HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE SMT JUSTICE P. MADHAVI DEVI

WRIT PETITION Nos.23067, 27138 of 2019
And
WRIT PETITION No.22195 OF 2021

WRIT PETITION NO: 23067 OF 2019

Between:

M/s S.V. Developers A proprietory concern, Represented by its proprietor, Sri. M. Prabhakar Rao, S/o Sri.M. Mohan Rao, Aged 54 years Occ. Business, R/o No.547, Plot no.305, SR Enclave, Sadanandnagar, NGEF layout, Bangalore 560038.

...PETITIONER

AND

1. State Bank of India, Hoskote SME, Represented by its Authorized Officer Old madras Road, Bangalore rural- 562 114.
2. State Bank of India, Hoskote SME, Represented by its Branch Manager Old madras Road, Bangalore rural- 562 114.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ of Mandamus or any other appropriate Writ declaring that for deriving Jurisdiction to issue Notice under Section 13 (2) of SERFEASI Act , 2002 it is necessary that a period 2 years 90 days which is required to elapse for classifying the loan account of borrower as NPA within the scope and definition of Section 13(2) R/w Section 2(o) (b) R/w RBI Guide lines vide RBI Circular No. DBOD No.BP.BC.10/21.04.048/2004-05 dated 17-04-2004 and further the Notice under Section 13(2) of SARFAESI Act, 2002 must disclose dates when the loan account of the borrower has become NPA, Sub-Standard Asset and Doubtful Asset to be a proper Notice under Section 13(2) of SARFAESI Act, 2002 and

consequentially to set aside the notice Section 13 (2) of SERFAESI Act, 2002, dated 08-01-2018 issued by the Respondent by declaring the same as without jurisdiction, unenforceable in accordance with the scheme of SERFEASI Act and in violation of the principles of natural justice and for a consequential direction to grant stay of all further proceedings in pursuance to the sale notice dated 28.09.2019.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings of Respondent Bank in pursuance of Notices dated 08-01-2018 under Section 13(2) of SARFAESI Act, 2002 and consequential Notice dated 26.09.2019 for possession under Section 13(4) of SARFAESI Act, 2002, pending the final disposal of this Writ Petition.

IA NO: 2 OF 2019

Between:

1. State Bank of India, Hoskote SME, Represented by its Authorized Officer Old madras Road, Bangalore rural- 562 114.
2. State Bank of India, Hoskote SME, Represented by its Branch Manager Old madras Road, Bangalore rural- 562 114.

...Petitioners/Respondents

AND

M/s S.V. Developers A proprietory concern, Represented by its proprietor, Sri. M. Prabhakar Rao, S/o Sri.M. Mohan Rao, Aged 54 years Occ. Business, R/o No.547, Plot no.305, SR Enclave, Sadanandnagar, NGEF layout, Bangalore 560038.

...Respondent/Petitioner

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders passed in W.P.No.23067 of 2019 dated 22/10/2019.

Counsel for the Petitioner: SRI M. LAXMI PRASAD FOR SMT. CH. VEDAVANI

Counsel for the Respondents: SRI MARUTHI JADHAV FOR M/s. PEARL LAW ASSOCIATES

WRIT PETITION NO: 27138 OF 2019

Between:

M/s. S.V. Developers, A proprietory concern Represented by its proprietor Sri. M. Prabhakar Rao S/o Sri.M. Mohan Rao Aged 54 years Occ Business, R/o No.547, Plot no.305, SR Enclave, Sadanandnagar, NGEF layout, Bangalore 560038.

...PETITIONER

AND

1. State Bank of India, Hoskote SME, Represented by its Authorized Officer Old madras Road, Bangalore rural- 562 114
2. State Bank of India, Hoskote SME, Represented by its Branch Manager Old madras Road, Bangalore rural- 562 114

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ of Mandamus or any other appropriate Writ declaring:

a) The action of the respondents in replying by their letter dated 22-11-2019 holding that the petitioner is not entitled for the benefit of the "OTS scheme" issued by the respondents in terms of their circular dated 13/08/2019, as being arbitrary, illegal ,contrary to the OTS scheme, violative of principles of natural justice, apart from being violative of the RBI guidelines pertaining to asset classification, and for a consequential direction to the respondents;

b) to follow the guidelines in the OTS circular dated 13/08/2019 in its letter and spirit and pass on the benefit of the said OTS scheme to the petitioner being eligible for the same, in the interests of justice;

c) Award costs of the writ petition.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to reconsider the case of the petitioner in term of the RBI guidelines pertaining to Asset classification and pass on the benefit of the OTS scheme issued by the respondent by their circular dated 13/08/2019, pending disposal of the writ petition.

