

01.07.2025.  
Item Nos. 11 to 14.  
Court No. 13  
ap

**M.A.T. No. 321 of 2019**  
**With**  
**I.A. No. CAN 1 of 2019 (Old CAN 2841 of 2019)**  
**State Bank of India**  
**Versus**  
**Santanu Manna & Ors.**

**With**  
**M.A.T. No. 320 of 2019**  
**With**  
**I.A. No. CAN 1 of 2019 (Old CAN 2842 of 2019)**  
**State Bank of India**  
**Versus**  
**Goutam Kumar Halder & Ors.**

**With**  
**M.A.T. No. 894 of 2019**  
**With**  
**I.A. No. CAN 1 of 2019 (Old CAN 6591 of 2019)**

**M/s. Swastyayan Agro Industries Limited & Anr.**  
**Versus**  
**Santanu Manna & Ors.**  
**With**  
**M.A.T. No. 895 of 2019**  
**With**  
**I.A. No. CAN 1 of 2019 (Old CAN 6592 of 2019)**

**M/s. Swastyayan Agro Industries Limited & Anr.**  
**Versus**  
**Goutam Kumar Halder & Ors.**

Mr. Varun Kedia,  
Mr. Avee Jaiswal.

...For the appellant in  
MAT 321 of 2019 & MAT 320 of 2019  
and respondents in MAT 894 of 2019 & MAT  
895 of 2019.

Mr. Tarak Karan.

..For the State in MAT 895 of 2019.

Mr. Rohit Das,  
Ms. Kishwan Rahman,  
Mr. Vishesh Pandey.

...For the ARCIL in  
MAT 321 of 2019 & MAT 320 of 2019.

1. Despite earlier representation, the respondents other than ARCIL are not represented.

2. The facts of the case are duly recorded in the order passed by a Co-ordinate Bench of this Court on 29<sup>th</sup> July, 2019 and are not repeated again by this Court.

3. This Court is in complete agreement with the views expressed in the said order dated 29<sup>th</sup> July, 2019.

4. A claim for compensation and/or damages by the purchasers of secured assets, either against the secured creditor or the borrower, is required to be dealt with by trial on evidence. A writ Court does not have the full benefit of the Civil Procedure Code, 1908.

5. While the learned Single Judge has appointed an Advocate Commissioner to receive evidence from all the parties, this Court is of the unequivocal view that the matters as regards compensation and/or damages, that might have been suffered by a successful purchaser under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Rules framed thereunder, must be agitated before a Civil Court. The law on the subject has been appropriately summarized by the Supreme Court in Paragraphs 69 and 70 of the decision in the case of **Joshi Technologies International Ltd. Vs. Union of India & Ors.** reported in **(2015) 7 SC 728**.

**69.** The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are

disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, “normally”, the Court would not exercise such a discretion:

**69.1.** The Court may not examine the issue unless the action has some public law character attached to it.

**69.2.** Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

**69.3.** If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

**69.4.** Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

**70.** Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

**70.1.** At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

**70.2.** State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

**70.3.** Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

**70.4.** Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

**70.5.** Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so : and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

**70.6.** Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

**70.7.** Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

**70.8.** If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

**70.9.** The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

**70.10.** Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

**70.11.** The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

6. M.A.T. 320 of 2019 and M.A.T. 321 of 2019 are, therefore, allowed and disposed of permitting the purchasers of the secured assets, namely, Rice Mill and Oil Mill sold by the appellant/State Bank of India, on account of recovery proceedings against borrower, namely, M/s. Swastyayan Agro Industries Limited may be agitated in a Civil Suit if filed within a period of three months from date.

7. In the event such suit is filed within the time stipulated above, the bar under the Statute of Limitation will not bar such suit.

8. The observations of the learned Single Bench as regards the liability of the State Bank of India shall be treated as tentative by the Civil Court. The Civil Court shall be entitled to decide the suit of the purchasers, namely, Oil Mill and Rice Mill, independently and based on the evidence that comes before it and as led by the parties.

9. The appellant shall communicate this order, both to the purchasers and the non-appearing respondents forthwith.

10. With the aforesaid observations, the impugned judgment and order dated 22<sup>nd</sup> September, 2018 shall stand set aside.

11. The cross appeal of the borrowers being M.A.T. 894 of 2019 and M.A.T. 895 of 2019 shall stand dismissed.

12. In view of disposal of the appeals, all the pending connected applications are disposed of.

13. There will be no order as to costs.

14. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

**(Rajasekhar Mantha, J.)**

**(Ajay Kumar Gupta, J.)**