

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2648 of 2011

**Ronit Nirman Private Limited
-Vs-
The State of West Bengal and Ors.**

With

C.R.R. 2649 of 2011

**Mohima Developers Private Limited
-Vs-
The State of West Bengal and Ors.**

For the Petitioner	: Md. Sabir Ahmed Mr. T. Ahamed Mr. S. Chakraborty Mr. D. Banerjee
For the State	: Mr. Sandip Chakraborty
For the Opposite Party No.2	: Mr. Debasish Saha
Heard on	: 09.08.2023, 14.09.2023, 16.10.2023, 19.02.2024, 01.05.2024
Judgment on	: 02.07.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional applications are filed by the petitioners praying for setting aside of the orders dated 28.06.2011 and 01.07.2011 passed by the Learned Chief Judicial Magistrate, Barasat in Miscellaneous Case No. 88/2011 and Miscellaneous Case No. 92/2011 respectively under Section 14 of the SARFAESI Act, 2002.

2. Petitioner company approached the Respondents no. 2 and 3 for availing cash credit facility for its business purpose and the Respondents after going through the formalities sanctioned cash credit limit up to Rs.5/- crores as working capital in the month of January 2009 on the terms and conditions of the sanction letter dated 14.01.09.
3. The terms and conditions of the said facility required equitable mortgage of several land and buildings in the name of the company or its directors particularly described in the sanction letter dated 14.01.09. It also required Hypothecation of Stock and book debts and pledge of Rs.20 lakhs.
4. After sanction of the said facility, the company transacted in the loan account for repayment of the said loan to considerable extent to the respondent bank.
5. On several occasions the petitioner company requested the respondent Bank to issue proper statement of account so that the company could ascertain its liability towards the said Cash Credit account in spite of which the respondent did not issue any statement of account.
6. The petitioner company somehow collected the statement of the loan account wherefrom it appeared that the company paid the entire interest as claimed by the bank and it also transpired that the amount was not shown as brought forward in the opening statement but was shown in the closing amount denoting inconsistency in the account maintained by the bank, which also proposed nil balance amount due in the said bank to be shown as brought forward amount.
7. Petitioner company on 15.03.11 received notice dated 11.03.2011 purported to be the notice under Section 13(2) of SARFAESI Act, 2002 issued by the respondents whereby the respondents asked the company pay an amount of Rs. 5,35,83,264/- and the petitioner was also served with a notice under Section

13(4)(a) of the Act dated 12.05.2011 for taking possession of the immovable property described therein.

8. The respondents on 13.07.11 issued possession notice for taking symbolic possession of the immovable assets of the applicant under Rule 9 of the Security Interest (Enforcement) Rules, 2002 read with Section 13(4) of the said Act and the same was published in the news paper on 17.07.11.
9. Petitioner company stated that the respondent bank issued notice under Section 13(2) of the Act on 11.03.11 which was received by the petitioner on 15.03.11 and the notice under Section 13(4)(a) of the SARFAESI Act, 2002 issued by the respondents on 12.05.11 whereby respondents on 1 and 2 had taken measures under SARFAESI Act, 2002 before the expiry of the statutory period of 60 days therefore the notice issued under Section 13(4) of the Act was premature and bad in law and subsequent steps taken by the respondent bank on the basis of the said notice were also unlawful and liable to be quashed.
10. Petitioner stated that respondent bank filed an application under Section 14 of the SARFAESI Act, 2002 before the Chief Judicial Magistrate at Barasat for assistance in taking physical possession of the secured assets on 01.07.11 being M.P. Case No. 92 of 2011 and the Learned Judge upon hearing was pleased to pass the order Section 14(2) of the SARFAESI Act 2002 and directed the officer in charge Barasat police station to take possession of the secured assets as mentioned in the application.
11. The Ld. Advocate for the petitioner submitted as follows:-
 - i. Under the SARFAESI Act 2002 the Chief Judicial Magistrate did not have the power and jurisdiction to entertain the application under Section 14 of the Act and to pass the order under Section 14(2) of the SARFAESI Act

2002, only the Chief Metropolitan Magistrate or District Magistrate had the power to pass such order under the said Act therefore the order passed by the Learned Chief Judicial Magistrate on 01.07.11 was liable to be set aside.

- ii. Under the SARFAESI Act, 2002 the Chief metropolitan Magistrate or District Magistrate is empowered to entertain the application under Section 14 of the Act and such power to be invoked by the bank after completing all the formalities contained in Section 13 of the Act but in the present case the respondent bank made the application under Section 14 of the SARFAESI Act 2002 on 28.06.11 whereas the possession notice under Section 13 of the SARFAESI Act 2002 issued on 13.07.11 and as such the entire procedure adopted by the respondent bank for taking possession of the assets is not only premature but also illegal and arbitrary misuse of power and is liable to be set aside.

12. Petitioner contended that Section 14 of the SARFAESI Act, 2002, inter alia, stated as follows :-

“Chief Metropolitan Magistrate or District Magistrate to assist the secured creditor in taking possession of secured asset.

- i. Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take

possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

- a. Take possession of such asset and documents relating thereto. and
- b. Forward such assets and documents to the secured creditor.
- ii. The purpose of securing compliance with the provisions of sub Section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
- iii. No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.”

13. It was further submitted that it would be evident from plain reading of the said Section of the SARFAESI Act 2002 that the Chief Judicial Magistrate had no jurisdiction and power to entertain the application under Section 14 of the said Act therefore the order passed by the Chief Judicial Magistrate was to be set aside.

14. Moreover it was evident that the impugned criminal proceedings was manifestly attended with an ulterior motive for wreaking vengeance on the petitioner with an oblique motive and/or for an extraneous purpose and was out and out harassment.

15. It was further submitted that it was a fit case where this Hon’ble Court could invoke its powers under Article 227 of the Constitution of India and stay and/or set aside the impugned order and proceedings in order to prevent the abuse of the process of the court or otherwise to secure the ends of justice.

