HIGH COURT OF MADHYA PRADESH : BENCH AT

INDORE

S.B.: **HON'BLE MR. S. C. SHARMA, J**

WRIT PETITION NO. 14044 / 2010

M/s. Jagran Prakashan (MPC) P. Ltd.,
& another

Vs.

Allahabad Bank & two ors.,

* * * * *

Mr. Brian Da'Silva, learned sr. counsel appearing with Mr. Bhuwan Gautam, learned counsel for the petitioner.

Mr. A. M. Mathur, learned sr. counsel appearing with Mr. Brijesh Pandya, learned counsel for the respondent.

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[O R D E R]
14/12/2010

The petitioner before this Court has filed the present petition being aggrieved by the sale pursuant to the steps taken by the respondent No.1 Bank under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act, 2002'). The contention of the petitioner is that a notice was issued on 6/11/2008 u/S. 13 of the SARFAESI Act, 2002 and the respondent Bank took symbolic possession of the property on 14/1/2009. Petitioner has further stated that thereafter a notice

was issued on 17/2/2009 for sale of immovable property and reserve price was fixed and thereafter again a fresh notice for sale was issued on 18/12/2005. The petitioner has further stated that in the writ petition that being aggrieved by the steps taken by the respondent u/S. 13 of the SARFAESI Act, 2002 and an appeal was preferred before the Debts Recovery Tribunal, Allahabad and an interim order was passed on 19/3/09 permitting the respondent Bank to proceed ahead with the process of sale and it was also observed that the sale will not be finalised. Learned counsel for the petitioner has further stated that the appeal preferred before the Debts Recovery Tribunal, Allahabad was dismissed and thereafter the petitioner has not preferred any appeal before the appellate tribunal for want of funds. Debts Recovery Tribunal, Allahabad has dismissed the appeal preferred by the petitioner on 14/5/2010 which was preferred against the notice issued u/S. 13(2) of the SARFAESI Act, 2002. The petitioner's grievance is that a notification was issued for sale of immovable property finally on 17/2/09 and fresh notice was issued subsequently on 28/2/09 and the property has been sold against the initially fixed reserve price of Rs. 9.00 crores, for 8.5 crores. The aforesaid fact has been

seriously disputed by the opposite side. Learned counsel for the petitioner has vehemently argued before this court that the question of alternative remedy in the peculiar facts and circumstances of the case does not arise in the light of the judgment delivered by the apex court in the case of Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd., and others (2003) 2 SCC 107 and also keeping in view the judgment of the apex court in the case of S.J.S. Business Enterprises (P) Ltd., Vs. State of Bihar & Ors., (2004) 7 SCC 166. Learned sr. counsel has vehemently argued before this court that in the present case the Tehsildar has issued a notice for appearance on 25/11/2010 and without valuing the property, the property has been sold at much lower value by the respondent No.1 Bank by private negotiations. Learned counsel for the petitioner has prayed for issuance of notices in the matter as well as for grant of ad interim relief. His contention is that the entire transaction is bad in law. Learned counsel for the respondent No.2 has argued before this court that the petitioner has initially preferred an appeal before the Debts Recovery Tribunal against a notice issued u/S. 13(2) of the SARFAESI Act, 2002 and his appeal has been dismissed by the Debts Recovery Tribunal on 14/5/10.

He has also argued before this court that the petitioner has thereafter not preferred any appeal before the appellate tribunal. It has also been brought to the notice of this court that the petitioner has preferred a writ petition against the proceedings in respect of possession by filing a petition before this court ie., WP NO. 13707 / 2010 and the same was withdrawn with a liberty to approach appropriate forum. Learned senior counsel has submitted that in the light of the judgment delivered in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior & others (AIR 1987 SC 88), the second writ petition is not maintainable at all. He prays for dismissal of the writ petition on the ground that the petitioner is having an alternative remedy of approaching the Debts Recovery Tribunal u/S. 17 of the SARFAESI Act, 2002.

2. Heard learned counsel for the parties at length and perused the record and the matter is being disposed of at the admission stage itself with the consent of the parties.

