REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 257-259 OF 2022

Phoenix ARC Private Limited …Appellant(s)

Versus

Vishwa Bharati Vidya Mandir & Ors. …Respondent(s)

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned order dated 27.03.2018 passed by the High Court of Karnataka at Bengaluru in Writ Petition Nos. 35564-35566 of 2015 by which the High Court has entertained the aforesaid writ petitions under Article 226 of the Constitution of India against the appellant, an Assets Reconstructing Company and has passed an interim order directing for maintaining status quo with regard to SARFAESI action (possession of the secured assets), the original respondent – the Assets Reconstructing Company (ARC) has preferred the present appeals.

2. That the respondent No.1 herein Vishwa Bharati Vidya Mandir is running educational institutions and is a Society registered under the Karnataka Societies Registration Act, 1960 which had availed credit facilities to the tune of Rs.105,60,84,000/- (Rupees One Hundred Five

Crores Sixty Lacs and Eighty Four Thousand Only) from Saraswat Co-operative Bank Limited. That similarly, St. Ann's Education Society had also availed credit facilities to the tune of Rs.20,05,00,000/- (Rupees Twenty Crores and Five Lacs Only) from the aforesaid Bank.

2.1 It appears that in order to secure the due repayment of the aforesaid credit facilities, various loans / security documents were executed by the respective respondents, including personal guarantees in favour of the bank. The respondents also created an equitable mortgage by way of deposit of title deeds over the immovable properties with respect to the mortgaged properties. It appears that on account of defaults committed by the borrowers / respondents in repayment of the outstanding dues, in the month of April, 2013, the account of the borrowers / respondents were classified as a “Nonperforming Asset” (NPA) by the Bank. As the borrowers / respondents failed and neglected to repay the outstanding dues of the Bank, the Bank issued a notice dated 01.06.2013 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”). It appears that in the month of March, 2014, the NPA account of the borrowers / respondents with respect to the credit facilities availed by them was assigned by the Bank in favour of the appellant – Phoenix

ARC Private Limited vide registered Assignment Agreement dated 28.03.2014.

2.2 Pursuant to the assignment of the NPA account in favour of the appellant, the borrowers approached the appellant with a request for restructuring the repayment of outstanding dues. A Letter of Acceptance dated 27.02.2015 was executed between the parties, wherein the borrowers / respondents acknowledged and admitted the liability to repay the entire outstanding dues. However, the borrowers failed to repay the dues as per the Letter of Acceptance.

2.3 Since the borrowers again committed defaults in payment of the outstanding dues, the appellant – Phoenix ARC Private Limited issued a letter dated 13.08.2015 intimating the borrowers that since despite issuance of 13(2) notice dated 01.06.2013 and the subsequent execution of the Letter of Acceptance dated 27.02.2015, the borrowers had failed to repay the outstanding dues, therefore, the appellant would be proceeding to take possession of the mortgaged properties after expiry of 15 days from the date of the said letter.

2.4 Against the aforesaid communication/letter dated 13.08.2015, the borrowers / respondents herein filed the writ petitions before the High Court on the ground that the communication/letter dated 13.08.2015 is a

possession notice under Section 13(4) of the SARFAESI Act, which is against the Security Interest (Enforcement) Rules, 2002.

2.5 It was the case on behalf of the original writ petitioners that the said possession notice under Section 13(4) of the SARFAESI Act is in violation of Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "Rules, 2002") and without issuance of the possession notice under Rule 8(1) and without publication of possession notice in two leading newspapers as required under Rule 8(2). The High Court passed an ex-parte ad-interim order dated 26.08.2015 directing status quo to be maintained with regard to possession of the mortgaged properties subject to the borrowers making a payment of Rs. 1 crore with the appellant – Phoenix.

