IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1354 of 2025
Prosenjit Sen
Vs.
State Bank of India & Anr.

For the Petitioner : Mr. Bijoy Adhikary
Mr. Supriyo Ghosh
Ms. Susmita Adhikary
Ms. Ashis Bhukta
….. advocates

For the Opposite Party : Mr. Debasish Saha
Mr. Sanjoy Ghosh
Mr. Avirup Roy Sanyal
Ms. Sucheta Pal …advocates

Reserved on : 14.05.2025
Judgment on : 25.06.2025

<u>Hiranmay Bhattacharyya, J.:-</u>

1. This application under Article 227 of the Constitution of India is at the instance of the borrower and is directed against an order being No. 03 dated November 22, 2024 passed by the learned Debts Recovery Tribunal-III (for short "DRT") in I.A. No. 3743 of 2024 arising out of S.A. No. 366 of 2024.

2. By the order impugned, DRT disposed of the I.A. No. 3743 of 2024 upon holding that there is no illegality, irregularity or impropriety in the order dated 02.08.2024 passed by the District Magistrate under Section 14 of the Securitisation Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act").

3. State Bank of India (for short "SBI") sanctioned a Term Loan facility in favour of the petitioner for purchasing a flat. The authorised Officer, SBI, issued a notice under Section 13(2) of the SARFAESI Act dated 08.12.2023 calling upon the petitioner to discharge in full the outstanding liabilities due and owing to the Bank of Rs. 4,96,881/- within the time limit indicated therein and in case of failure to repay the said amount, the Bank will exercise all or any of the rights under Section 13(4) of the said Act. Bank

affixed a Possession Notice dated 26.02.2024. Possession Notice was published in two leading newspapers on 27.02.2024. Challenging the notice issued under Section 13(2) of the SARFAESI Act, dated 08.12.2023, the possession notice dated 26.02.2024 and the publication of the possession notice on 27.02.2024, petitioner filed an application under Section 17 of the SARFAESI Act which is registered as S.A. 366 of 2024. District Magistrate, 24 Parganas (South), passed an order dated August 2, 2024 in a proceeding under Section 14 of the Act, whereby the Authorised Officer was authorised to take possession of the secured asset. Petitioner challenged the order of the District Magistrate dated 02.08.2024 by filing an application being IA 3743 of 2024 and prayed for stay of operation of the order dated 02.08.2024. Prayer for stay stood rejected by the impugned order.

4. Being aggrieved, the borrower has approached this Court.

5. Mr. Adhikari, learned advocate for the petitioner contended that SBI sanctioned a term loan facility of Rs. 10,71,000/- for purchasing a flat and the petitioner was required to repay the principal amount together with interest by way of Equated Monthly Instalments (for short "EMI") of Rs. 11,673/. In support of such contention he placed reliance upon several documents annexed to this civil revision application. He contended that the petitioner never defaulted in paying EMI as per the agreement. He contended that the demand made in the notice under Section 13(2) of the SARFAESI Act is an imaginary one and the same is in utter violation of the law declared by the Hon'ble Supreme Court. Mr. Adhikary further contended that though the SBI sanctioned a term loan facility of Rs. 10,71,000/- but the notice under Section 13(2) was issued by treating the amount of loan sanctioned to be of Rs. 10,99,000/-. He, thus, contended that the Bank practiced fraud upon the petitioner and, therefore, this Court should entertain the application under Article 227 of the Constitution of India. In support of such contention, he placed reliance upon the judgment of the Hon'ble Supreme Court delivered on January 09, 2025 in **Civil Appeal No. 1876 of 2016** in the case of **Central Bank of India vs. Prabha Jain** reported at **LAWS (SC) 2025-1-111**.

6. Mr. Saha, learned advocate for the Bank raised an objection as to the maintainability of this application under Article 227 of the Constitution of India. He contended that the petitioner had a statutory remedy available by way of appeal before the Debts Recovery Appellate Tribunal (for short "DRAT") against the order passed by Debts Recovery Tribunal. He submitted that this Court should not entertain this application challenging the order of the DRT. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in **United Bank of India vs.**

Satyawati Tandon and others reported at **(2010) 8 SCC 110** and **K. Sreedhar vs. Raur Constructions Private Limited and others** reported at **(2023) 11 SCC 169**.