Counsel for the Petitioner: SRI M. LAXMI PRASAD FOR SMT. CH. VEDAVANI

Counsel for the Respondents: SRI MARUTHI JADHAV FOR M/s. PEARL LAW ASSOCIATES

WRIT PETITION NO: 22195 OF 2021

Between:

M/s. S,V. Developers, Rep. by its Proprietor Mr. Prabhakar Rao, Aged 56 years, Occ.Business, R/o. Flat No. 305, SR Enclave, Sadanand Nagar, NZGEF Layout, Bangalore - 560 038.

...PETITIONER

AND

1. Debts Recovery Tribunal - I, Hyderabad, Telangana State
2. State Bank of India, Hoskote SME Branch, Old Hoskote - 561114, Bangalore Rural, Karnataka State Rep. by its Manager.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ or Writs or order or direction more particularly in the nature of Writ of Mandamus by declaring that the Respondent No.1 will not get jurisdiction to entertain O.A.204 of 2020 under Section 19 of Recovery of Debts And Bankruptcy Act, 1993 as Respondent No.2 has first initiated proceedings under The Securitisation And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) in view of provisions of Section 13(10), Section 35 and Section 37 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) until the secured asset is sold by the Respondent No. 2 and there remains unrealized debt for which only said O.A. can be filed by the Respondent No. 2 before Respondent No. 1 and if it is not so done the same further violates the rights of the Petitioner under Article 14 and 21 of the Constitution and consequentially set aside the impugned Order Dated 27 August 2021 in I.A. No. 236/2021 in O.A.204/2020 passed by Respondent No.1 Debt Recovery Tribunal - I, at Hyderabad as without jurisdiction and consequentially reject the O.A. No.204/2020 by allowing the said I.A.No.236/2021 in O.A.204/2020.

(Prayer is amended as per Court Order, dated 25.10.2021 vide I.A.No.2 of 2021.)

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend impugned order dated 27/08/2021 passed by the respondent No.1 in I.A.No.236 of 2021 in O.A.No.204 of 2020 pending the final disposal of the Writ Petition.

Counsel for the Petitioner: SRI. MINNIKANTI LAXMIPRASAD

Counsel for the Respondent No.1: NONE APPEARED

Counsel for the Respondent No.2: SRI MARUTHI JADHAV FOR M/s. PEARL LAW ASSOCIATES

The Court made the following: COMMON ORDER

THE HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SMT. JUSTICE P. MADHAVI DEVI

W.P.Nos.23067 and 27138 of 2019
And
W.P.No.22195 of 2021

COMMON JUDGMENT AND ORDER:
(Per Hon'ble Sri Justice Ujjal Bhuyan)

This order will dispose of W.P.Nos.23067 of 2019, 27138 of 2019 and 22195 of 2021.

2. We have heard Sri M. Laxmi Prasad, learned counsel appearing on behalf of Smt. Ch. Vedavathi, learned counsel for the petitioner and Sri Maruthi Jadhav, learned counsel appearing for Pearl Law Associates for the respondents.

2. In W.P.No.23067 of 2019 the prayer made is to set-aside the notice dated 08.01.2018 issued by the respondent State Bank of India (SBI) under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly, 'the SARFAESI Act' hereinafter). Petitioner in W.P.No.27138 of 2019 has sought for quashing of letter dated 22.11.2019 issued by the respondent/SBI stating that petitioner is not entitled to the

benefit of one time settlement (OTS) scheme and further seeks a direction to the respondent/SBI to grant the benefit of OTS scheme to the petitioner in terms of the Circular of SBI dated 13.08.2019.

3. In the later Writ Petition i.e., W.P.No.22195 of 2021 the prayer made is for a declaration that respondent No.1 i.e., Debts Recovery Tribunal-I, Hyderabad would not have the jurisdiction to entertain an Original Application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (briefly "the 1993 Act" hereinafter), if respondent No.2 had first initiated proceedings under the SARFAESI Act.

4. Case of the petitioner is that it is a proprietary concern having its office and place of business at Bengaluru in the State of Karnataka.