2.6 The petition was opposed by the appellant by filing statement of objections to the writ petitions contending, inter alia, that the letter dated 13.08.2015 as such cannot be said to be taking a measure under Section 13(4) of the SARFAESI Act and that it was only a proposed action/measure to be taken by the appellant. It was also submitted that the writ petitions are not maintainable. That the appellants filed an application being I.A. No. 01 of 2016 for vacation of the ex-parte ad-interim order dated 26.08.2015. However, instead of deciding the application for vacating the interim order, the High Court extended the

interim order on 28.02.2017 on the condition that the borrowers shall deposit a further sum of Rs.1 crore. Simultaneously, the appellant also filed two separate original applications against the borrowers before the Debt Recovery Tribunal, Bangalore for recovery of the outstanding dues. Thereafter, the High Court again vide order dated 27.03.2018 extended the earlier ex-parte interim-order dated 26.08.2015 on condition that the borrowers deposit a further sum of Rs. 1 crore.

2.7 Feeling aggrieved and dissatisfied with the aforesaid interim orders / extension of the interim orders and entertaining the writ petitions, the appellant – Phoenix ARC Private Limited, the original respondent has preferred the present appeals.

3. Shri V. Giri, learned Senior Advocate has appeared on behalf of the respective appellants and Shri Basavaprabhu S. Patil, learned Senior Advocate has appeared on behalf of the original writ petitioners – borrowers.

4. Shri V. Giri, learned Senior Advocate appearing on behalf of the appellant(s) has vehemently submitted that in the present case the borrowers are liable to pay to the appellant – ARC / secured creditor an amount of Rs.117,31,68,487/-. It is submitted that for recovery of the amount due and payable, initially in the year 2003, notice under Section 13(2) of the SARFAESI Act was issued and therefore the proceedings

under the SARFAESI Act commenced. It is submitted that thereafter despite the Letter of Acceptance dated 27.02.2015 admitting the dues and agreeing to make the payment due and payable, the borrowers failed to repay the amount due and payable, the appellant proposed to proceed further with the proceedings under the SARFAESI Act and therefore vide communication dated 13.08.2015, the borrowers were called upon to make the payment within 15 days failing which it was proposed to take further steps under the provisions of the SARFAESI Act. It is submitted that, technically speaking, at that stage communication dated 13.08.2015 cannot be said to be notice under Section 13(4) of the SARFAESI Act. Despite the above and treating and/or considering the communication dated 13.08.2015 as possession notice under Section 13(4) of the SARFAESI Act, the borrowers filed the writ petitions before the High Court against communication dated 13.08.2015. It is submitted that unfortunately the High Court has entertained the aforesaid writ petitions though not maintainable against a private party like the appellant – ARC and has granted an ex-parte ad-interim order, which has been extended from time to time directing to maintain status quo with respect to the possession of the mortgaged properties on payment of meager amount of Rs. 1 crore (in all Rs. 3 crores only) against the total dues of Rs.117 crores approximately.

4.1 It is submitted that as such the writ petitions against the private party – ARC and that too against the communication proposing to take action under the SARFAESI Act would not be maintainable at all, and, therefore, the High Court ought not to have entertained such writ petitions and ought not to have granted the interim protection to the borrowers, who have failed to repay the amount due and payable, which comes to approximately Rs.117 crores.

4.2 It is further submitted by Shri Giri, learned Senior Advocate appearing on behalf of the appellant – ARC that assuming that the communication dated 13.08.2015 is treated as an action under Section 13(4) of the SARFAESI Act, in that case also, the only remedy available to the borrowers was by way of an appeal under Section 17 of the SARFAESI Act. It is submitted that under no circumstances, the writ petitions would be maintainable and that too against the private ARC.