16. Learned Advocate for the petitioner further submitted that:-

- i. The opposite party relied on the judgment reported in **(2019) 20 SCC 47** wherein it had been decided by the Hon'ble Supreme Court that the Chief Judicial Magistrate was equally competent to deal with the application moved by the secured creditor under Section 14 of the SARFAESI Act, 2002.
- ii. The petitioner submitted that though the Hon'ble Supreme Court had decided that the Chief Judicial Magistrate was competent to deal with the application under Section 14 of the SARFAESI Act, 2002 by secured creditor, but the Hon'ble Apex Court had not given the retrospective effect of the judgment delivered by the Hon'ble Supreme Court.
- iii. On the other hand in paragraph 54 of the said judgment, Indian Bank Vs. D Vishalakshi, it was specifically stated that "it is unnecessary to dilate on the argument of prospective overruling passed into service by the secured creditors (banks)."
- iv. That law being well settled that any substantive law and/or statute which affects substantive right is presumed to be prospective in operation unless made retrospective either expressly or by necessary intendment. Reliance may be placed in ***Hitendra Vishnu Thakur and Other Vs. State of Maharashtra reported in (1994) 4SCC 602*** and ***GJ Raja Vs. Tejraj Surana reported in (2019) 19 SCC 469***.
- v. It was further submitted that from the aforesaid principles of law and the principles of applicability of doctrine of prospective overruling in criminal jurisprudence, was always prospective in nature and law declared by a court would not have any retrospective effect.

- vi. The decision rendered in the ***PV George and Others Vs. State of Kerala and Others reported in (2007) 3SCC 557*** was relied upon.
- vii. Further reliance was set upon the decision of the Hon'ble Supreme Court reported in ***(2010) 5SCC 388, paragraphs 34, 35 and 36,*** where the good question arose in the revisional application was that whether Chief Judicial Magistrate had any jurisdiction to deal with an application filed under section 14 of the SARFAESI Act, 2002. The order passed by the Learned Magistrate in the revisional application has been challenged based on the view taken by the Hon'ble Calcutta High Court that Chief Judicial Magistrate did not have any jurisdiction to deal with any application filed before him.
- viii. The Hon'ble Supreme Court in Indian Bank (Supra) overruled the view of the Hon'ble High Court at Calcutta and hold that Chief Judicial Magistrate is equally competent to deal with the application under Section 14 of the SARFAESI Act, 2002. This decision has been delivered on September 23rd, 2019 and the Hon'ble Apex Court has observed that it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors. As such the decision taken by the Hon'ble Supreme Court is prospective in nature and on the date of the order passed by the Chief Judicial Magistrate, the view taken by the Hon'ble High Court at Calcutta was prevalent and the order passed by the Chief Judicial Magistrate is without jurisdiction.

17. The Ld. Advocate for the opposite party no. 2 and 3 submitted that the instant application filed under Article 227 of the Constitution of India had been

misconceived and could not be filed and challenged the same on the ground of maintainability since the Ld. Trial Court had passed the impugned order under Section 14 of the SARFESI Act of 2002 exercising administrative power and not judicial power.

18. The Ld. Advocate for the opposite party no. 2 and 3 further contended that this Court should not give any liberty to the petitioners at this juncture to approach the statutory forum as envisaged under the SARFAESI Act, 2002. It is well settled that an application under Section 17 of the SARFAESI Act 2002 is akin to a suit and thus the delay which already occurred cannot be condoned.

19. The Ld. Advocate for the opposite party no. 2 and 3 relied on the following decisions.

- a. The following was held by the Hon'ble Supreme Court in **Kanaiyalal Lalchand Sachdev v. State of Maharashtra**¹:-

In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd. [(2003) 3 SCC 524 : 2003 SCC (Cri) 762] , Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675] and SBI v. Allied Chemical Laboratories [(2006) 9 SCC 252] .)

- b. The Hon'ble Supreme Court observed the following in **United Bank of India v. Satyawati Tondon**²:-

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*

¹ (2011) 2 SCC 782

² (2010) 8 SCC 110

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.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad* [AIR 1969 SC 556], *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1] and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

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50. In *Punjab National Bank v. O.C. Krishnan* [(2001) 6 SCC 569] this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed: (SCC p. 570, paras 5-6)

“5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short ‘the Act’). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order

passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

- c. In **Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir**³, the following was observed by the Hon’ble Supreme Court:-

12. *In Kanaiyalal Lalchand Sachdev [Kanaiyalal Lalchand Sachdev v. State of Maharashtra, (2011) 2 SCC 782 : (2011) 1 SCC (Civ) 570] after referring to the earlier decisions of this Court in Sadhana Lodh v. National Insurance Co. Ltd. [Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762] , Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] and SBI v. Allied Chemical Laboratories [SBI v. Allied Chemical Laboratories, (2006) 9 SCC 252] while upholding the order passed by the High Court dismissing the writ petition on the ground that an efficacious remedy is available under Section 17 of the Sarfaesi Act, it was observed that ordinarily relief under Articles 226/227 of the*

³ (2022) 5 SCC 345

Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person.

- d. In **South Indian Bank Ltd. v. Naveen Mathew Philip**⁴, the following was held by the Hon'ble Supreme Court:-

17. *We shall reiterate the position of law regarding the interference of the High Courts in matters pertaining to the SARFAESI Act by quoting a few of the earlier decisions of this Court wherein the said practice has been deprecated while requesting the High Courts not to entertain such cases.*

• *Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733,*

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v.) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

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26. *A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the company though the case of nationalized banks stands on a different footing. There may well be companies, in which majority of the share capital may be contributed out of the State funds and in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the*

⁴ 2023 SCC OnLine SC 435

company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lakhs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The banking companies have not been set up for the purposes of building the economy of the State; on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guidelines and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other business activities, maybe manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its

own mismanagement or the interest of the shareholders or people generally may not be jeopardized for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the private companies. Care is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951 that their production, which is important for the economy, may not go down, yet the business activity is carried on by such companies or corporations which only remains a private activity of the entrepreneurs/companies.

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.”

• *United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110,*

“42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice

issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression “any person” used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

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.

