IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7440 of 2012

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M/S MADHAVI HOTELS PVT. LTD. Place Of Business At Hotel Ganga Residency, Rambagh Kila, Darbhanga, Bihar Through Its Managing Director Sri Bal Krishn Jha S/O Yogindra Jha Residence Of Hotel Ganga Residency, Rambagh Kila, P.S. L.M.U. Campus, Distt. Darbhanga Bihar

... ... Petitioner/s

Versus

1. Central Bank of India through Branch Manager, Bela Industrial Estate Branch, Darbhanga
2. Authorized Officer, Central Bank Of India, Regional Office, Alalpatti Darbhanga
3. Ramanuj Kumar Singh, Son of Late Kailash Singh, resident of village and P.O. Bihar Refinery Road, Tola Ibrahimpur, P.S. Barauni, District Begusarai.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Jha, Advocate
For the Bank : Mr. Ajay Kumar Sinha, Sr. Advocate
For the Respondent No.3: Vaibhava Veer Shanker, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 20-12-2024

1. The petitioner has filed the Writ application for the following reliefs:

> *(a) For a direction to respondent authorities to recall Notice U/s 13(2) of the SARFAESI Act, 2002 dated 14.12.2011 and possession notice dated 15.3.2012, issued under the signature of the Authorized Officer in violation of Order dated 17.11.2011 passed by this Hon'ble Court in CWJC No. 18565 of 2010 whereby and whereunder this Hon'ble Court prefer not to allow the prayer of respondent Bank in I.A. No. 4834 of 2011 by*

which respondent Bank seeks permission to proceed afresh from the stage of 13(2) of the SARFAESI Act, 2002.

(b) For a direction to respondent Bank to implement restructuring the account as approved by the Bank by letter dated 30.4.2009 waiving the condition 'the total landed property must be transferred in the name of the company by Directors/ Guarantors before implementing the package" because this condition is for bidden by law and is of such nature that, if permitted, would defeat the provisions of law.

(c) For a direction to respondent Bank not to create any right or interest in the property which are not mortgaged to it for the reason that Bank cannot transfer title better than what he has and the petitioner company has not transferred any right title or interest in the property mentioned in section 13(2) notice.

(d) For any other appropriate relief/relief's for which the petitioner is found to be entitled in the facts and circumstances of the case"

2. The brief facts culled out of the Writ

petition is that the petitioner is a company registered under the provisions of Companies Act, 1956, having its place of business at Hotel Ganga Residency, Rambagh Quila, Darbhanga, Bihar. The petitioner company applied for the sanction of term loan of Rs. 135 lakhs for construction of hotel rooms, banquet hall, furnishing and repayment of existing loans. For the purpose of the loan, the security offered was land building, plant, machinery and other fixed assets. It is further submitted that the land was in the name of the guarantors, which was mentioned in application form. The Assistant General Manager sanctioned the proposal by letter dated 19.9.2005, under the terms and conditions mentioned therein. The petitioner has quoted Clause 9 and Clause 14(b) in the petition which are as follows:

> *"9. Security: a. Land, building, plant and machinery, furniture and other fixed assets created at the site in the name of Madhavi Hotel Pvt.Ltd. value Rs. 2.54 crores.*
>
> *b. E.M. of land and building in*

the name of Smt. Rani Jha, one of the Director value Rs. 48.00 lakhs against which 15 lakhs of Cent Mortgage loan is existing also charged with this loan too.

14.b Recital of charges of existing mortgaged properties along with usual stamps as per guidelines/ notification".

3. It is submitted by the petitioner that, in pursuance of the terms and conditions of the sanction letter dated 19.9.2005, all the three directors/ guarantors extended the mortgage by letter dated 20.9.2005, showing their intention that Original Sale Deed No. 6926 and 17606 in the name of Bal Krishna Jha, Sale Deed No. 7085 in the name of Smt. Rani Jha and Sale Deed no. 7262 in the name of Kamlesh Jha would be kept as security against the loan under the title of "Madhavi Hotel Pvt.Ltd." and its unit Ganga Executive Club, Ganga Residency and Moving Planet situated at Rambagh, Darbhanga. Further in terms of clause 9(b) of the sanction letter, Mrs. Rani Jha, on 20.9.2005