3. In the present case issuance of notice u/S. 13(2) of the SARFAESI Act, 2002 dt. 6/11/2008 is not in dispute. The respondent No.1 Bank also took symbolic possession of the property on 14/1/08 and a notice was issued on 17/2/09 for sale

of the property in question and thereafter another notice was issued on 18/12/2005 for sale of the property and it is also an admitted fact that the petitioner has preferred an appeal against the action of the respondent Bank in declaring the account as NP Account and the appeal of the petitioner has been dismissed and thereafter no further appeal has been preferred before the appellate tribunal. Not only this, the petitioners being aggrieved by the action of the respondents in taking possession of the property in question have preferred a writ petition and the same was dismissed as withdrawn by the Division Bench of this Court. The Division Bench has passed the following order :

> W P NO. 13707 / 2010
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> 6.12.2010
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> Shri J. P. Karo, learned counsel for the petitioner.
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> Shri Abhinav Dhanodkar, learned counsel for the respondent No. 10 / caveator.
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> Learned counsel for the petitioner seeks leave to withdraw the petition with liberty to approach appropriate forum.
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> With the aforesaid liberty, the petition is dismissed as withdrawn.

4. No liberty was granted to file a fresh writ petition. In the present case sale certificates have already been issued on 25/11/10 and the petitioner was very much aware of the aforesaid fact on the date the writ petition was heard by the

Division Bench ie., on 6/12/2010.

5. Sections 13, 17 and 18 of the SARFAESI Act, 2002 reads as under :

> "13. Enforcement of security interest.-
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> (1) Notwithstanding, anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.
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> (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as 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 under sub-section (4).
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> (3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.
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> [(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such

representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.]

"17. Right to appeal.-(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[*Explanation*.- For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the

secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.]

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured

creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as

far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

"18. Appeal to Appellate Tribunal.-
(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 an 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."

6. The apex court in the case of Mardia Chemicals Ltd., Vs.

Union of India and others 2004 (4) SCC 311 in paragraphs 77 and 80 has observed as under :

> "77. It is also true that till the stage of making of the demand and notice under Section 13(2) of the Act, no hearing can be claimed for by the borrower. But looking to the stringent nature of measures to be taken without intervention of Court with a bar to approach the Court or any other forum at that stage, it becomes only reasonable that the secured creditor must bear in mind the say of the borrower before such a process of recovery is initiated. So as to demonstrate that the reply of the borrower to the notice under Section 13(2) of the Act has been considered applying mind to it. The reasons
> howsoever brief that may be for not accepting the objections, if raised in the reply, must be communicated to the borrower. True, presumption is in favour of validity of an enactment and a legislation may not be declared unconstitutional lightly more so, in the matters relating to fiscal and economic policies resorted to in the public interest, but while resorting to such legislation it would be necessary to see that the persons aggrieved get a fair deal at the hands of those who have been vested with the powers to enforce drastic steps to make recovery.
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> 80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act

to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :-

1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information /knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section

(4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition at it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the Court."

7. The Apex Court in the aforesaid case has held that

the borrower is having a remedy to prefer an appeal u/S. 17 of the Act of 202 and the High Court was not justified in entertaining the writ petition against the notice issued u/S. 13(2) of the Act of 2002.

8. In the case of United Bank of India Vs. Satyawati Tondon and others decided on 26.07.2010 **[2010] INSC 550** in paragraphs 4, 5, 6, 17, 18, 19, 21, 22, 27 and 28 the Supreme Court has observed thus :-

> "4. Section 17 speaks of the remedies available to any person including borrower who may have grievance against the action taken by the secured creditor under sub-section (4) of Section 13. Such an aggrieved person can make an application to the Tribunal within 45 days from the date on which action is taken under that sub-section. By way of abundant caution, an Explanation has been added to Section 17(1) and it has been clarified that the communication of reasons to the borrower in terms of Section 13(3-A) shall not constitute a ground for filing application under Section 17(1). Sub-section (2) of Section 17 casts a duty on the Tribunal to consider whether the measures taken by the secured creditor for enforcement of security interest are in accordance with the provisions of the Act and the Rules made thereunder. If the Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that the measures taken by the secured creditor are not in consonance with sub-section (4) of Section 13, then it can direct the secured creditor to restore management of the business or possession