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55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

• State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85,

“5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal [(2014) 1 SCC 603], as follows : (SCC p. 611, para 15)

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419], Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

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8. The Statement of Objects and Reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not have the power to take possession of securities and sell them. The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions. Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without court intervention which would enable them to realise long-term assets, manage problems of liquidity, asset liability mismatches and improve recovery. The proceedings under the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to

as “the DRT Act”) with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have not been kept in mind and considered before passing the impugned order.

9. Even prior to the SARFAESI Act, considering the alternate remedy available under the DRT Act it was held in *Punjab National Bank v. O.C. Krishnan* [(2001) 6 SCC 569] that : (SCC p. 570, para 6)

“6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

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15. It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of *ex parte* interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in

a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in United Bank of India v. Satyawati Tondon [(2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260], has also not been kept in mind before passing the impugned interim order : (SCC pp. 123-24, para 46)

“46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [AIR 1969 SC 556], Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

• *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345,*

“18. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount

as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. v. C.A. Imanual, [(1969) 1 SCC 585] and Ramesh Ahluwalia v. State of Punjab, [(2012) 12 SCC 331 : (2013) 3 SCC (L&S) 45 : 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.

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21. Applying the law laid down by this Court in State Bank of Travancore v. Mathew K.C., [(2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs. 1 crore only (in all Rs. 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs. 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further

with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed.”

• *Varimadugu Obi Reddy v. B. Sreenivasulu, (2023) 2 SCC 168,*

“36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the 2002 Act.”

18. *While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a*

borrower, when the legislature has provided for a specific mechanism for appropriate redressal.

20. The petitioners raised the issue pertaining to the power of the Chief Judicial Magistrate to entertain an application filed under the Section 14 of the SARFESI Act since the same could be exclusively exercised either by the Chief Metropolitan Magistrate or by the District Magistrate in terms of the aforesaid Section 14 of the Said Act.
21. The Ld. Advocate for the petitioners vociferously argued that the Ld. Trial Court being the Chief Judicial Magistrate could not have stepped into the shoes of the Chief Metropolitan Magistrate statutorily empowered to deal with an application under Section 14 of the SARFESI Act and accordingly the impugned order must be set aside.
22. Per Contra, the Ld. Advocate for the opposite party No. 2 contended that the impugned order passed by the Ld. CJM in exercising administrative power could not be dealt with by this Court under the provisions of Article 227 of the Constitution of India.
23. Certain basic principles and provisions of law are necessary to be reiterated prior to the issues involved in the instant case are dealt with.
24. Any Court in the District Judiciary does not function as a 'persona designata' but as a Court created by the mandate of a Statute.
25. The excerpts of the decision of the Hon'ble Supreme Court cited in **LIC v. Nandini J. Shah**⁵ manifestly described the functions of a Court contrary to the nomenclature of 'persona designata'.

⁵ (2018) 15 SCC 356

43. We may now turn to the decision of the Delhi High Court in *N.P. Berry* [*N.P. Berry v. DTC*, 1978 SCC OnLine Del 195 : (1979) 15 DLT 108], on which reliance has been placed by the Bombay High Court in *Nusli Neville Wadia case* [*Nusli Neville Wadia v. New India Assurance Co. Ltd.*, 2010 SCC OnLine Bom 271 : (2010) 2 Mah LJ 978 : (2010) 4 Bom CR 807] . The main point considered by the Delhi High Court was about the distinction between a “Judge” acting as a *persona designata* and that as a “Court”, in the context of an order passed by an Additional District Judge of Delhi acting as an Appellate Officer under Section 9 of the 1971 Act.

44. We may reiterate that, in the present case, we are not concerned with the question as to whether the Estate Officer functions as a court whilst exercising powers under the 1971 Act, an issue which was also considered by the Delhi High Court. It also dealt with the question as to whether the “Appellate Officer” defined in Section 9 of the 1971 Act, acts as a *persona designata* and not as a court. The Delhi High Court opined that the mere fact that the Appellate Officer is a District Judge is not conclusive to hold that he has to act as a court. It went on to observe that if that had been the intention of the legislature, Section 9 would have empowered either the Court of a District Judge or at any rate, the District Judge as such to hear the appeals. This view expressed by the Delhi High Court, in our opinion, is untenable, keeping in mind the exposition in *Thakur Das* [*Thakur Das v. State of M.P.*, (1978) 1 SCC 27 : 1978 SCC (Cri) 21] and *Mukri Gopalan* [*Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker*, (1995) 5 SCC 5] in particular.

45. Indeed, the Delhi High Court could not have noticed the aforementioned decisions of this Court, wherein it has been observed that a *persona designata* is a person who is pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character. We are conscious of the fact that the decision in *Thakur Das* [*Thakur Das v. State of M.P.*, (1978) 1 SCC 27 : 1978 SCC (Cri) 21] was in relation to the purport of Section 6-C of the Essential Commodities Act and the decision in *Mukri*

Gopalan [Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5] was in respect of Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1955. As noted earlier, Section 6-C of the Essential Commodities Act refers to the “judicial authority” appointed by the State Government concerned and Section 18 of the Kerala Buildings (Lease and Rent Control) Act refers to such officers and authorities not below the rank of Subordinate Judge to exercise the powers of the appellate authority. However, the principle underlying these enunciations will apply on all fours to the dispensation stipulated in the 1971 Act. For, it predicates that the Appellate Officer shall be the District Judge of the district in which the premises are situated or such other judicial officer designated by the District Judge.