5. Petitioner had availed a loan of Rs.5,00,00,000.00 from the second respondent i.e., SBI, Hoskote SME, Bengaluru Rural on 30.05.2015 for its real estate business. It is stated that the said amount was repayable in 36 monthly

installments but with a moratorium period of 12 months from the date of sanction of the loan. The moratorium period was subsequently extended for another 10 months and thereafter by another six months. Notwithstanding the same, petitioner was repaying the loan amount regularly.

6. Respondent/SBI had issued notice dated 08.01.2018 under Section 13 (2) of the SARFAESI Act whereby petitioner was informed that its loan account was declared as non-performing asset (NPA) with effect from 29.12.2017.

7. It is this notice dated 08.01.2018 issued by the respondent/SBI under Section 13 (2) of the SARFAESI Act which is under challenge in W.P.No.23067 of 2019. The challenge has been made on the ground that the said demand notice was bereft of any details. Respondent/SBI did not follow the Reserve Bank of India (RBI) guidelines regarding classification of loan account as NPA. As such, classification of the loan account of the petitioner as NPA is arbitrary and illegal. Respondent/SBI acted hastily in issuing the notice

under Section 13 (2) of the SARFAESI Act without waiting for the period of two years thirty days from the date of first default to expire. Therefore, respondent/SBI illegally and erroneously assumed jurisdiction under Section 13 (2) of the SARFAESI Act.

8. Thereafter respondent/SBI issued notice dated 16.04.2018 and again on 29.05.2018 under Section 13 (4) of the SARFAESI Act. Petitioner had paid an amount of Rs.25,00,000.00 by way of cheque on 15.02.2019 along with a proposal for OTS. Respondent/SBI encashed the cheque for the aforesaid amount whereafter the possession notices were subsequently withdrawn on 19.02.2019.

9. While representation of the petitioner dated 05.10.2019 for OTS was declined by respondent/SBI on 08.10.2019, subsequent representation of the petitioner dated 16.10.2019 for re-consideration of the OTS proposal was pending consideration.

10. In the meanwhile, petitioner came to know that e-auction notice was issued by respondent/SBI on 26.09.2019 proposing to auction sale the mortgaged movable and immovable assets (schedule properties) of the petitioner on 23.10.2019.

11. It is in such circumstances, the petitioner has been compelled to approach the High Court under Article 226 of the Constitution of India seeking the relief as indicated above.

12. According to the petitioner, during the pendency of W.P.No.23067 of 2019, it had come across a Circular of SBI dated 13.08.2019 providing for an OTS scheme (SBIOTS 2019). As per the said Circular various categories of NPAs were eligible for the OTS scheme. Last date for submission of application under the OTS scheme was 23.09.2019 and the last date for conveying sanction was 30.09.2019.

13. Petitioner has stated that it was incumbent upon the respondent/SBI to have informed all the borrowers about the

above scheme but no such intimation was given to the petitioner.

14. Without being informed about the above OTS scheme, petitioner paid a sum of Rs.25,00,000.00 by way of cheque towards part payment and it was encashed by the respondent/SBI. Later on when petitioner became aware of the scheme it submitted a representation on 16.11.2019 requesting the respondent/SBI to accept the OTS proposal of the petitioner as petitioner fulfilled all the conditions of SBIOTS 2019. However, respondent/SBI informed the petitioner on 22.11.2019 that it was not entitled to the benefit of OTS scheme.

15. In the above extent, petitioner has filed the second Writ Petition i.e., W.P.No.27138 of 2019 to declare the action of the respondent/SBI dated 22.11.2019 declining to grant OTS benefit to the petitioner as being arbitrary and illegal and for a direction to the respondent/SBI to grant the benefit of OTS scheme in terms of SBIOTS 2019.

16. Petitioner has contended that respondent/SBI though had initially instituted proceedings under the SARFAESI Act, it did not take the same to its logical end. Instead, it started another proceeding before the Debts Recovery Tribunal-1, Hyderabad under the 1993 Act by filing Original Application under Section 19 thereof which was registered as O.A.No.204 of 2020.

17. According to the petitioner, if a bank or a secured creditor first initiates proceedings under the 1993 Act and thereafter additionally initiates further proceedings under the SARFAESI Act, the same would be permissible. However, once proceedings under the SARFAESI Act is initiated, a secured creditor can take recourse to provisions of the 1993 Act only for the balance amount if outstanding dues still remain un-realized after sale of secured asset under the SARFAESI Act. This aspect of selection of remedies under the two enactments has not been decided by any Court.