7. In reply, Mr. Adhikary, learned advocate for the petitioner submitted that existence of an alternative appellate remedy available under a statute cannot oust the jurisdiction of the High Court under Article 226/227 of the Constitution of India. In support of such contention, he placed reliance upon the decision of the Hon'ble High Court of Punjab and Haryana in **Jyoti vs. State of Punjab and others** reported at **Neutral Citation No. 2024 PHHC: 171831**, an unreported judgment delivered on 19.02.2024 by an Hon'ble Single Judge of this Court in **CO 3486 of 2011** in the case of **Central Bank of India vs. M/s. Premier Feed Meals (P) Ltd. and others** and a decision of the Hon'ble Supreme Court in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others** reported at **(1998) 8 SCC 1**.

8. Heard the learned advocates for the parties and perused the materials placed.

9. SBI sanctioned a term loan facility in favour of the petitioner for purchasing a flat.

10. Section 13(2) of the SARFAESI Act provides that where any borrower who is under a liability to a secured creditor under a security agreement, makes any default in repayment of the secured debt or any instalment thereof, and the account in respect of such debt is classified by the secured creditor as a non performing asset, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights in terms of Section 13(4).

11. Section 13(4) specifies various measures which can be taken by the secured creditor to recover the secured debt. The secured creditor can take possession of the secured assets of the borrower.

12. In the case on hand, the authorised officer, issued the notice under Section 13(2) and the possession notice.

13. Section 17 of the SARFAESI Act states that any person including the borrower who may feel aggrieved by any of the measures taken by the secured creditor under Section 13(4), may make an application to DRT within 45 days from the date on which such measures had been taken.

14. Challenging the notice issued under Section 13(2) and the possession notice, petitioner filed an application under Section 17 before the DRT which is still pending.

15. Section 14 of the SARFEASI Act allows the secured creditor to file an application before the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction the secured asset or other documents relating thereto are found for taking possession thereof. If any such request is made, the Chief Metropolitan Magistrate or the District Magistrate is under a statutory obligation to take possession of such asset and documents relating thereto and forward the same to the secured creditor.

16. Upon a request being made by the SBI in terms of Section 14 of the SARFAESI, the District Magistrate passed an order dated 02.08.2024 authorising the Authorised Officer to take possession of the secured asset. Such order was also challenged by the petitioner before DRT by filing an interlocutory application and the DRT refused to pass an order of stay of operation of such order by the impugned order. Such order has been assailed in this application under Article 227 of the Constitution of India by the borrower.

17. Section 18 of the SARFAESI Act provides for an appeal to the Appellate Tribunal. Section 18 which is extracted hereinafter –

> *"18. (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.*
>
> *Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:*
>
> *Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less: Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.*
>
> *(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."*

18. Section 18 provides that any person aggrieved by any order made by Debts Recovery Tribunal under Section 17 may prefer an appeal to the Appellate Tribunal within 30 days from the date of receipt of the order of the Debts Recovery Act. The second proviso thereto states that such appeal shall not be entertained unless a pre-deposit as specified therein is made.

19. The expression “any order” used in Section 18 has a very wide connotation as it includes interim and final orders. Therefore, an appeal lies under Section 18 against an interlocutory order passed on an application in a proceeding before the DRT under Section 17.

20. This Court, accordingly, holds that against the order passed by the DRT rejecting the prayer for stay of operation of the order of the District Magistrate, the borrower/ petitioner herein had a statutory remedy available by way of appeal before the DRAT.

21. The petitioner approached this Court by filling an application under Article 227 of the Constitution of India bypassing the statutory appellate remedy.

22. The issue that arises for consideration is whether this Court should entertain this application under Article 227 of the Constitution of India.