46. *The Bombay High Court in Nusli Neville Wadia case [Nusli Neville Wadia v. New India Assurance Co. Ltd., 2010 SCC OnLine Bom 271 : (2010) 2 Mah LJ 978 : (2010) 4 Bom CR 807] largely relied upon the decision of the Delhi High Court in N.P. Berry case [N.P. Berry v. DTC, 1978 SCC OnLine Del 195 : (1979) 15 DLT 108] . We are bound by the dictum in Thakur Das [Thakur Das v. State of M.P., (1978) 1 SCC 27 : 1978 SCC (Cri) 21] decided by a three-Judge Bench of this Court wherein it is observed that the expression “judicial” qualifying the “authority” clearly indicates that that authority alone can be appointed to intervene and hear the appeals on which was conferred the judicial powers of the State. By a reference to judicial authority, it is indicative of the fact that the appellate authority must be one such pre-existing authority which was exercising judicial powers of the State and if any authority as persona designata was to be constituted, there was no purpose in qualifying the word “authority” by the specific adjective “judicial”. The thrust of the exposition is that the “judicial authority” which is a pre-existing authority exercising judicial power of the State, is a strong indication of legislative intent to depart from the dispensation of persona designata when a person is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character. That view has been reiterated even*

in Mukri Gopalan [Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5] (supra).

47. *Notably, the expression “Appellate Officer” has not been defined in the 1971 Act, unlike the definition of “Estate Officer” contained in Section 2(b) of that Act. The Appellate Officer cannot be considered as a statutory authority, as defined in the dictionary clause in Section 2(fa) of the 1971 Act. In Thakur Das [Thakur Das v. State of M.P., (1978) 1 SCC 27 : 1978 SCC (Cri) 21] , in para 9, while analysing the cleavage of opinion of the High Courts, it is noticed that the expression “judicial authority” would comprehend the Additional Sessions Judge or the Sessions Judge could transfer such appeal pending before him to the Additional Sessions Judge which was a pointer to the fact that he was not a persona designata. Even in respect of the appeal under Section 9 of the 1971 Act, the Principal Judge of the City Civil Court or District Judge is competent to hear the appeal himself or designate some other judicial officer within his jurisdiction possessing requisite qualification. It will be useful to advert to Section 7 of the City Civil Courts Act and Sections 3, 5 and 7 of the Maharashtra Civil Courts Act. It is implicit in Section 9 read with the provisions of the Acts constituting the District Judiciary that the head of the district judiciary is the District Judge or Principal Judge of the City Civil Court and Section 9 of the 1971 Act makes it explicit, by investing authority in the District Judge or Principal Judge of the City Civil Court, to designate any other judicial officer within his jurisdiction possessing essential qualifications, to hear such appeals. This is a clear departure from the appointment of a District Judge as a persona designata. The Additional District Judge or judicial officer possessing essential qualification, therefore, is not an inferior Appellate Officer within the meaning of Section 9 of the 1971 Act. In our opinion, there is enough indication in Section 9 of the 1971 Act to spell out the legislative intent that the remedy of appeal before the Appellate Officer is not before a persona designata but a pre-existing judicial authority in the district concerned.*

26. The primary distinction between the jurisdiction and functions of a Chief Judicial Magistrate and a Chief Metropolitan Magistrate as enumerated in the Code of Criminal Procedure is replicated as follows:-

8. Metropolitan areas.—(1) *The State Government may, by notification, declare that, as from such date as may be specified in the notification, any area in the State comprising a city or town whose population exceeds one million shall be a metropolitan area for the purposes of this Code.*

(2) *As from the commencement of this Code, each of the Presidency-towns of Bombay, Calcutta and Madras and the city of Ahmedabad shall be deemed to be declared under sub-section (1) to be a metropolitan area.*

(3) *The State Government may, by notification, extend, reduce or alter the limits of a metropolitan area but the reduction or alteration shall not be so made as to reduce the population of such area to less than one million.*

(4) *Where, after an area has been declared, or deemed to have been declared to be, a metropolitan area, the population of such area falls below one million, such area shall, on and from such date as the State Government may, by notification, specify in this behalf, cease to be a metropolitan area; but notwithstanding such cesser, any inquiry, trial or appeal pending immediately before such cesser before any Court or Magistrate in such area shall continue to be dealt with under this Code, as if such cesser had not taken place.*

(5) *Where the State Government reduces or alters, under sub-section (3), the limits of any metropolitan area, such reduction or alteration shall not affect any inquiry, trial or appeal pending immediately before such reduction or alteration before any Court or Magistrate, and every such inquiry, trial or appeal shall continue to be dealt with under this Code as if such reduction or alteration had not taken place.*

Explanation.—In this section, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

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12. Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.—(1) In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate.

(2) The High Court may appoint any Judicial Magistrate of the first class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under this Code or under any other law for the time being in force as the High Court may direct.

(3) (a) The High Court may designate any Judicial Magistrate of the first class in any sub-division as the Sub-divisional Judicial Magistrate and relieve him of the responsibilities specified in this section as occasion requires.

(b) Subject to the general control of the Chief Judicial Magistrate, every Sub-divisional Judicial Magistrate shall also have and exercise, such powers of supervision and control over the work of the Judicial Magistrates (other than Additional Chief Judicial Magistrates) in the sub-division as the High Court may, by general or special order, specify in this behalf.

13. Special Judicial Magistrates.—(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate [of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area:]

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

[(3) The High Court may empower a Special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.]

14. Local jurisdiction of Judicial Magistrates.—*(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code:*

[Provided that the Court of Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.]

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

[(3) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.]

15. Subordination of Judicial Magistrates.—*(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.*

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Judicial Magistrates subordinate to him.

16. Courts of Metropolitan Magistrates.—(1) *In every metropolitan area, there shall be established as many Courts of Metropolitan Magistrates, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.*

(2) *The presiding officers of such Courts shall be appointed by the High Court.*

(3) *The jurisdiction and powers of every Metropolitan Magistrate shall extend throughout the metropolitan area.*

17. Chief Metropolitan Magistrate and Additional Chief Metropolitan Magistrate.—(1) *The High Court shall, in relation to every metropolitan area within its local jurisdiction, appoint a Metropolitan Magistrate to be the Chief Metropolitan Magistrate for such metropolitan area.*

(2) *The High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate, and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under this Code or under any other law for the time being in force as the High Court may direct.*

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19. Subordination of Metropolitan Magistrates.—(1) *The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge; and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.*

(2) *The High Court may, for the purposes of this Code, define the extent of the subordination, if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.*

(3) *The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to the allocation of business to an Additional Chief Metropolitan Magistrate.*

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29. Sentences which Magistrates may pass.—(1) *The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.*

(2) *The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding 1 [ten thousand rupees], or of both.*

(3) *The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding 2 [five thousand rupees], or of both.*

(4) *The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class*

27. A conjoint reading of the aforesaid Sections of the Criminal Procedure Code demonstrates that the Chief Judicial Magistrate and the Chief Metropolitan Magistrate exercise similar powers and functions subject to distinction in territorial jurisdiction in terms of respective Districts excluding the Metropolitan Area as defined in Section 8 of the Criminal Procedure Code being the exclusive jurisdiction in the domain of the Chief Metropolitan Magistrate.