18. Therefore, petitioner has filed W.P.No.22195 of 2021 for a declaration that it is not open to the Debts Recovery Tribunal-1, Hyderabad, to entertain O.A.No.204 of 2020 under the 1993 Act after first initiating proceedings under the SARFAESI Act.

STAND OF RESPONDENT/SBI:

19. Respondent/SBI has filed counter affidavit in both Writ Petition Nos. 23067 of 2019 and 27138 of 2019. At the outset respondent/SBI has stated that there is serious suppression of material facts by the petitioner which are at two stages-suppression of material facts prior to withdrawal of possession notices dated 16.04.2018 and 29.05.2018; and suppression of material facts subsequent to withdrawal of possession notices dated 16.04.2018 and 29.05.2018. Insofar the first stage is concerned, petitioner had approached this Court by filing W.P.No.22775 of 2018 challenging the possession notices dated 16.04.2018 and 29.05.2018. On 14.07.2018 this Court dismissed

W.P.No.22775 of 2018 on merit. In the meanwhile, petitioner had approached the Debts Recovery Tribunal-II, Hyderabad (Tribunal) under Section 17 of the SARFAESI Act challenging the possession notices dated 16.04.2018 and 29.05.2018 which was registered as S.A.No.275 of 2018. In the said securitization application, petitioner filed three Interlocutory Applications, one after the other, being I.A.No.3968 of 2018, I.A.No.6263 of 2018 and I.A.No.427 of 2019.

20. In the meanwhile, respondent/SBI had issued e-auction sale notice on 12.07.2018 proposing auction sale of schedule properties on 27.08.2018.

21. In I.A.No.3968 of 2018 petitioner sought for stay of auction during pendency of S.A.No.275 of 2018. Tribunal passed a conditional order on 24.08.2018 declining to interfere with the auction sale. But respondent/SBI was directed not to register the sale certificate in favour of the successful bidder in the auction sale subject to the petitioner depositing 30% of the total outstanding dues in two equal installments ---first installment of 15% to be deposited within

a week and the second installment of 15% was directed to be deposited within two weeks after deposit of the first installment directly with the respondent/SBI. It was clarified that if there was non-compliance to the above conditions, the conditional stay order would stand vacated and respondent/SBI would be at liberty to register the sale certificate in favour of the successful bidder which would however be subject to outcome of S.A.No.275 of 2018.

22. The aforesaid order dated 24.08.2018 came to be challenged by the petitioner before this Court by filing W.P.No.31209/2018. This Court by order dated 04.09.2018 while dismissing the Writ Petition, however granted liberty to the petitioner to approach the respondent/SBI to grant further time till 31.12.2018 for repayment of the entire dues.

23. Auction sale scheduled on 27.08.2018 did not materialize for want of bidders.

24. Respondent/SBI issued fresh e-auction sale notice dated 25.10.2018, scheduling auction of schedule properties

on 16.11.2018. This notice came to be challenged by the petitioner before this Court by filing W.P.No.39508 of 2018. Additionally, petitioner sought for a direction to the respondent/SBI to consider its representation for OTS. By order dated 05.11.2018 this Court dismissed the Writ Petition taking note of the fact that petitioner had already approached the Tribunal in S.A.No.275 of 2018 challenging the possession notices which was pending. Therefore, the proposed auction to sell the schedule property would also fall for adjudication in S.A.No.275 of 2018. In that view of the matter, the Writ Petition was dismissed leaving it open to the petitioner to approach the Tribunal.

25. However, this time also the auction sale scheduled on 16.11.2018 did not materialize for want of bidders.

26. Respondent/SBI issued another e-auction sale notice dated 10.12.2018 scheduling auction sale of schedule properties on 31.12.2018. This time petitioner filed I.A.No.6263 of 2018 in S.A.No.275 of 2018 for stay of auction scheduled on 31.12.2018. Tribunal passed a conditional

order on 28.12.2018, like the previous order dated 24.08.2018 passed in I.A.No.3968 of 2018.

27. Like all previous auctions, this time also the auction sale scheduled on 31.12.2018 did not fructify as there were no bidders.