extended the Mortgage dated 20.8.2004 to secure the loan of Rs. 1.35 crore, granted to Madhavi Hotels Pvt. Ltd. It is submitted that the petitioner availed the term loan in full, and as per the terms of the sanction the EMI was fixed at Rs. 2.62 lakhs by the respondent Bank for repayment in 84 months, with a moratorium period of six months, and instalments were to be paid from March, 2006. However, the moratorium period was extended for two more months for March and April, 2006, for the reasons best known to the authorities and was communicated for the first time to the petitioner in July, 2006, vide Branch letter dated 17.7.2006. It is also submitted that a further moratorium for one year from May, 2006 was granted i.e. moratorium was extended upto April, 2007, but the same was never communicated to the petitioner and during the period payments were realized. After expiry of the moratorium period, the petitioner company paid Rs. 15,72,000/- as instalment upto October, 2007 which was duly informed to the company by the Bank by a letter dated 11.12.2007. It is submitted that the respondent Bank again informed about the outstanding repayment of the petitioner company upto August, 2008, which was Rs. 13.10 lakhs, out of which Rs. 1.75 lakhs was paid on 1.7.2008. Thereafter, the petitioner company had made payment of Rs. 11.87 lakhs till Oct., 2008. However, one year after the expiry of moratorium period i.e. from April, 2007 and after due payment of instalments upto Sept. - Oct. 2008, all of a sudden the respondent Bank vide its letter no. BR/08-09/51 dated 1.12.2008, informed the petitioner that E.M.I. of Rs. 2.62 lakhs was now revised and recalculated by the Bank in light of the extension of moratorium of one year granted by the Bank and hence, EMI was revised for Rs. 3,07,500/- per month, instead of Rs. 2.62 lakhs as fixed previously, thereby making a demand of Rs. 12.65 lakhs till 1st December, 2008 to be recovered from the petitioner.

4. It is submitted by the petitioner that the respondent Bank unilaterally enhanced the monthly instalment from Rs. 2,62,000/- to Rs. 3,07,500/- per

month, without any prior consent or communication to the petitioner and further imposed penalty of Rs. 1.40 lakhs in pursuance of their letter dated 1.12.2008. The Learned counsel for the petitioner submitted that it is a settled proposition of law that no executive instruction or order can be given retrospective effect. Therefore, the action of the Bank is arbitrary and illegal and cannot be given effect to. It is further submitted that the petitioner had applied for the restructuring of the account by a letter dated 12.2.2009. It is contended that the respondent Bank in pursuance of the proposal dated 12.2.2009, approved the restructuring of the account of the petitioner's company. It is further submitted that the restructuring of the petitioner's account was not in accordance with the RBI circular. It is also submitted that even though assets were standard at the time of restructuring, the Bank imposed a condition for implementing the restructuring of account: "The total landed property must be transferred in the name of the company, by the director/guarantor before implementing this package." The contention of the petitioner is that while imposing this condition of transferring the landed property in the name of the company, respondent Bank failed to appreciate the equitable mortgage dated 20.9.2005, which was created by the guarantors/ director to secure the term loan of Rs. 1.35 crore. It is further submitted that though the mortgage created by letter dated 20.9.2005, all the title, interest and charge were transferred in favour of the Bank, and that ownership in favour of the company cannot be created unless the property is redeemed. If these conditions are enforced, it would amount to a novation of contract and would constitute a fresh agreement rather than restructuring of the loan. It is submitted by the petitioner that under such circumstances the petitioner by letter dated 12.6.2009, while accepting the sanctioning of restructuring of account, clearly mentioned that against the Bank's outstanding amount of Rs. 1.5 crore, the security was valued at Rs. 10.00 crore as per the present market valuation. It was also stated that besides the legal impediment in transferring the property, in the name of the company, such a transfer would incur a cost of Rs. 40.50 lakhs as registration charges. The petitioner company accepted all the terms and conditions except the transfer of property in the name of the company.

5. It is further submitted that while the letter dated 12.6.2009 was still pending for disposal, the respondent Bank issued a notice u/s 13(2) of the SARFAESI Act, 2002 for payment of Rs. 1,86,74,244.14 as of 12.11.2009 i.e., date of the notice. The petitioner company replied to the aforesaid notice u/s 13(2), raising all its objections, including objection that no cause of action has arisen to proceed under SARFAESI Act, 2002. It is further submitted that in the aforesaid sale notice, the property of the company was also put under sale, though till date no action u/s 13(4) against the property of the company has been taken by the secured creditor.