28. Section 14 of the SARFESI Act states as follows:-

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—(1) *Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate*

or, as the case may be, the District Magistrate shall, on such request being made to him—

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such asset and documents to the secured creditor:

[Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

- (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;
- (ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;
- (iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;
- (iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;
- (v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;
- (vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;
- (vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;
- (viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a period of thirty days from the date of application]:

[Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.] Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

*(i) to take possession of such assets and documents relating thereto; and
(ii) to forward such assets and documents to the secured creditor.]*

(2) For the purpose of securing compliance with the provisions of subsection (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate 1 [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority.

29. The Hon'ble Supreme Court in **Indian Bank v. D. Visalakshi**⁶ illustratively determined the conundrum confronting the powers of the Chief Judicial Magistrate and the Chief Metropolitan Magistrate as follows:-

⁶ (2019) 20 SCC 47

35. *Indisputably, the expressions “CMM” and “DM” have not been defined in the 2002 Act. That definition can thus, be traced to the provisions of CrPC. It is also well established by now that the 2002 Act, is a self-contained code. Concededly, the nature of inquiry to be conducted by the designated authorities under the 2002 Act, is spelt out in Section 14 of the 2002 Act. The same is circumscribed and is limited to matters specified in clauses (i) to (ix) of the first proviso in sub-section (1) of Section 14 of the 2002 Act, inserted in 2013. Prior to the insertion of that proviso, it was always understood that in such inquiry, it is not open to adjudicate upon contentious pleas regarding the rights of the parties in any manner. The stated authorities could only do verification of the genuineness of the plea and upon being satisfied that it is genuine, the adjudication thereof could then be left to the court of competent jurisdiction.*

36. *Suffice it to observe that an inquiry conducted by the stated authority under Section 14 of the 2002 Act, is a sui generis inquiry. In that, majorly it is an administrative or executive function regarding verification of the affidavit and the relied upon documents filed by the parties. That inquiry is required to be concluded within the stipulated time-frame. While undertaking such an inquiry, as is observed by this Court, the authority must display judicious approach, in considering the relevant factual position asserted by the parties. That presupposes that it is a quasi-judicial inquiry though, a non-judicial process. The inquiry does not result in adjudication of inter se rights of the parties in respect of the subject property or of the fact that the transaction is a fraudulent one or otherwise.*

37. *Notably, the powers and functions of CMM and CJM are equivalent and similar, in relation to matters specified in CrPC. These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude CJM from dealing with the request of the secured creditor made thereunder. The power to be exercised under Section 14 of the 2002 Act by the authority concerned is, by its very nature, non-judicial or State's coercive*

power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage much less added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression “CMM”, as inclusive of CJM concerning non-metropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in CrPC on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.

38. Such a view has been taken by the High Court of Kerala as early as in 2006 and on the same lines, are the decisions of the other High Courts (Karnataka, Allahabad and Andhra Pradesh). Be it noted, the challenge to the decision of the High Court of Kerala was unsuccessful before this Court in *Mohd. Ashraf v. Union of India* [*Mohd. Ashraf v. Union of India*, 2009 SCC OnLine SC 52] , which came to be dismissed on 2-2-2009.

39. Now we may turn to the decision in *Standard Chartered Bank* [*Standard Chartered Bank v. V. Noble Kumar*, (2013) 9 SCC 620 : (2013) 4 SCC (Civ) 509] . The Court was called upon to consider the argument that secured creditor before invoking the remedy under Section 14 of the 2002 Act, must necessarily make an attempt to take possession of the secured assets and can take recourse thereto only if he fails in that effort and encounters resistance to such an attempt. While considering that argument, the Court analysed Sections 13, 14

and 15 of the 2002 Act and opined that Section 14 of the 2002 Act enables the secured creditor who desires to seek the assistance of “State's coercive power” for obtaining possession of the secured assets to make a request in writing to the authority designated therein, within whose jurisdiction the secured asset is located. It also noted that the authority after receiving such request under Section 14 of the 2002 Act, was not expected to do any further scrutiny of the matter except to verify from the secured creditor whether notice under Section 13(2) of the Act has already been given or not and whether the secured asset is located within his jurisdiction. There is no adjudication of any kind at this stage. The Court also noticed in para 23 of the reported judgment that after amendment of Section 14 of the 2002 Act, by inserting first proviso therein, the designated authority has to satisfy itself only with regard to the matters mentioned in clauses (i) to (ix). In para 25 of this decision, the Court noted as follows : (SCC p. 635)

“25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.”

40. The Court then went on to observe in paras 33 and 36 of the reported judgment as follows : (Standard Chartered Bank case [Standard Chartered Bank v. V. Noble Kumar, (2013) 9 SCC 620 : (2013) 4 SCC (Civ) 509] , SCC pp. 638-40)

“33. We are of the opinion that the High Court [V. Noble Kumar v. Standard Chartered Bank, 2010 SCC OnLine Mad 4067 : (2011) 1 CTC 513] clearly erred in recording such a conclusion. The language of Rule 8 does not demand such a construction. On the other hand, a Magistrate whose functioning is structured by the Code of Criminal Procedure is required to act in accordance with the provisions of the said Code unless expressly ordained otherwise by any other law. It is not a case that CrPC never prescribed for the procedure to be followed

by the Magistrate in a case where the Magistrate is required to take possession of property. For example, under Section 83 of the Code, a criminal court is authorised to attach the movable or immovable property or both belonging to a proclaimed offender. Sub-sections (3) and (4) of Section 83 specifically provide that once an order of attachment under sub-section (1) is made by the criminal court, the property which is the subject-matter of such attachment shall either be seized or taken possession of as the case may be depending upon the fact whether the property is movable or immovable. Both the sub-sections contemplate the appointment of Receiver. It is declared under sub-section (6) that the powers, duties and liabilities of a Receiver appointed under Section 83 are the same as those of a Receiver appointed under the Code of Civil Procedure, 1908.