28. However, as alluded to hereinabove, on 1.12.2018 petitioner paid Rs.25,00,000.00 by way of cheque which was encashed by the respondent/SBI on 15.02.2019.

29. Respondent/SBI issued fresh e-auction sale notice on 17.01.2019 proposing to hold auction sale of schedule properties on 04.02.2019. At that stage, petitioner filed I.A.No.427 of 2019 in S.A.No.275 of 2018 seeking stay of the auction scheduled on 04.02.2019. Like on the previous occasions, Tribunal passed a conditional stay order on 01.02.2019. While declining to stay the auction scheduled on 04.02.2019, respondent/SBI was directed not to register the sale certificate that may be issued in favour of the highest bidder in the auction, subject to petitioner depositing 30% of

the total outstanding dues in two equal installments---first installment of 15% to be deposited within two weeks and the second installment of 15% to be deposited within two weeks of deposit of the first installment directly with the respondent/SBI. It was clarified that in the event of non-compliance to any of the above conditions, respondent/SBI would be at liberty to register the sale certificate in favour of the highest bidder.

30. It is stated that petitioner has not complied with any of the conditions imposed by the Tribunal in the orders dated 24.08.2018 (passed in I.A.No.3968 of 2018, 28.12.2018 (passed in I.A.No.6263 of 2018) and 01.02.2019 (passed in I.A.No.427 of 2019).

31. None of these facts which are material and relevant have been mentioned by the petitioner in any of the three Writ Petitions.

32. Not content with the above suppression of material facts, it is contended that there is further suppression of

material facts subsequent to withdrawal of possession notices dated 16.04.2018 and 29.05.2018. These two possession notices were withdrawn by respondent/SBI on 19.02.2019. Thereafter fresh possession notice was issued to the petitioner on 22.02.2019 under Section 13 (4) of the SARFAESI Act whereafter respondent/SBI issued e-auction sale notice dated 29.05.2019 proposing to hold auction sale of schedule properties on 10.07.2019.

33. At that stage, petitioner filed W.P.No.13873 of 2019 challenging e-auction sale notice dated 29.05.2019. This Court by order dated 09.07.2019 observed that petitioner had already filed S.A.No.275 of 2018 before the Tribunal; further earlier Writ Petition filed by the petitioner was dismissed; therefore it was not open to the petitioner to come before the Court again. If the petitioner had any grievance, the same could be raised before the Tribunal in S.A.No.275 of 2018. Accordingly, the Writ Petition was dismissed.

34. Auction sale scheduled on 10.07.2019 could not be held as there were no bidders. Thereafter respondent/SBI issued

e-auction sale notice dated 11.07.2019 proposing auction sale on 31.07.2019 which also did not materialize. Finally, respondent/SBI issued e-auction sale notice dated 26.09.2019 scheduling auction sale on 23.10.2019 where after petitioner has filed the three Writ Petitions one after the other.

35. Answering respondent has also contested the averments made by the petitioner on merit. Respondent/SBI had sanctioned cash credit of Rs.4.90 crores to the petitioner on 17.06.2015. The same was secured by creating equitable mortgage of the schedule properties and personal guarantees of two persons viz. M. Prabhakar Rao and M. Sandhya. Petitioner defaulted in repayment of loan. Accordingly, the loan account was classified as NPA on 29.12.2017 where after demand notice dated 08.01.2018 was issued under Section 13 (2) of the SARFAESI Act. Outstanding dues of the petitioner as on 08.01.2018 was quantified at Rs.4,93,03,766.00 plus future interest, expenses, costs etc.

36. Petitioner had made a representation on 27.03.2018 under Section 13 (3A) of the SARFAESI Act but it was rejected by the respondent/SBI on 05.04.2018. No objection was raised by the petitioner as to classification of its loan account as NPA, more specifically with regard to the plea taken in the Writ Petition that without expiry of a period of two years and ninety days from the date of first default secured creditor would not have the jurisdiction to issue notice under Section 13 (2) of the SARFAESI Act. Petitioner had filed S.A.No.275 of 2018 before the Tribunal as well as W.P.Nos.22775 of 2018, 31208 of 2018, 39508 of 2018 and 13873 of 2019 before this Court. In none of these proceedings any plea was taken as regards classification of the loan account as NPA.

37. Thereafter answering respondent has narrated details of possession notices and consequential e-auction sale notices. Mention has also been made about the securitization application filed by the petitioner before the Tribunal and the related I.As. Answering respondent has also stated about the Writ Petitions filed by the petitioner before this High Court.