4.3 It is submitted that the High Court has not at all appreciated that as such there was no occasion to interfere in exercise of the powers under Article 226 of the Constitution of India against a private party and a non-State actor like the appellant – Phoenix ARC. It is submitted that the writ petitions under Article 226 of the Constitution of India for the relief sought in the writ petitions shall not be maintainable and that too against a private party. It is submitted that, however, the Hon'ble High Court has

not only entertained the writ petitions but also passed an ex-parte ad-interim order dated 26.08.2015, which has been continued from time to time directing to maintain the status quo with regard to the SARFAESI action (possession of the secured assets). It is submitted that this effectively resulted in staying of all further proceedings under the SARFAESI Act. It is submitted that despite the application(s) for vacating the ex-parte ad-interim relief, the High Court extended the ex-parte interim order dated 26.08.2015 on condition that the borrowers pay further sum of Rs.1 crore only.

4.4 It is submitted that even in the subsequent order dated 27.03.2018, though the High Court observed that "though the learned counsel for the petitioners seeks to refer the nature of the claim and contend that the demand as made would not be justified, the said consideration in a writ petition of the present nature would not arise", still the High Court has extended the ex-parte interim order dated 26.08.2015 by observing that the "petitioner is required to settle the matter with the respondents". It is submitted that the High Court is not at all justified firstly, in entertaining the writ petitions under Article 226 of the Constitution of India for the relief sought in the main writ petitions and that too against a private party and, more particularly, when against any action under the SARFAESI Act, an appeal under Section 17 of the SARFAESI Act would be maintainable and is required to be filed.

4.5 Shri Giri, learned Senior Advocate appearing on behalf of the appellant(s) has relied upon the following decisions in support of the submission that the writ petitions before the High Court are not maintainable:-

United Bank of India Vs. Satyawati Tondon & Ors., (2010) 8 SCC 110; Kanaiyalal Lalchand Sachdev & Ors. Vs. State of Maharashtra & Ors., (2011) 2 SCC 782; General Manager, Sri Siddeshwara Cooperative Bank Limited & Anr. Vs. Ikbal & Ors., (2013) 10 SCC 83; Agarwal Tracom Private Limited Vs. Punjab National Bank & Ors., (2018) 1 SCC 626; Authorized Officer, State Bank of Travancore & Anr. Vs. Mathew K.C., (2018) 3 SCC 85; and **Radha Krishnan Industries Vs. State of Himachal Pradesh & Ors., (2021) 6 SCC 771.**

4.6 Making the aforesaid submissions and relying upon the above decisions, it is prayed to set aside the impugned order dated 27.03.2018 and also to dismiss the writ petitions filed before the High Court as being non-maintainable.

5. Shri Basavaprabhu S. Patil, learned Senior Advocate appearing on behalf of the original borrowers has vehemently submitted that the present appeals are against the ad interim order/interim order passed by the High Court and the main writ petitions are pending before the High

Court. It is submitted that pursuant to the earlier order passed by this Court dated 06.08.2018, the impugned interim order passed by the High Court has been stayed. It is therefore submitted that when the main writ petitions are pending before the High Court, the present appeals may not be further entertained. It is submitted that despite the fact that there is a stay of operation of the impugned order passed by the High Court since 06.08.2018, thereafter no further steps have been taken by the appellant against the borrowers under the provisions of the SARFAESI Act.

5.1 Now, so far as the maintainability of the writ petition against the Assets Reconstruction Company (ARC) is concerned, it is submitted that the writ petition is filed against the ARC complaining of infraction of Rule 8. It is submitted that the said rule imposes a statutory duty on the secured creditor - the ARC to act fairly while dealing with the security so as to secure the interest of the borrower as well as public at large (depositors). In support of aforesaid submission, reliance is placed on the decision of this Court in the case of **J. Rajiv Subramaniyan and Anr. Vs. Pandiyas and Ors., (2014) 5 SCC 651.** It is therefore submitted that as in the present case as the ARC has not performed the statutory duty cast upon it and there is a contravention of the statutory duty imposed under the Security Interest (Enforcement) Rules, 2002, a writ would lie against ARC against such an illegal action.

