HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 5209/2020
CNR: RJHC010256722020 | URN: CW / 12106U / 2020

1. Dwarka Prasad Jangid S/o Mangal Chand Jangid, Aged About 54 Years, R/o Sutharon Ki Badi Guwad, Usta Bari, Bikaner.
2. Bhagwati Devi Jangid W/o Shri Dwarka Prasad Jan, Aged About 50 Years, R/o Sutharon Ki Badi Guwad, Usta Bari, Bikaner.

----Petitioners

Versus

1. The Bank Of Baroda, Through Its Authorized Officer, Branch Station Road In Front Of Railway Station, Bikaner.
2. Shivani Kalla D/o Shri Jungal Kishore Kalla, R/o Near Swami Kewalram Aushdhalaya. Inside Dharam Nagar Dwar, Bikaner, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. M.S. Purohit Mr. Amit Kumar Purohit
For Respondent(s)	:	

JUSTICE ANOOP KUMAR DHAND

Order

07/08/2026

1. The instant petition has been filed by the petitioner challenging the validity of the impugned Sale Certificate dated 28.02.2020 issued by the respondent-Bank pursuant to the provisions contained under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act, 2002") read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002.

2. In the considered opinion of this Court, the petitioners have an efficacious alternative statutory remedy of appeal under the provisions of the SARFAESI Act, 2002.

3. The Hon'ble Supreme Court, in **Punjab National Bank v. O.C. Krishnan & Ors.,** reported in **(2001) 6 SCC 569**, has held that where an order is appealable under the relevant statute, a petition under Articles 226/227 of the Constitution of India is not maintainable before the High Court.

4. Similarly, in the case of **Union Bank of India v. Satyawati Tandon**, reported in **(2010) 8 SCC 110**, the Hon'ble Supreme Court, in paragraph 45, has held as under:-

> "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. 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. 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 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 Corporation v. Ragistrar of Trade Marks, Mumbai (11998) 8 SCC 1 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order."

5. In the case of **Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir and Ors.**, reported in **(2022) 5 SCC 345**, the Hon'ble Supreme Court, in paragraph 13.2, has held as under:-

> "Applying the law laid down by this Court in the case of Mathew K.C. (supra) 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 13.08.2015 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. "

6. It is settled a preposition of law that by entertaining such petitions, arising out of proceedings under the SARFAESI Act, 2002 or order(s) passed by the DRT, the basic scheme of the SARFAESI Act, 2002 and intention of the legislature behind creation of such subjective legislation would be frustrated.

7. This Court is of the considered opinion that a writ petition filed directly before this Court without availing alternative statutory remedy available under the provisions of the SARFAESI Act, 2002, bypassing the jurisdiction of the competent authority is not maintainable.

8. On this count alone, the instant petition stands disposed of granting liberty to the petitioners to avail the alternative statutory remedy available under the SARFAESI Act, 2002 before the competent Debt Recovery Tribunal.

9. In case any such application is submitted by the petitioners before the competent Debt Recovery Tribunal within a period of one month from today, it is expected from the competent Debt Recovery Tribunal to consider and decide the same expeditiously as early as possible after providing an opportunity of hearing to all the concerned parties, ignoring the period of limitation.

10. With the aforesaid observation, the instant petition stands disposed of. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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