38. It is stated that on 15.02.2019 respondent/SBI received representation from the petitioner regarding settlement of loan account by way of OTS. However, the same was rejected on 19.02.2019. Petitioner made further representation for OTS on 05.10.2019 and 16.10.2019 both of which were rejected by respondent/SBI on 08.10.2019 and 18.10.2019 respectively.

39. Counter affidavit on identical line has been filed by the respondent/SBI in W.P.No.27138 of 2019 as well. In so far OTS proposal of the petitioner is concerned, it is stated that petitioner had offered to pay Rs.3.50 crores as the full and final OTS amount. This was rejected by the respondent/SBI as total dues as on that date was Rs.5,38,24,414.85 plus expenses.

40. Though petitioner has filed reply affidavit in W.P.No.23067 of 2019, petitioner has not denied the allegation of suppression of material facts made by the respondent/SBI.

41. From the pleadings and submissions, the following four issues arise for consideration:-

(i) Whether the notice dated 08.01.2018 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?

(ii) Whether petitioner is entitled to the benefit of the OTS scheme under SBIOTS 2019 and whether the High Court under Article 226 of the Constitution of India can issue a direction to the respondent/SBI to accept the OTS proposal of the petitioner?

(iii) Whether respondent/SBI would be precluded from taking steps under the 1993 Act after having invoked provisions of the SARFAESI Act?

(iv) Is there any suppression of material facts by the petitioner? And If so, whether the same would disentitle the petitioner to any relief from the Writ Court?

42. We now take up the above issues.

42.1. **ISSUE NO.I:-**

Whether the notice dated 08.01.2018 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?

42.2. Section 13 of the SARFAESI Act deals with enforcement of security interest. As per Sub-section (1), 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 the SARFAESI Act notwithstanding anything contained in Section 69 or Section 69-A of the Transfer of Property Act, 1882. Sub-section (2) says that 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 installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset (NPA), 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 would be entitled to take action under Sub-section (4).

42.3. Pausing here for a moment, what Sub-section (2) of Section 13 contemplates is that in the event of a borrower

defaulting in repayment and his account in respect of such debt is classified by the secured creditor as NPA, the secured creditor may require the borrower by notice in writing to discharge his liabilities in full to the secured creditor within sixty days of the notice. In other words, the stage at which the loan account is classified as NPA precedes issuance of a demand notice under Sub-section (2) of Section 13.

42.4. Proceeding further, we find that Sub-section (3) mentions that the demand notice under Sub-section (2) should provide 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.

42.5. This brings us to Sub-section (3-A). If the borrower makes any representation or raises any objection upon receipt of the demand notice, the secured creditor is under an obligation to consider such representation or objection. If the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he

shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

42.6. Before we deal with the proviso to Sub-section (3-A), we may mention that in the event of failure by the borrower to discharge his liability in full within the period specified in Sub-section (3-A), Sub-section (4) will come into the picture, where under the secured creditor may take recourse to one or more of the measures mentioned therein to recover the secured debt. The measures include taking over of possession of the secured assets, assignment or sale thereof for realizing the secured asset. 42.7. Reverting back to the proviso to Sub-section (3-A), we may mention that the legislative intent is quite manifest there under in as much as the proviso makes it very clear that the reasons so communicated under Sub-section (3-A) 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 jurisdictional Debts Recovery Tribunal

under Section 17 or to the Court of District Judge under Section 17-A. This position is made more specific by insertion of the Explanation below the proviso to Sub-section (1) of Section 17. Sub-section (1) of Section 17 provides a remedy to the aggrieved person including borrower to file application against any of the measures taken by the secured creditor under Sub-section (4) of Section 13. The Explanation however declares that the communication of 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 would not entitle the aggrieved person including the borrower to make an application to the jurisdictional Debts Recovery Tribunal under Sub-section (1) of Section 17.

