

Sarfaesi S. 13(2) - Writ petition - Whether the notice issued by the respondent/SBI under Section 13 (2) of the SARFAESI Act is legal and valid? Corollary to the above is the question as to whether the High Court should interfere in such a notice under Article 226 of the Constitution of India? - At the stage of issuance of notice under Section 13 (2) of the SARFAESI Act, no interference is called for by the Court. Therefore, question of examining legality and validity of such demand notice would not arise - The adjudication would have to wait till the stage of Sub-Section (4) of Section 13 is reached, where after the aggrieved person including a borrower can file securitization application under Section 17 of the SARFAESI Act in which all grounds of challenge would be available.

Thus, on a careful consideration of the statutory language employed in the proviso to Sub-Section (3A) of Section 13 of the SARFAESI Act read with the Explanation to Sub-Section (1) of Section 17 of the SARFAESI Act, it is crystal clear that a notice under Section 13 (2) of the SARFAESI Act or the rejection of the objection raised to it including the reasons in support thereof would not give rise to a cause of action for instituting an action in law - To that extent, we find sufficient force in the contention advanced by the respondents that the writ petition filed is premature - The statute does not contemplate any intervention at this preliminary stage - Only when the process ripens into a definitive action taken by the secured creditor under Sub-Section (4) of Section 13 of the SARFAESI Act, the aggrieved person can avail the statutory remedy under Section 17 of the SARFAESI Act by filing securitization application before the jurisdictional Debts Recovery Tribunal.

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