5.2 Shri Patil, learned Senior Advocate appearing on behalf of the borrowers has also relied upon the decisions of this Court in the case of **Praga Tools Corporation Vs. Shri C.A. Imanual and Ors., (1969) 1 SCC 585** and **Ramesh Ahluwalia Vs. State of Punjab and Ors., (2012) 12 SCC 331** in support of his submission that even against a purely private body but performing public functions, which are normally expected to be performed by the State authorities, a writ would be maintainable.

5.3 Now, in so far as the submission on behalf of the appellant that assuming that a communication dated 13.08.2015 can be said to be a SARFAESI action under Section 13(4) of the Act, the borrowers had to prefer an appeal under Section 17 and, therefore, the writ petition would not be maintainable and/or is required to be entertained, it is vehemently submitted by Shri Patil, learned Senior Advocate appearing on behalf of the borrowers that on the ground of alternative remedy only, the writ petition would not be barred.

5.4 It is submitted that Section 13 of the SARFAESI Act provides for enforcement of security interest and sub-section 4(a) of Section 13 provides that in case a borrower fails to discharge his liability within the period specified under sub-section (2) of Section 13, the secured creditor may take possession of the secured assets of the borrower. It is

submitted that Rule 8(1) of the Rules, 2002 mandates that where the secured assets is an immovable property, the authorized officer of the secured creditor shall take or cause to be taken possession, by delivering the possession notice prepared as nearly as possible in Appendix – IV of the said Rules, to the borrower and by affixing the possession notice on the outer door or at the conspicuous space of the property. It is submitted that Rule 8(2) of the said Rules also mandates that the said possession notice be published as soon as possible, but in any case not later than 7 days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality by the authorized officer.

5.5 It is submitted that in the instant case, it is not the case of the appellant that it took any measure in terms of Section 13(4) of the SARFAESI Act. It is therefore submitted that the remedy under Section 17 of the SARFAESI Act, which would be against any measure referred to in sub-section (4) of Section 13 of the SARFAESI Act to file an application to the Debts Recovery Tribunal is not available to the borrowers in the instant case. It is further submitted that there is no compliance with Rule 8(1) and 8(2) of the Rules, 2002. It is submitted that as held by this Court in the case of **Mathew Varghese Vs. M. Amritha Kumar and Ors., (2014) 5 SCC 610** on a detailed analysis of Rules 8 and 9 that any sale effected without complying with the same

would be unconstitutional and, therefore, null and void. It is submitted therefore that the High Court has rightly entertained the writ petitions.

5.6 Making the above submissions and relying upon the decision of this Court in the case of **J. Rajiv Subramaniyan and Anr. (supra)**, it is urged that the High Court has not committed any error in entertaining the writ petitions.

5.7 It is further submitted by Shri Patil, learned Senior Advocate appearing on behalf of the respondents – borrowers that even otherwise considering the fact that the present appeals are against the interim order granted by the High Court, the same may not be entertained. Reliance is also placed on the decision of this Court in the case of **United Commercial Bank Vs. Bank of India and Ors., (1981) 2 SCC 766.**

5.8 It is further submitted that even otherwise in the present case, subsequently, the appellant has taken recourse under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 by filing O.A. No. 715 of 2017 before the Debts Recovery Tribunal, Bengaluru and the said Tribunal has passed an interim order directing the borrowers to deposit the fee collected / to be collected by all educational institutions run by the Society – borrower for academic year 2017-2018 into the Bank. It is submitted that another interim order has

been passed on 06.07.2017 restraining the borrowers from selling, transferring, alienating or otherwise dealing with certain properties of the borrowers/respondents. It is submitted therefore that the interest of the appellant is fully protected and no prejudice would be caused to the appellant if the writ petitions are finally considered and disposed of by the High Court on merits.

