Industries Ltd. of any breach of the agreement or default on the part of the borrower and they will assist the Bank in enforcement of such security.

76. It is also pertinent to note that the counsel for the Reliance Industries Ltd. who appeared before the DRAT have fairly submitted that they have no hesitation in vacating the premises if the property is sold under auction. Accordingly, the Reliance Industries Ltd. vacated the premises and further, the Bank has handed over the possession to the auction purchaser in the year 2009. The contention of the Learned counsel for the petitioner that the notice issued to the Reliance Industries Ltd. by the Bank under Section 13(4) of the SARFAESI Act, 2002 cannot be construed at this juncture as the Reliance Industries Ltd. itself has handed over the possession of the property which was leased out by the borrower or the Reliance Industries Limited. On perusal of the entire Tripartite agreement,

it is evident that the said agreement do not reflect any liability to liquidate the dues of the Bank by the Reliance Industries Limited.

77. It is relevant to mention that the Bank has given notice to the Writ petitioner and pursuant to it auction was held in accordance with law and possession of landwas handed over to the auction purchaser way back in the year 2009 and the auction purchaser is running the retail outlet of HPCL.

78. There is no error or irregularities in the order passed by the DRAT under the SARFAESI Act. The Bank has every right to proceed against the borrower and the guarantor alone and not against the Reliance Industries Ltd. as it never stood as guarantor for the loan amount of the borrower. The Tripartite agreement is only entered into between the petitioner, the Bank and the Reliance Industries to protect the interest of the Bank.

79. If at all the petitioner has any grievance against the Reliance Industries Ltd., she is always at

liberty to proceed as per the due process of law.

80. There are no merits in the Writ petitions.

81. In the result, all the three Writ petitions are dismissed, as devoid of merits.

82. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	30.08.2024
Uploading Date	20.12.2024
Transmission Date	