43. This Court in **M/S NECX PRIVATE LIMITED Vs. UNION BANK OF INDIA (W.P.No.23643 of 2020) and KATEPALLI LAVANYA Vs. UNION BANK OF INDIA (W.P.No.20046 of 2021),** decided on 09.02.2022, analyzed

the provisions of Sub-section (2) of Section 13 of the SARFAESI Act and held that no cause of action within the meaning of the SARFAESI Act can be said to have been arisen at the stage of issuance of demand notice under Section 13 (2) of the SARFAESI Act or at the stage of rejection of representation/objection of the borrower to the issuance of demand notice by the secured creditor. It has been held as follows:

> *"25.From a conjoint reading of Sub-Sections (2), (3) and (3A) of Section 13 of the SARFAESI Act, it is seen that if upon receipt of a notice under Sub-Section (2) of Section 13, 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 the reasons for non-acceptance of the representation or objection to the borrower within a period of 15 days of receipt of such representation or objection. However, as per the proviso, 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 jurisdictional Debts Recovery Tribunal under Section 17 of the SARFAESI Act or to the Court of District Judge under Section 17A of the SARFAESI Act.*
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> *26. At this stage we may also mention that under Section 17 (1) of the SARFAESI Act, any person including a borrower who is aggrieved by any of the measures referred to in Sub-Section (4) of Section 13 taken by the secured creditor or by his authorized officer may make an application before the jurisdictional Debts Recovery Tribunal within 45 days from the date on which such measure has been taken. The Explanation to Sub-Section (1) clarifies that the communication of 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 concerned including the borrower to make an application to the jurisdictional*

Debts Recovery Tribunal under Sub-Section (1) of Section 17 of the SARFAESI Act.

27. Reverting back to Sub-Section (3A) of Section 13 of the SARFAESI Act, this Court in Smt. Gudupati Laxmi Devi Vs. Canara Bank, W.P.No.28291 of 2021, decided on 10.11.2021, held as follows:

5. A careful analysis of sub-section (3-A) of Section 13 of the SARFAESI Act would go to show that upon receipt of notice issued by the secured creditor under sub-section (2), the borrower has a right to make a representation, or raise any objection, as to the notice so issued. If the borrower exercises that right, then, it is incumbent upon the secured creditor to consider such representation or objection. The use of the word 'shall' in sub section (3-A) is indicative of the legislative intent of considering such representation or objection, by the secured creditor mandatory. If the secured creditor is not satisfied with the representation or objection, and finds it to be unacceptable, or untenable, he shall communicate such decision within fifteen days along with the reasons to the borrower.

6. While the statute is silent as to what happens in case of a positive decision by the secured creditor on consideration of such representation or objection, it is axiomatic that once the decision is taken either way, the same has to be communicated to the borrower, notwithstanding the fact that it would not give rise to a cause of action for moving an application either under Section 17 or under Section 17(A). But the fact remains that it would be obligatory on the part of the secured creditor to consider the representation or objection of the borrower, and then take a conscious decision one way or the other, which should be communicated to the borrower within fifteen days of receipt of such representation or objection.

28. Supreme Court in ***Mardia Chemicals (supra) and in ITC Limited Vs. Blue Coast Hotels Limited*** *stressed upon the need of the secured creditor to consider the representation / objection of the borrower and to communicate the decision taken thereon within the stipulated period. The secured creditor has to act in a fair and reasonable manner.*

29. In the instant case, respondent No.1 issued the impugned notice under Section 13 (2) of the SARFAESI Act on 16.11.2020. Petitioner raised objection to such notice vide letter dated 24.11.2020 under Section 13 (3A) of the SARFAESI Act, which was replied to by the authorized officer of the first respondent on 04.12.2020.

30. 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.

31. This aspect was highlighted by the Supreme Court in ***Punjab National Bank Vs. Imperial Gift House.*** *In that case, the High Court had interfered with the notice issued under Section 13 (2) of the SARFAESI Act and quashed the proceedings initiated by the Bank. Setting aside the order of the High Court, Supreme Court held that the High Court was not justified in entertaining the writ petition before any further action could be taken by the Bank under Section 13 (4) of the SARFAESI Act.*

32. That being the position, we are of the view that filing of this writ petition is misconceived. Consequently Writ Petition No.23643 of 2020 is dismissed. However, dismissal of the writ petition would not foreclose the remedies available to the petitioner under the law as and when the cause of action arises".

44. This decision was followed in the subsequent judgment dated 03.03.2022 passed in **M/S. TANDRA IMPEX PRIVATE LIMITED Vs. PUNJAB NATIONAL BANK (W.P.No.23268 of 2020, dated 03.03.2022).** After analyzing the provisions of Section 13 (2) of the SARFAESI Act and the decision in W.P.Nos.23643 of 2020 and 20046 of 2021, this Court held as follows:

"From the above, it is quite clear that the legislative intent is to ensure that there should be no judicial or quasi judicial interdiction at the stage of issuance of demand notice under Section 13 (2) of the SARFAESI Act. This is so because of the very object and reasons behind enactment of the SARFAESI Act.