36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:

36.1. (i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.

36.2. (ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinise the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1-A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

36.3. (iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act. The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under Clause 36.2(ii) above.

36.4. In any of the three situations above, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) Rules, 2002, shall apply.”

41. Concededly, the Court was not called upon to consider the specific issue that arises for our consideration, in this batch of cases. To wit, whether CJM is competent to deal with the request made by the secured creditor under Section 14 of the 2002 Act in the same manner as can be done by CMM in metropolitan areas and DM in non-metropolitan areas. Nevertheless, what is significant to note is that this decision clearly delineates the nature of inquiry required to be conducted by the authority referred to in Section 14 of the 2002 Act. By its very nature, the inquiry is an administrative or executive measure and to borrow the phrase used in the said judgment, “State's coercive power”, for obtaining possession of the secured assets. It is possible to suggest that as the authority is required to make inquiry and pass an order, it would partake the colour of being a quasi-judicial inquiry. In any case, the stated authority is not empowered to adjudicate on any issue(s) that may be raised regarding the rights of the parties concerned.

42. Reliance was also placed on the exposition in *Harshad Govardhan Sondagar* [*Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1 : (2014) 3 SCC (Civ) 1], wherein the appellants claimed to be tenants of a mortgaged premises (secured asset); and as borrowers (landlord/owner thereof) had committed default, the secured creditor had invoked provisions of the 2002 Act to enforce the secured asset. In that backdrop, application was moved

before CMM, Mumbai under Section 14 of the 2002 Act to take possession of the premises and hand over the possession thereof to the secured creditor. While dealing with the challenge to this action of the secured creditor, the Court noticing Section 14 of the 2002 Act concluded that for the purpose of transferring the secured asset and for realising the secured asset, the secured creditor will require the assistance of CMM or the DM for taking of possession of a secured asset from the lessee, where the lease stands determined by any of the modes mentioned in Section 111 of the Transfer of Property Act. The Court then went on to examine the question about the remedies available to the lessee where he is threatened to be dispossessed by any action taken by the secured creditor under Section 13 of the 2002 Act. In that context, the Court noted that Section 34 of the 2002 Act makes it amply clear that no injunction can be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the 2002 Act. Even this decision, if we may say so, deals with entirely different issue than the question under consideration in the present cases.

43. It is no more *res integra* that CJM is equated with CMM for the purposes referred to in CrPC; and those expressions are used interchangeably being synonymous of each other. This Court in *All India Judges Assn. [All India Judges Assn. (3) v. Union of India, (2002) 4 SCC 247 : 2002 SCC (L&S) 508]*, in para 31, opined as under : (SCC pp. 271-72)

“31. As we have already mentioned, the Shetty Commission had recommended that the Chief Metropolitan Magistrates should be in the cadre of District Judges. In our opinion, this is neither proper nor practical. The appeals from orders passed by the Chief Metropolitan Magistrates under the provisions of the Code of Criminal Procedure are required to be heard by the Additional Sessions Judge or the Sessions Judge. If both the Additional Sessions Judge and the Chief Metropolitan Magistrate belong to the same cadre, it will be paradoxical that any appeal from one officer in the cadre should go to another officer in the

same cadre. If they belong to the same cadre, as recommended by the Shetty Commission, then it would be possible that the junior officer would be acting as an Additional Sessions Judge while a senior may be holding the post of the Chief Metropolitan Magistrate. It cannot be that against the orders passed by the senior officer it is the junior officer who hears the appeal. There is no reason given by the Shetty Commission as to why the post of the Chief Metropolitan Magistrate be manned by the District Judge, especially when as far as the posts of the Chief Judicial Magistrates are concerned, whose duties are on a par with those of the Chief Metropolitan Magistrate, the Shetty Commission has recommended, and in our opinion rightly, that they should be filled from amongst Civil Judges (Senior Division). Considering the nature and duties of the Chief Judicial Magistrates and the Chief Metropolitan Magistrates, the only difference being their location, the posts of Chief Judicial Magistrate and Chief Metropolitan Magistrate have to be equated and they have to be placed in the cadre of Civil Judge (Senior Division). We order, accordingly.”

44. Be it noted that Section 14 of the 2002 Act is not a provision dealing with the jurisdiction of the Court as such. It is a remedial measure available to the secured creditor, who intends to take assistance of the authorised officer for taking possession of the secured asset in furtherance of enforcement of security furnished by the borrower. The authorised officer essentially exercises administrative or executive functions, to provide assistance to the secured creditor in terms of the State's coercive power to effectuate the underlying legislative intent of speeding the recovery of the outstanding dues receivable by the secured creditor. At best, the exercise of power by the authorised officer may partake the colour of quasi-judicial function, which can be discharged even by the Executive Magistrate. The authorised officer is not expected to adjudicate the contentious issues raised by the parties concerned but only verify the compliances referred to in the first proviso of Section 14; and being satisfied in that behalf, proceed to pass an order to facilitate taking over possession of the secured assets.