6. It is further submitted that against the

abovestated sale notice, the petitioner filed CWJC No. 18565 of 2010. By order dated 15.11.2010, this Court stayed the sale notice dated 11.10.2010 while granting liberty to the Bank to issue a fresh sale notice in terms of possession notice dated 31.1.2010, and also two weeks time was granted to the Bank to file a counter affidavit. However, I.A. No. 4834 of 2010 was filed by the respondent Bank to allow the respondent Bank to issue fresh notice u/s 13(2) of the SARFAESI Act, 2002 and, to proceed further under the provisions of SARFAESI Act, 2002. It is further submitted that in the present case, on the date of filing of the aforesaid Interlocutory Application, the respondent Bank preferred O.A. No. 16 of 2011, with a statement in Column 8 of the statutory Form-1 prescribed under section 19(3) of DRT Act r/w Rule 4 of the Debt Recovery (Procedure) Rule stating that the matter regarding which this application has been made is not pending before any court of law, or any other authority or any other Bench of the Tribunal.

7. A Co-ordinate Bench of this Court by the order dated 17.11.2011, allowed the CWJC No. 18565 of 2010, and the entire proceedings in question under the SARFAESI Act, including the demand notice u/s 13(2), possession notice u/s 13(4) of the SARFAESI Act, and the Sale notice under Rule-8 of the Security Interest (Enforcement) Rules, 2002 were quashed. The Court further observed that "*So far the question of initiating fresh proceeding under the SARFAESI Act, from the stage of section 13(2) thereof is concerned, the respondents can initiate fresh proceeding only if law provides and so permits.*"

8. It is further submitted by the petitioner that aggrieved by part of the Order dated 17.11.2011, wherein it was observed that the respondent Bank can initiate fresh proceeding from the stage of section 13(2) only if law provides and permits, the petitioner preferred an appeal numbered L.P.A. No. 41 of 2010. A Division Bench of this Court dismissed the L.P.A. No. 41 of 2010 and observed as follows:

"This Appeal preferred under Clause 10 of the Letters Patent against the judgment and order dated 17th November 2011 passed by the Learned single Judge in C.W.J.C. No. 18565 of 2010, is without any merit. Appeal is dismissed in limine".

9. It is submitted by the petitioner that without any declaration of law on the subject matter, the respondent Bank issued a fresh notice dated 14.12.2011 U/s 13(2) of the SARFAESI Act, 2002, which is in violation of the order of this Hon"ble Court.

10. It is further submitted on behalf of the petitioner that in view of prayer (b) of CWJC No. 18565 of 2010, either by entering into a compromise and waiving interest as directed by the Tribunal, or by implementing the restructuring of the account as approved by the Bank by letter dated 30.4.2009 the petitioner represented before the respondent Bank for settlement of Term Loan Account, by way of a settlement proposal dated 3rd March, 2012.

11. It is contended by the petitioner that ignoring the compromise proposal/ restructuring of account, the respondent Bank proceeded to take possession of the mortgage property of Sri Bal Krishna Jha, Smt. Rani Jha and Sri Kamlesh Jha. On 23.3.2012, the respondent Bank came out with a possession notice which was entirely different from the possession notice served on the borrower dated 15.3.2012. The possession notice mentioned the mortgage property of Sri Bal Krishna Jha, Smt. Rani Jha and Sri Kamlesh Jha but in the paper publication, it included the property:- Land & Building i.e., Madhavi Hotel, Ganga Residency, Cinema Hall (Movie Plaza), Marriage Hall and Swimming Pool. It is further contended that the power conferred on the Bank is two folds, to take over the possession or management (or both), or can sell /lease /assign the property. While the possession cannot be disputed by the petitioner, as far as the sale and transfer is concerned, in the absence of any right /title being transferred in favour of the Bank. They are not entitled

to create any such right in favour of the third party. This issue was considered by this Hon'ble Court. Once more the possession notice dated 15.3.2012 was issued to mortgage property of land, whereas the newspaper publication includes both the land as well as properties of the company, which were not mortgaged with the Bank, thereby creating right title or interest in the property.

12. In the facts and circumstances mentioned above, the Learned counsel for the petitioner submits that the act of the secured creditor is contrary to the provision of law and direction of this Hon'ble Court, therefore, the fresh proceeding under SARFAESI Act are liable to be quashed.