5.9 Making the above submissions, it is prayed to dismiss the present appeals.

6. We have heard the learned counsel for the respective parties at length.

7. At the outset, it is required to be noted that in the present case, the respondents – borrowers whose accounts have been declared as NPA in the year 2013 have filed the writ petitions before the High Court challenging the communication dated 13.08.2015 purporting it to be a notice under Section 13(4) of the SARFAESI Act. It is required to be noted that as per the appellant – assignor approximately Rs.117 crores is due and payable to the Bank. While passing the ex-parte interim order on 26.08.2015 and while entertaining the writ petitions against the communication dated 13.08.2015, the High Court has directed to maintain status quo with respect to the possession of the secured

properties on condition that the borrowers deposit Rs. 1 crore only. Despite the fact that subsequently an application for vacating the ex-parte ad-interim order has been filed in the year 2016, the application for vacating the interim order has not been decided and disposed of. On the contrary, the High Court thereafter has further extended the ex-parte ad-interim order dated 26.08.2015 on condition that the borrowers should deposit a further sum of Rs. 1 crore. Thus, in all the borrowers are directed to deposit Rs. 3 crores only against the dues of approximately Rs.117 crores.

7.1 It is the case on behalf of the appellant that the writ petitions against the communication dated 13.08.2015 proposing to take further action under Section 13(4) of the SARFAESI Act and that too against a private Assets Reconstructing Company (ARC) shall not be maintainable. It is also the case on behalf of the appellant that assuming that the communication dated 13.08.2015 can be said to be a notice under Section 13(4) of the SARFAESI Act, in view of the alternative statutory remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions.

7.2 While considering the issue regarding the maintainability of and/or entertainability of the writ petitions by the High Court in the instant case,

a few decisions of this Court relied upon by the learned Senior Advocate appearing on behalf of the appellant – ARC are required to be referred to.

7.3 In the case of **Satyawati Tondon & Ors. (supra)**, it was observed and held by this Court that the remedies available to an aggrieved person against the action taken under section 13(4) or Section 14 of the SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective. On maintainability of or entertainability of a writ petition under Article 226 of the Constitution of India, in a case where the effective remedy is available to the aggrieved person, it is observed and held in the said decision in paragraphs 43 to 46 as under:-

> **"43.** 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 a 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, the 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.

44. 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.

45. 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.

46. 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 (*sic* will) 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 Corpn.* v. *Registrar of Trade Marks* [(1998) 8 SCC 1] and *Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.* [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

7.4 In the case of **City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwala, (2009) 1 SCC 168**, it was observed by this Court in paragraph 30 that the Court while exercising its jurisdiction under Article 226 is duty bound to consider whether ……(c) the petitioner has any alternative or effective remedy for the resolution of the dispute."

7.5 In the case of **Kanaiyalal Lalchand Sachdev and Ors. (supra) a**fter referring to the earlier decisions of this Court in the cases of **Sadhana Lodh Vs. National insurance Co. Ltd. and Anr., (2003) 3 SCC 524; Surya Dev Rai Vs. Ram Chander Rai and Ors., (2003) 6 SCC 675** and **State Bank of India Vs. Allied Chemical Laboratories and Anr., (2006) 9 SCC 252** while upholding the order passed by the High Court dismissing the writ petition on the ground that an efficacious remedy is available under Section 17 of the SARFAESI Act, it was observed that ordinarily relief under Articles 226/227 of the Constitution

of India is not available if an efficacious alternative remedy is available to any aggrieved person.

7.6 Similar view has been expressed by this Court in subsequent decisions in the case of **General Manager, Sri Siddeshwara Cooperative Bank Limited & Anr. (supra)** as well as in the case of **Agarwal Tracom Private Limited (supra).**

8. Applying the law laid down by this court in the aforesaid decisions, it is required to be considered whether, in the facts and circumstances of the case, the High Court is justified in entertaining the writ petitions against the communication dated 13.08.2015 and to pass the ex-parte ad interim order virtually stalling/restricting the proceedings under the SARFAESI Act by the creditor.