23. In **Whirlpool Corporation** (supra), the Hon’ble Supreme Court held that under Article 226 of the Constitution of India, the High Court having regard to the facts of the case has a discretion to entertain or not to entertain a writ petition but the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. It has been held that alternative remedy shall not operate as a bar in at least three contingencies, namely where the writ petition has been filed for enforcement of any of the Fundamental rights or there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an act is challenged.

24. The question whether a petition under Article 227 of the Constitution of India was maintainable against an order passed by the Tribunal under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 fell for consideration before the Hon’ble Supreme Court in **Punjab National Bank vs. O.C. Krishnan** reported at **(2001) 6 SCC 569**. The Hon’ble Supreme Court noted that the 1993 Act has been enacted with a view to provide a special procedure for recovery of debts and the financial institutions. The Hon’ble Supreme Court held that when there is a hierarchy of appeal provided under the Act, namely filling of an appeal under Section 20, this fast track procedure cannot be allowed to be derailed either by taking

recourse to proceedings under Article 226 or 227 of the Constitution of India or by filing a civil suit, which is expressly barred. It has been further held that even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Article 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.

25. In **Raj Kumar Shiv Hare vs. Directorate of Enforcement** reported at **(2010) 4 SCC 772**, the Hon'ble Supreme Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and the jurisdiction under Article 226 of the Constitution can be invoked. The Hon'ble Supreme Court held that when a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation.

26. In **Satyawati Tondon** (supra), the Hon'ble Supreme Court after considering various provisions of the SARFAESI Act more particularly Sections 17 and 18 held that both the Tribunal and the Appellate Tribunal are empowered to pass interim order under Section 17 and 18 and are required to decide the matter within a fixed time schedule. It was held that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

27. The Hon'ble Supreme Court in **Satyawati Tondon** (supra) after taking note of several decisions including **Whirlpool Corporation** (supra), **O.C.Krishnan** (supra), **Raj Kumar Shivhare** (supra), held that it is a matter of serious concern that despite repeated pronouncement, the High Courts continue to ignore the availability of statutory remedies under DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse effect on the right of the banks and other financial institutions to recover their dues.

28. In K. Sreedhar (supra), the Hon'ble Supreme Court held that in view of alternative statutory remedy available by way of appeal before the DRAT, the High Court ought not to have entertained the writ petition under Article 226/227 of the Constitution of India challenging the order passed by the DRT. It was further held that by entertaining the writ petition straightaway under Article 226/227 of the Constitution of India challenging the order passed by the DRT, the High Court has permitted the borrower to circumvent the provision of appeal before the DRAT and the predeposit

which the borrower would have to deposit under the provisions of SARFAESI Act.

29. The Hon'ble Supreme Court in **PHR Invent Educational Society vs. UCO Bank & Ors.** reported at **(2024) 6 SCC 579** noted that certain exceptions have been carved out when a petition under Article 226 of the Constitution could be entertained in spite of an alternative remedy which are thus-

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

(ii) It has acted in defiance of the fundamental principles of judicial proceure.

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

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

30. It was further held therein that the rule that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution of India if an effective speedy remedy is available to an aggrieved person applies with great rigour in matters involving recovery of taxes, cess, fees and other types of public money and the dues of bank and financial institutions.

31. SARFAESI Act is a complete code by itself. It contains a detailed procedure for recovery of debts and envisages constitution of quasi judicial bodies for redressal of the grievances. Though it is well settled that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, this Court is not inclined to entertain this application under Article 227 of the Constitution of India against an order passed by the DRT as the alternative remedy of appeal before DRAT is not only efficacious but effective as well. The issue is answered against the petitioner.

32. In **Jyoti** (supra), the Hon'ble High Court of Punjab and Haryana after noticing the decision in the case of **PHR Invent Educational Society** (supra), dismissed the application under Article 227 of the Constitution of India upon holding that the same is not maintainable but granted liberty to the petitioner therein to avail her remedy as available in law. The said decision do not support the stand taken by the petitioner in the case on hand.