of the secured assets to the borrower. On the other hand, if the Tribunal finds that the recourse taken by the secured creditor under sub-section (4) of Section 13 is in accordance with the provisions of the Act and the Rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor can take recourse to one or more of the measures specified in Section 13(4) for recovery of its secured debt. Sub-section (5) of Section 17 prescribes the time-limit of sixty days within which an application made under Section 17 is required to be disposed of. The proviso to this sub-section envisages extension of time, but the outer limit for adjudication of an application is four months. If the Tribunal fails to decide the application within a maximum period of four months, then either party can move the Appellate Tribunal for issue of a direction to the Tribunal to dispose of the application expeditiously. Section 18 provides for an appeal to the Appellate Tribunal.

5. Section 34 lays down that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Tribunal or Appellate Tribunal is empowered to determine. It further lays down that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken under the SARFAESI Act or the DRT Act. Section 35 of the SARFAESI Act is substantially similar to Section 34(1) of the DRT Act. It declares that 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.

6. However, effective implementation of the SARFAESI Act was delayed by more than two years because several writ petitions were filed in the High Courts and this Court questioning its vires. The matter was finally decided by this Court in Mardia Chemicals v. Union of India (2004) 4 SCC 311 and the validity of the SARFAESI Act was upheld except the condition of deposit of 75% amount enshrined in Section 17(2). The Court referred to the recommendations of the Narasimham and Andhyarujina Committees on the issue of constitution of special tribunals to deal with cases relating to recovery of the dues of banks etc. and observed:

> "One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of assets. It is thus to be seen that the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field. In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more

> effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the Report of the Narasimham Committee, yet another Committee was constituted headed by Mr. Andhyarujina for bringing about the needed steps within the legal framework. We are, therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in operation it was uncalled for to have yet another legislation for the recovery of the mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy."
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> (emphasis supplied)

This Court then held that the borrower can challenge the action taken under Section 13(4) by filing an application under Section 17 of the SARFAESI Act and a civil suit can be filed within the narrow scope and on the limited grounds on which they are permissible in the matters relating to an English mortgage

enforceable without intervention of the Court. In paragraph 31 of the judgment,the Court observed as under:

> "In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debts Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would subserve the public interest."
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> (emphasis supplied)

17. There is another reason why the impugned order should be set aside. If respondent No.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 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. 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 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, 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.

18. 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. Registrar of Trade Marks, Mumbai (1998) 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.

19. In Thansingh Nathmal v. Superintendent of Taxes (1964) 6 SCR 654, the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under:

> "The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very

amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery

> created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

21. The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa (supra) were echoed in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others (1985) 1 SCC 260 in the following words:

> "Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situa- tions, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose

> of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

22. In Punjab National Bank v. O.C. Krishnan and others (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:

> "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.
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> 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."

27. 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 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.
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> 28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act."

9. Keeping in view the aforesaid judgment of the apex court and also keeping in view the statutory provisions ie., the SARFAESI Act, 2002, this court is of the considered opinion that the petitioner does have an alternative equally efficacious remedy available to him u/S. 17 of the SARFAESI Act, 2002 and the petitioner shall be free to take all possible objections in the matter while preferring an appeal before the Debts Recovery Tribunal in the matter. This court has also considered the judgment relied upon by the learned counsel for the petitioner and keeping in view the judgment delivered in the case of Mardia Chemicals Ltd., Vs. Union of India and others; Punjab National Bank and another Vs. M/s Imperial Gift House and others; and, United Bank of India Vs. Satyawati Tondon and others (supra), this court is of the considered opinion that the petitioner does have an alternative remedy and no case for interference is made out in the matter before this court. Not only

this the Division Bench of this Court in the case of M/s. Velocity Ltd., Vs. State Bank of India (WA NO. 296 / 2010) and in case of The Dhar Textile Mills Ltd., Vs. Canara Bank and others (WA No. 302 / 2010) has taken a similar view, hence no case for interference is made out in the matter. Resultantly admission is declined with a liberty to the petitioner to take appropriate steps as provided u/S. 17 of the SARFAESI Act, 2002.

Cc as per Rules.

(S C SHARMA)
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