45. *It is well established that no civil court can interdict the action initiated in respect of any matter, which a Debts Recovery Tribunal or Debts Recovery Appellate Tribunal is empowered by or under the 2002 Act, to determine and in particular, in respect of any action taken or to be taken in pursuance of any power conferred by or under the 2002 Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. That has been ordained by Section 34 of the 2002 Act.*

46. *The borrowers or the persons claiming through borrowers had placed emphasis on Section 35 of the 2002 Act. The same reads thus:*

“35. The provisions of this Act to override other laws.—*The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

47. *The construction of this provision plainly indicates that the provisions of the Act will override any other law for the time being in force. The question is : do the provisions of the 2002 Act override the provisions of CrPC, whereunder the functions to be discharged by CMM are similar to that of CJM. Further, the expressions “CMM and CJM” are used interchangeably in CrPC and are considered as synonymous to each other. Section 14, even if read literally, in no manner denotes that allocation of jurisdictions and powers to CMM and CJM under the Code of Criminal Procedure are modified by the 2002 Act. Thus understood, Section 14 of the 2002 Act, stricto sensu, cannot be construed as being inconsistent with the provisions of the Code of Criminal Procedure or vice versa in that regard. If so, the stipulation in Section 35 of the 2002 Act will have no impact on the expansive construction of Section 14 of the 2002 Act. Whereas, there is force in the submission canvassed by the secured creditors (banks), that Section 37 of the 2002 Act answers the issue under consideration. The same reads thus:*

“37. Application of other laws not barred.—*The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and*

Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.”

The bare text of this provision predicates that the provisions of the 2002 Act or the Rules made thereunder shall be in addition to the stated enactments or “any other law for the time being in force”. Having said that the provisions of Section 14 of the 2002 Act are in no way inconsistent with the provisions of the Code of Criminal Procedure, it must then follow that the provisions of the 2002 Act are in addition to, and not in derogation of the Code.

48. *Suffice it to observe that keeping in mind the subject and object of the 2002 Act and the legislative intent and purpose underlying Section 14 of the 2002 Act, contextual and purposive construction of the said provision would further the legislative intent. In that, the power conferred on the authorised officer in Section 14 of the 2002 Act is circumscribed and is only in the nature of exercise of State's coercive power to facilitate taking over possession of the secured assets.*

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52. *Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of the Code of Criminal Procedure, would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.*

53. *Having said this, we need not dilate on other decisions pressed into service regarding the approach to be adopted in the matter of interpretation of statutes.*

54. *To sum up, we hold that CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala [Mohd. Ashraf v. Union of India, 2008 SCC OnLine Ker 201 : AIR 2009 Ker 14] · [Radhakrishnan, V.N. v. State of Kerala, (2008) 4 KHC 989] , Karnataka [Kaveri Mktg. v. Saraswathi Coop. Bank Ltd., 2013 SCC OnLine Kar 18 : (2013) 3 BC 582] , Allahabad [Abhishek Mishra v. State of U.P., 2016 SCC OnLine All 2876 : AIR 2016 All 210] and Andhra Pradesh [T.R. Jewellery v. SBI, 2015 SCC OnLine Hyd 449 : AIR 2016 Hyd 125] and reverse the decisions of the High Courts of Bombay [IndusInd Bank Ltd. v. State of Maharashtra, 2008 SCC OnLine Bom 1691] · [Arjun Urban Coop. Bank Ltd. v. Chief Judicial Magistrate, 2009 SCC OnLine Bom 718 : (2009) 5 Mah LJ 380] , Calcutta [Dinesh Kumar Agarwal v. State of W.B., 2013 SCC OnLine Cal 1785 : (2013) 1 CHN 671] · [Andhra Bank v. Dinesh Kumar Agarwal, 2013 SCC OnLine Cal 7709 : (2013) 4 CHN 95] , Madras [K. Arockiyaraj v. Chief Judicial Magistrate, 2013 SCC OnLine Mad 2576 : AIR 2013 Mad 206 : (2013) 4 LW 485] · [T.C. Ramadoss v. SBI, 2015 SCC OnLine Mad 1589 : AIR 2015 Mad 67] , Madhya Pradesh [Shyam Sunder Rohra v. IndusInd Bank, 2017 SCC OnLine MP 1529 : AIR 2017 MP 36] and Uttarakhand [Deepak Aggarwal v. State of Uttarakhand, 2012 SCC OnLine Utt 45] in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (banks).*

30. By virtue of Article 227 of the Indian Constitution, the High Courts have superintendence over all other courts and tribunals in the territory in relation to which it exercises jurisdiction except over any other court or tribunal constituted by or under any law relating to the armed forces.
31. The power of superintendence conferred on the High Court is in administrative as well as judicial and such supervisory jurisdiction can be invoked at the instance of any aggrieved person.

32. The Hon'ble Supreme Court in **Pepsi Foods Ltd. v. Special Judicial Magistrate**⁷ held the following:-

22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

⁷ (1998) 5 SCC 749

23. In *Waryam Singh v. Amarnath* [AIR 1954 SC 215 : 1954 SCR 565] this Court considered the scope of Article 227. It was held that the High Court has not only administrative superintendence over the subordinate courts and tribunals but it has also the power of judicial superintendence. The Court approved the decision of the Calcutta High Court in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* [AIR 1951 Cal 193] where the High Court said that the power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so.

24. In *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* [(1975) 1 SCC 858 : AIR 1975 SC 1297] this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. It said that the High Court could not, while exercising jurisdiction under Article 227, interfere with the findings of fact recorded by the subordinate court or tribunal and that its function was limited to seeing that the subordinate court or tribunal functioned within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or reappreciating it. The Court further said that the jurisdiction under Article 227 could not be exercised, “as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings”. The Court referred with approval the dictum of Morris, L.J. in *R. v. Northumberland Compensation Appeal Tribunal* [(1952) 1 All ER 122] .

25. In *Nagendra Nath Bora v. Commr. of Hills Division* [AIR 1958 SC 398 : 1958 SCR 1240] this Court observed as under:

“It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under

Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.”