13. To controvert the pleadings made by the petitioner in the Writ petition, a detailed counter affidavit was filed by the respondent Bank, stating therein that the objection under Section 13(3)(A) has already been addressed by the respondent Bank vide Annexure-14; only thereafter, possession under section

13(4) was issued followed by the sale notice dated 24.04.2012. Therefore, the respondent Bank has complied with the statutory requirements of provision of SARFAESI Act. The Learned counsel for the Bank contended that as far as the objection with regard to the very initiation of proceeding under section 13(2) of the Act is concerned, the same is untenable in law, as it is in consonance with the order dated 17.11.2011 passed in CWJC No. 18563/2010 against which LPA No. 41/2012 preferred by the petitioner had been dismissed in limine vide order dated 12.02.2012. It is further submitted on behalf of the Bank that the petitioner had also filed a contempt petition i.e., MJC No. 4019/2012, against the respondent Bank, alleging willful disobedience of interim order dated 15.11.2010 and 17.11.2011 passed in CWJC No. 18565/2010. However, this was dismissed vide order dated 22.08.2014 passed by a Co-ordinate Bench of this Hon’ble Court.

14. It is submitted by the Learned counsel for the respondent Bank that the objections under

section 13(3)(A) and the reply thereto by the Bank contained in Annexure-14 of the second supplementary affidavit, addresses all the points raised by the Bank, including mentioning the date of the NPA, the outstanding on the date of the NPA and the outstanding as on the date of notice under section 13(2). Since, all other issues were answered, it is submitted that the objection raised by the petitioner are untenable.

15. Respondent No. 3 is the Auction Purchaser who purchased the immovable assets of Madhavi Hotels Pvt. Ltd. in an auction held on 14.08.2013, sponsored by the Central Bank of India. He received the letter of possession dated 11.08.2023 and respondent No. 3 started the demolition of that old building, which was in a dilapidated condition.

16. I.A. No. 1 of 2023 was filed on 8.5.2023 by the petitioner, stating therein that the amendment petition was filed for staying the order dated 29.11.2022 and the consequential order dated 28.04.2023, passed by the State Authorities for handing

over possession of land mentioned therein. It was further submitted that the order passed by the District Magistrate was in conflict with earlier order dated 23.11.2016, passed by the same authority, which was stayed by this Hon'ble Court, in CWJC No. 16299 of 2017 by its order dated 23.07.2018, and that the Writ Petition was admitted to be heard alongwith CWJC No. 7440 of 2012 and other analogues cases. It is also stated in the Interlocutory Application that during the pendency of the batch of Writ petitions, 27.05.2023 was the date fixed, for handing over possession which was in violation of the earlier order of this Hon'ble Court, and will frustrate the entire proceeding pending before this Hon'ble Court since 2010. The petitioner prays for staying the notice dated 23.4.2023 with a further direction to the Bank to maintain the status-quo in the matter until the disposal of the Writ petition.

17. On 06.05.2024, it was brought to the notice of this Court that initially, the SARFAESI Act proceedings had been challenged by the petitioner,

which was set aside by this Court. Pursuant to the orders of this Court, again SARFAESI Act proceedings were initiated against the petitioner which are under challenge, and the District Magistrate took steps to demolish the houses constructed over the land. However, on hearing the submissions made by the petitioner, this Court directed the parties to maintain status quo until the disposal of these cases.

18. I.A. No. 2 of 2024 was filed by the respondent No. 3 the Auction Purchaser, who purchased immovable assets of Madhavi Hotels Pvt. Ltd. in an auction held on 14.08.2013. It is the specific contention of the Auction Purchaser that the respondent no. 3 purchased the immovable assets of Madhavi Hotels Pvt. Ltd., which comprises 16 kathas of land as fully detailed in the sale notice as well as in the letter of possession dated 11.08.2023. There is a dilapidated house which stands on the land which was intended to be demolished for reconstruction. However, due to the interim order passed by this Court on 06.05.2024, the auction