33. In **M/s. Premier Feed Meals** (supra), the order passed by the DRAT was challenged in an application under Article 227 of the Constitution of India. The issue that arises for consideration in the case on hand is whether an application under Article 227 of the Constitution of India should be

entertained against an order passed by DRT and not DRAT. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

34. Mr. Adhikary placed strong reliance on the decision of the Hon'ble Supreme Court in **Prabha Jain** (supra) in support of his contention that an application under Article 227 of the Constitution is maintainable when fraud has been practiced by the Bank.

35. The issue that fell for consideration in **Prabha Jain** (supra) was whether a civil suit praying for declaration that the sale deed executed in favour of a private party and the mortgage deed executed in favour of the bank are nullity and for handing over possession of the suit property was barred under Section 34 of the SARFAESI Act.

36. The Hon'ble Supreme Court held that the reliefs prayed for declaring the sale deed and the mortgage deed as nullity are not in relation to any measures taken by the secured creditor under Section 13(4) of the SARFAESI Act, rather they are reliefs in relation to the actions taken prior to the secured creditor stepping into the picture and well prior to the secured creditor invoking the provisions of the SARFAESI Act. The Hon'ble Supreme Court held that the Tribunal would have no jurisdiction under Section 17 of the SARFAESI Act to grant such declaration. It was further held that even if the Court is persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of plaint under Order VII Rule 11 CPC. It was held that even if one relief survives, the plaint cannot be rejected under Order VII Rule 11 of the Code.

37. On the issue of fraud, the Hon'ble Supreme Court in **Prabha Jain** (supra) reiterated the proposition of law laid down in **Electrosteel Castings Ltd. vs. UV Asset Reconstruction Co. Ltd. & Ors.** reported at **(2022) 2 SCC 573** that mere allegations of fraud in the plaint without mentioning the particulars will not overcome the bar under Section 34.

38. Turning back to the facts of the case on hand, this Court finds that the petitioner alleged that though the Bank sanctioned a term loan facility of Rs. 10,71,000/- and was depositing the EMI of Rs. 11,673/-, but the notice under Section 13(2) was issued by taking the loan sanctioned to be of Rs. 10,99,000/-. This Court finds that such is the allegation in the application under Section 17 of the SARFAESI Act. Since the SARFAESI Application filed under Section 17 is pending, this Court is not inclined to return any finding on such issue. That apart it has been admitted in this application under Article 227 that the Bank by issuing a letter dated 06.05.2014

requested the petitioner to arrange to insure the property immediately with a General Insurer of his choice if not already done and forward the policy document for the records of the Bank. It was further stated in the said letter that if the same is not received by the Bank within the time limit indicated therein, the Bank shall be constrained to take insurance policy with adequate cover for SBI General Insurance Company Limited and debit the loan account with the premium payable.

39. Petitioner has further alleged in the Sarfaesi application that initially the loan was sanctioned for Rs. 10,99,000/- but the amount was credited to the loan account of Rs. 10,71,000/-. The Bank stated that the difference was due to Insurance policy and the borrower claims that be did not agree to accept the insurance. The petitioner claims that the Bank revised the loan amount in the hard copy of the agreement for EMI but it was not done in the system.

40. Whether the loan sanctioned is correctly reflected in the hard copy of the agreement as annexed to this petition or in the system is a disputed question of fact which is pending adjudication before the DRT in the application under Section 17 of the SARFAESI Act. Whether or not the petitioner refused to accept the insurance cover is also a disputed question of fact.

41. An adjudication on facts in necessary for deciding such issue. Such an adjudication cannot be done in an application under Article 227 of the Constitution of India and that too in a challenge thrown against the order of DRT refusing to stay the operation of the order passed under Section 14 of the SARFAESI Act.

42. For all the reasons as aforesaid, this Court is not inclined to grant any relief to the petitioner. CO No. 1354 of 2025 stands dismissed as being not entertained with liberty to the petitioner to avail the appropriate remedy in accordance with law.

43. There shall be, however, no order as to costs.

44. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)