

(4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO. 9108 OF 2001

PETITIONERS

- : 1. M/s Shri Jagdish Rice & Oil Mills  
a proprietorship concern  
through its proprietor :  
Mr. Khemchand Mahawar,  
Jeypore Road, Jagdalpur 494001  
Distt. Bastar (C.G.)
2. Mr. Khemchand Mahawar  
son of Shri C.L. Mahawar  
aged 63 years, occupation:  
business, R/o Jeypore Road  
Jagdalpur 494-001  
Distt. Bastar (C.G.)

P. R. No. 2074/01  
Presented by Shri Sachin  
dated 11.9.01

VERSUS

RESPONDENTS

- : 1. Central Bank of India  
A body corporate constituted  
under the Banking Companies  
(Acquisition & Transfer of  
Undertakings) Act V, 1970  
having its Central Office at  
Chander Mukhi, Nariman Point,  
MUMBAI 400-021,  
through its Chief General-  
Manager
2. Central Bank of India  
Jagdalpur Branch,  
Jagdalpur, 494-001, Distt. Bastar  
(C.G.), through its Branch-  
Manager.
3. The Recovery Officer,  
Debts Recovery Tribunal  
H.No. 797-II, Shantikunj, South  
Civil Lines,  
Jabalpur (M.P) 482-001



PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA  
FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS  
PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION  
OR DIRECTIONS, ORDER OR ORDERS.

1. PARTICULARS OF THE PETITIONER

As shown in the cause title above.

2. PARTICULARS OF THE RESPONDENTS

As shown in the cause title above.

## आदेश पत्रक

मामला क्रमांक W.P. 2108 सन् 2001

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p><u>30/01/2002</u></p> <p>Shri Manindra Sshrivastava, learned counsel for the petitioners.</p> <p>Shri P.K. Agrawal, learned counsel for the respondents 1 and 2.</p> <p>Heard.</p> <p>Learned counsel for the petitioners submits that the auction is scheduled to take place on 01/02/2002. The petitioner apprehends that the respondents are anxious to recover the loan amount and for that they may sell the property of the petitioner for a meagre sum and in that event the petitioners will suffer irreparable loss.</p> <p>On the other hand, learned counsel for respondents 1 and 2 relying on the decision of the Apex Court in the case of <u>Punjab National Bank Vs. O.C. Krishnan and others</u> (2001 AIR SCW 2993) vehemently opposed the prayer of stay as in view of the above mentioned judgment of the Supreme Court the petition is not even maintainable.</p> <p>In the case referred to above the Apex Court has held as under :-</p> <p><i>The recovery of Debts Due to Banks and Financial Institutions Act, 1993, has been enacted with a view to provide a special</i></p>	

[पीछे देखिये]

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		<p><i>procedure for recovery of Debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under section 20 against order passed by the Debt Recovery Tribunal (DRT) directing sale of mortgaged property and this fast track procedure can not 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 through a provision under an Act can not 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. The High Court should not have entertained the petition under Article 127 of the Constitution and should have directed to take recourse to the appeal mechanism provided by the Act "</i></p>

[पीछे देखिये]

## आदेश पत्रक

मामला क्रमांक W.P. 2108/2001 सन् 200

विरुद्ध

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	<p>Having heard the learned counsel appearing for both the sides and considered the facts and circumstances of the case, material available on record and after going through the judgment of the Apex Court I am of the view that the petitioner is not maintainable and the same is liable to be dismissed.</p> <p>Ex consequenti, with the observations made above, the petition fails and is hereby dismissed.</p>	<p>Sd/- Fakhruddin Judge</p>