purchaser has stopped the demolition and therefore, this Interlocutory application has been filed to vacate the interim orders passed by this Court. It is the specific contention of the Auction Purchaser that the bank sold the property for a sum of Rs. 4,58,21,000.00 (Rs. Four Crores Fifty Eight Lakhs Twenty Thousand only) in the auction held on 14.08.2013, which was confirmed on 14.09.2013, and accordingly a sale certificate was issued to the 3rd respondent on 16.09.2013. Inspite of the sale certificate, due to the litigation initiated by the petitioner, the Bank was unable to issue possession certificate. Consequently, the auction purchaser was granted possession only on 11.8.2023 after a span of 10 years. Further, the Auction Purchaser contended that as per Section 14 of the Rules of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Bank requested the District Magistrate, Darbhanga for help and assistance by providing police force for handing over of the possession of the assets to respondent No. 3. An application for taking possession of the secured assets was filed by the authorised officer of the Bank, which was registered as Appeal Case No. 177 of 2013, on the file of the District Magistrate. Further, the present Writ petition and the other Writ petition bearing CWJC No. 4263 of 2013 filed by the Directors of the company were pending. However, the District Magistrate, Darbhanga on its own, decided to stay further proceedings, refusing the Bank to provide assistance in taking over of the possession. Further, the authorised officer of the bank and also the Central Bank of India filed C.W.J.C No. 2036 of 2017, against the order passed by the District Magistrate, Darbhanga in Appeal Case No. 177 of 2013 dated 23.11.2016. The said Writ application was also pending before this Court. Further, it is contended by the Auction Purchaser that he preferred C.W.J.C No. 16299 of 2017, challenging the same order dated 23.11.2016 of the District Magistrate, Darbhanga in Appeal No. 177 of 2013, and the said Writ application was heard on 23.07.2018, and this Court stayed the operation of the order dated 23.11.2016 passed by the District Magistrate. However, taking into consideration the pendency of CWJC No. 7440 of 2012; the Writ application was admitted and was directed to be heard along with the other Writ applications. It is the specific contention of the respondent No. 3, that he has invested a huge amounts i.e. more than 4 crore in the year 2013, but was not able to take possession of the said property till 2024, and, therefore, prays to dismiss the Writ petition.

19. It is a well settled principle of the Hon'ble Apex Court, that the Writ petition is not maintainable in view of the alternative and effective remedy available as per the case law of **PHR Investment Educational Society Vs. UCO Bank & Ors. reported in (2024) 6 SCC 579** and therefore, prayed to vacate, recall or modify the order dated 06.05.2024.

20. Heard the Learned counsel for the petitioner and the Learned counsel for the respondents.

21. On perusal of the entire record, it is evident that this is the second round of litigation under SARFAESI Act, 2002. Initially, the petitioner filed CWJC No. 18565 of 2010 for the following reliefs:

> *"(i) For a direction to respondent no.3 to recall the sale notice to the extent it relates to the assets & properties of the petitioner Company and amend the sale notice dated 11.10.2010 to the extent to exclude the properties of the company i.e. building, plant & machinery and goods hypothecated with the respondent Bank for the reason that the action of the Authorised Officer to proceed to sale the properties of the company without taking action under section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (hereinafter referred to as `the SARFAESI Act' for the sake of brevity) is illegal and without jurisdiction.*
>
> *(ii) For a direction to respondent Bank to enter into compromise waiving interest as directed by Hon'ble Tribunal or to implement restructuring of the account as approved by the Bank by letter*

dated 30.04.2009 waiving the condition "The Total Landed Property must be transferred in the name of the Company by the Directors/Guarantors before implementing this package" because this condition is forbidden by law and is of such nature that, if permitted, it would defeat the provisions of law".

(iii) For a direction to respondent no.3 to proceed against only such portion of the property which was the subject matter of attachment under Rule 8 of Security Interest Act, 2002 and was published in Hindi Daily on 31.01.2010 and further direction to company the mandatory provision of Rule 8 Sub- Rule 6(b), mentioning the secured

(iv) For any other appropriate relief/reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

22. However, I.A. No. 434 of 2011 was filed in the Writ petition by the respondent Bank, admitting that certain properties included in the sale notice under Rule 8 of the Security Interest (Enforcement) Rules, 2002 were found to be defective, as they were not included in the earlier demand notice and possession notice under

SARFAESI Act'.

23. A Co-ordinate Bench of this Court, after considering the entire material, allowed the Writ petition by setting aside the demand notice under Section 13(2) of the Act and 13(4) of the SARFAESI Act, and also quashed the sale notice under Rule 8 of the Security Interest (Enforcement) Rules 2002. However, the operative portion of the judgment of CWJC No. 18565 of 2010 reads as follows:

"*So far the question of initiating fresh proceeding under the SARFAESI Act, from the stage of section 13(2) thereof is concerned, the respondents can initiate fresh proceeding only if law provides and so permits.*"

24. At present, the Bank has initiated fresh proceedings under Section 13(2) of the Act against the petitioner, which is under challenge.