26. *Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.*

33. In the case of **Surya Dev Rai v. Ram Chander Rai**⁸ the Hon'ble Supreme Court held the following:-

Supervisory jurisdiction under Article 227

22. *Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu.*

⁸ (2003) 6 SCC 675

The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

23. *The history of supervisory jurisdiction exercised by the High Court, and how the jurisdiction has culminated into its present shape under Article 227 of the Constitution, was traced in Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565] . The jurisdiction can be traced back to Section 15 of the High Courts Act, 1861 which gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. Section 107 of the Government of India Act, 1915 and then Section 224 of the Government of India Act, 1935, were similarly worded and reproduced the predecessor provision. However, sub-section (2) was added in Section 224 which confined the jurisdiction of the High Court to such judgments of the inferior courts which were not otherwise subject to appeal or revision. That restriction has not been carried forward in Article 227 of the Constitution. In that sense Article 227 of the Constitution has width and vigour unprecedented.*

Difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227

24. *The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram v. Radhikabai [1986 Supp SCC 401] . Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of*

superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

25. *Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would*

now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

27. In *Chandrasekhar Singh v. Siya Ram Singh* [(1979) 3 SCC 118 : 1979 SCC (Cri) 666] the scope of jurisdiction under Article 227 of the Constitution came up for the consideration of this Court in the context of

Sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of earlier decisions, the three-Judge Bench summed up the position of law as under: (SCC pp. 121-22, para 11)

(i) that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal Procedure;

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors;

(iii) that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;

(iv) that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the court of appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a court of appeal.

28. *Later, a two-Judge Bench of this Court in Baby v. Travancore Devaswom Board [(1998) 8 SCC 310] clarified that in spite of the revisional jurisdiction being not available to the High Court, it still had powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents, the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the revisional jurisdiction conferred on it.*

34. In view of the discussion as cited above, this Court has the jurisdiction to deal with an application filed under the provisions of Article 227 of the Constitution

of India. The Chief Judicial Magistrate as aforesaid did not commit any error in passing the impugned order under Section 14 of the SARFESI Act as aforesaid acting in its administrative capacity restricted to ministerial work, of passing an order to take possession of secured assets on an application of the applicant and did not adjudicate or decide any dispute between the agitating parties on either question of law or of facts.

35. In **R.D. Jain & Co. v. Capital First Ltd.**⁹, the following was observed by the Hon'ble Supreme Court:-

23. *However, for taking physical possession of the secured assets in terms of Section 14(1) of the SARFAESI Act, the secured creditor is obliged to approach the CMM/DM by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to it (secured creditor) for further action. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the SARFAESI Act from the secured creditor for that purpose. As soon as such an application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the SARFAESI Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity.*

24. *As mandated by Section 14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time-limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, sixty days. Thus, the powers exercised by the CMM/DM is a ministerial act. He cannot brook delay. Time is of the essence. This is the spirit of the special enactment.*

⁹ (2023) 1 SCC 675

25. As observed and held by this Court in *NKGSB Coop. Bank [NKGSB Coop. Bank Ltd. v. Subir Chakravarty, (2022) 10 SCC 286 : (2023) 1 SCC (Cri) 157]*, the step taken by the CMM/DM while taking possession of the secured assets and documents relating thereto is a ministerial step. It could be taken by the CMM/DM himself/herself or through any officer subordinate to him/her, including the Advocate Commissioner who is considered as an officer of his/her court. Section 14 does not oblige the CMM/DM to go personally and take possession of the secured assets and documents relating thereto. Thus, we reiterate that the step to be taken by the CMM/DM under Section 14 of the SARFAESI Act, is a ministerial step. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasi-judicial function or application of mind would require. The Magistrate has to adjudicate and decide the correctness of the information given in the application and nothing more. Therefore, Section 14 does not involve an adjudicatory process qua points raised by the borrower against the secured creditor taking possession of secured assets.

36. The Ld. Advocate for the petitioner argued on the principles of applicability of the doctrine of prospective overruling in criminal jurisprudence barring retrospective effect and emphasized the view taken by the Hon'ble High Court at Calcutta was prevalent. However the Hon'ble Supreme Court in paragraphs 52 to 54 of ***Indian Bank v. D. Visalakshi*** (*supra*) had observed as follows:-

52. Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of the Code of Criminal Procedure, would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being

competent to assist the secured creditor to take possession of the secured asset.

53. *Having said this, we need not dilate on other decisions pressed into service regarding the approach to be adopted in the matter of interpretation of statutes.*

54. *To sum up, we hold that CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala [Mohd. Ashraf v. Union of India, 2008 SCC OnLine Ker 201 : AIR 2009 Ker 14] · [Radhakrishnan, V.N. v. State of Kerala, (2008) 4 KHC 989] , Karnataka [Kaveri Mktg. v. Saraswathi Coop. Bank Ltd., 2013 SCC OnLine Kar 18 : (2013) 3 BC 582] , Allahabad [Abhishek Mishra v. State of U.P., 2016 SCC OnLine All 2876 : AIR 2016 All 210] and Andhra Pradesh [T.R. Jewellery v. SBI, 2015 SCC OnLine Hyd 449 : AIR 2016 Hyd 125] and reverse the decisions of the High Courts of Bombay [IndusInd Bank Ltd. v. State of Maharashtra, 2008 SCC OnLine Bom 1691] · [Arjun Urban Coop. Bank Ltd. v. Chief Judicial Magistrate, 2009 SCC OnLine Bom 718 : (2009) 5 Mah LJ 380] , Calcutta [Dinesh Kumar Agarwal v. State of W.B., 2013 SCC OnLine Cal 1785 : (2013) 1 CHN 671] · [Andhra Bank v. Dinesh Kumar Agarwal, 2013 SCC OnLine Cal 7709 : (2013) 4 CHN 95] , Madras [K. Arockiyaraj v. Chief Judicial Magistrate, 2013 SCC OnLine Mad 2576 : AIR 2013 Mad 206 : (2013) 4 LW 485] · [T.C. Ramadoss v. SBI, 2015 SCC OnLine Mad 1589 : AIR 2015 Mad 67] , Madhya Pradesh [Shyam Sunder Rohra v. IndusInd Bank, 2017 SCC OnLine MP 1529 : AIR 2017 MP 36] and Uttarakhand [Deepak Aggarwal v. State of Uttarakhand, 2012 SCC OnLine Utt 45] in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (banks).*

37. Under such circumstances the submission of the Ld. Advocate for the petitioner on the principle of prospective overruling in the context of this particular case only, becomes redundant.

38. In view of the above discussions, both the criminal revisional applications are dismissed.
39. There is no order as costs.
40. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
41. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)