9. It is required to be noted that it is the case on behalf of the appellant that as such the communication dated 13.08.2015 cannot be said to be a notice under Section 13(4) of the SARFAESI Act at all. According to the appellant, after the notice under Section 13(2) of the SARFAESI Act was issued in the year 2013 and thereafter despite the Letter of Acceptance dated 27.02.2015, no further amount was paid, the appellant called upon the borrowers to make the payment within two weeks failing which a further proceeding under Section 13(4) of the

SARFAESI Act was proposed. Thus, according to the appellant, it was a proposed action. Therefore, the writ petitions filed against the proposed action under Section 13(4) of the SARFAESI Act was not maintainable and/or entertainable at all.

10. Assuming that the communication dated 13.08.2015 can be said to be a notice under Section 13(4) of the SARFAESI Act, in that case also, in view of the statutory remedy available under Section 17 of the SARFAESI Act and in view of the law laid down by this Court in the cases referred to hereinabove, the writ petitions against the notice under Section 13(4) of the SARFAESI Act was not required to be entertained by the High Court. Therefore, the High Court has erred in entertaining the writ petitions against the communication dated 13.08.2015 and also passing the ex-parte ad-interim orders directing to maintain the status quo with respect to possession of secured properties on the condition directing the borrowers to pay Rs. 1 crore only (in all Rs.3 crores in view of the subsequent orders passed by the High Court extending the ex-parte ad-interim order dated 26.08.2015) against the total dues of approximate Rs.117 crores. Even the High Court ought to have considered and disposed of the application for vacating the ex-parte ad-interim relief, which was filed in the year 2016 at the earliest considering the fact that a large sum of Rs.117 crores was involved.

11. Now, in so far as the reliance placed upon the decision of this Court in the case of **J. Rajiv Subramaniyan and Anr. (supra)** by the learned senior counsel appearing on behalf of the borrowers in support of his submission that writ petition would be maintainable, it is to be noted that in the aforesaid case, the learned counsel appearing on behalf of the Bank did not press the maintainability and/or entertainability of the writ petition under Article 226 and therefore, this Court had no occasion to consider the entertainability and/or maintainability of the writ petition. Therefore, the aforesaid decision is not of any assistance to the respondents – borrowers.

12. Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC – appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed

by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of **Praga Tools Corporation (supra)** *and* **Ramesh Ahluwalia (supra)** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.

13. Now, so far as the submission on behalf of the borrowers that in exercise of the powers under Article 226 of the Constitution, this Court may not interfere with the interim / interlocutory orders is concerned, the decision of this Court in the case of **Mathew K.C. (supra)** is required to be referred to.

13.1 In the case of **Mathew K.C. (supra)** after referring to and/or considering the decision of this Court in the case of **Chhabil Dass Agarwal (supra),** it was observed and held in paragraph 5 as under:-

> **"5.** We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in

dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in *CIT* v. *Chhabil Dass Agarwal* [*CIT* v. *Chhabil Dass Agarwal*, (2014) 1 SCC 603], as follows: (SCC p. 611, para 15)

> "*15*. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* [*Thansingh Nathmal* v. *Supt. of Taxes*, AIR 1964 SC 1419] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd.* v. *State of Orissa*, (1983) 2 SCC 433] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

13.2 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.

14. In view of the above and for the reasons stated above, present appeals succeed. The Writ Petition Nos. 35564 to 35566 of 2015 before the High Court are dismissed. Consequently, the ex-parte ad-interim order dated 26.08.2015 further extended by orders dated 28.02.2017 and 27.03.2018 stand vacated.

Present appeals are accordingly allowed with costs to the appellants to be paid by the original writ petitioners quantified at Rs.1 lakh in both the cases to be directly paid to the appellant within a period of four weeks from today. Pending application(s), if any, also stand disposed of.

…….J.
[M.R. SHAH]

NEW DELHI;
JANUARY 12, 2022.

…….J.
[B.V. NAGARATHNA]