25. It is the specific contention of the Learned counsel for the petitioner that once the SARFAESI Act proceedings have been quashed, the

Bank is barred from issuing fresh SARFAESI Act proceedings. However, this Court is of the considered view that there is no bar on the Bank for issuing fresh proceeding under SARFAESI Act, in view of the orders passed by a Co-ordinate Bench of this Court in CWJC No. 18565 of 2010, if the law provides and permits. It is pertinent to mention that the prayer made in the Writ petition is as follows:-

> *(a) For a direction to respondent authorities to recall Notice U/s 13(2) of the SARFAESI Act, 2002 dated 14.12.2011 and possession notice dated 15.3.2012, issued under the signature of the Authorized Officer in violation of Order dated 17.11.2011 passed by this Hon'ble Court in CWJC No. 18565 of 2010 whereby and whereunder this Hon'ble Court prefer not to allow the prayer of respondent Bank in I.A. No. 4834 of 2011 by which respondent Bank seeks permission to proceed afresh from the stage of 13(2) of the SARFAESI Act, 2002.*
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> *(b) For a direction to respondent Bank to implement restructuring the account as*

approved by the Bank by letter dated 30.4.2009 waiving the condition 'the total landed property must be transferred in the name of the company by Directors/ Guarantors before implementing the package" because this condition is for bidden by law and is of such nature that, if permitted, would defeat the provisions of law.

(c) For a direction to respondent Bank not to create any right or interest in the property which are not mortgaged to it for the reason that Bank cannot transfer title better than what he has and the petitioner company has not transferred any right title or interest in the property mentioned in section 13(2) notice.

26. The prayers made by the writ petitioner are vague. Admittedly, if any notice is issued under Section 13(2) of the SARFAESI Act 2002, it is for the petitioner to approach the Debt Recovery Tribunal, by way of filing an application as an alternative and effective remedy which is available to the petitioner. The petitioner instead of availing the remedy has preferred a Writ petition.

27. It is the specific contention of the respondent Bank, that this Court has quashed the notice issued under Section 13(2) of the SARFAESI Act, giving liberty to the Bank to initiate fresh proceeding under Section 13(2) of the SARFAESI Act, if the law provides and so permits. Further, under Section 17 of the SARFAESI Act, a remedy is available to the petitioner to challenge it before the Debt Recovery Tribunal. By order dated 15.09.2014, this Court rejected the prayer for interim relief by way of maintaining s*tatus quo*. It is the matter of fact to be decided by the Debt Recovery Tribunal, and cannot be adjudicated under Article 226 of the Constitution of India. Further, the Learned counsel for the respondent Bank relied on the following section the SARFAESI Act:

> *"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;"*

2(zc)secured asset means the property on which security interest is created;

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"

2(zf)(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

2(zf)(ii)such right, title or interest in any intangible asset or assignment or licence *of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset;]*

And contended, that if any charge is created by any adversary, the respondent Bank is entitled to take possession over the said property, and it was further contended that Annexure-2 i.e. the loan agreement, also contains at Page 33, Column No. 9, the Land, building, Plant & Machinery, Furniture, and other fixed assets created at the site in the name of Madhavi Hotel Pvt. Ltd. valued at Rs. 2.54 crore. Therefore, there is no irregularity in issuing notice under Section 13(2) of the SARFAESI Act and also under Section 13(4) of the SARFAESI Act.

28. It is relevant to mention the case law i.e., **PHR Investment Educational Society (supra)** wherein their Lordships have held as follows:

"22. The law with regard to entertaining a petition under Article 226 of the Constitution in

case of availability of alternative remedy is well settled. In Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260 : 2010 INSC 428] , this Court observed thus : (SCC p. 123, paras 43-45)

> *"43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*
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> *44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or Writs including the five prerogative Writs*

for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

29. Recently, in Celir LLP [Celir LLP v. Bafna Motors (Mumbai) (P) Ltd., (2024) 2 SCC 1 : (2024) 1 SCC (Civ) 62 : 2023 INSC 838] , after surveying various judgments of this Court, the Court observed thus : (SCC p. 81, para 101)

"101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010)

3 SCC (Civ) 260 : 2010 INSC 428] , it appears that the High Courts have continued to exercise its Writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act."

34. In our view, the High Court ought to have taken into consideration that the confirmed auction-sale could have been interfered with only when there was a fraud or collusion. The present case was not a case of fraud or collusion. The effect of the order of the High Court would be again reopening the issues which have achieved finality.

37. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.

29. Admittedly, the Writ petition does not

come under the exceptions therefore, the petition under Article 226 of the Constitution of India cannot be entertained. Accordingly, the Writ petition is dismissed as it is devoid of merits.

30. In view of the dismissal of the Writ petition, nothing remains for adjudication is the Writ petition bearing CWJC No. 16299 of 2017, filed by the auction purchaser, hence, the said Writ petition stands closed.

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

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.01.2025
Transmission Date	