* * *

We have already noticed above that classification of loan account by the secured creditor is at a stage prior to issuance of the demand notice under Section 13(2) of the SARFAESI Act. If at the stage of issuance of demand notice, interference by the Court and Tribunal is not to be made, we fail to understand as to how such intervention can be made at a stage prior to issuance of demand notice under Section 13(2) of the SARFAESI Act".

45. Therefore, answer to issue No.1 is very clear: 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.

46. Before we proceed to the next issue, we may also mention that classification of a defaulter's loan account as

NPA precedes issuance of demand notice under Section 13 (2) of the SARFAESI Act. As held in **M/S. TANDRA IMPEX PRIVATE LIMITED (supra)**, if a demand notice under Section 13 (2) of the SARFAESI Act does not give rise to any actionable claim or cause of action within the meaning of the SARFAESI Act, we fail to understand as to how action of the secured creditor in classifying the loan account as NPA can be challenged at this stage. The challenge thereto would also have to stand deferred till the stage of Section 13 (4) of the SARFAESI Act is reached.

47. **ISSUE NO.2:-**

Whether the petitioner is entitled to the benefit of the OTS scheme under SBIOTS 2019 and whether the High Court under Article 226 of the Constitution of India can issue a direction to the respondent/SBI to accept the OTS proposal of the petitioner?

48. This issue is also no longer *res-integra* as the Supreme Court in **BIJNOR URBAN CO-OPERATIVE BANK LIMITED, BIJNOR Vs. MEENAL AGARWAL, Civil Appeal No.7411 of 2021,** decided on 15.12.2021, has held that no borrower can as a matter of right pray for grant of benefit of

OTS scheme. That apart, no Writ of Mandamus can be issued under Article 226 of the Constitution of India directing a bank or financial institution to positively grant the benefit of OTS scheme to a borrower. Such decision should be left to the commercial wisdom of the bank or financial institution. It has been held as follows:

> *"9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs.100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realized by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.*
>
> *10. If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan*

accounts and those accounts are regularized. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.

11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

12. In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant-Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside".

49. The above being the position, this issue is decided against the petitioner.

50. **ISSUE NO.3:-**

Whether respondent/SBI would be precluded from taking steps under the 1993 Act after having invoked provisions of the SARFAESI Act?

51. Insofar this issue is concerned, petitioner had filed an I.A.in O.A.No.204 of 2020 filed by the respondent/SBI before the Debts Recovery Tribunal-I at Hyderabad contending that respondent/SBI having invoked provisions of the SARFAESI Act would be estopped from proceeding further by filing Original Application under Section 19 of the 1993 Act. The I.A. was registered as I.A.No.263 of 2021. By order dated 27.08.2021 Debts Recovery Tribunal-I, Hyderabad held that the said I.A was devoid of merit and was accordingly dismissed. Referring to various Supreme Court decisions, it was held that both the SARFAESI Act and the 1993 Act are complimentary to each other and parallel proceedings can go on under both the said acts. In other words, proceedings under the two enactments can be pursued side by side. It was held that there is no embargo in either of the two enactments restraining the secured creditor from pursuing both the remedies either simultaneously or one after the other. Any reading of such an embargo would frustrate the very object and purport of the two enactments. If sale of the

schedule property under the SARFAESI Act succeeds and any amount is recovered, then the jurisdictional Debts Recovery Tribunal or the recovery officer can be approached and the amount recoverable under the recovery certificate issued following the proceedings under the 1993 Act would accordingly be modified to operate only for the balance amount of the debt remaining outstanding. While dismissing the I.A., Debts Recovery Tribunal-I, Hyderabad held that the petitioner was trying to protract the litigation.

52. Learned counsel for the petitioner has referred to Sub-Section (10) of Section 13 of the SARFAESI Act and submits that where the dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed before the Debts Recovery Tribunal having jurisdiction or a competent Court, as the case may be, for recovery of the balance amount from the borrower. On the strength of this provision he submits that once a secured creditor invokes provisions of the SARFAESI

Act, till such proceedings are taken to its logical conclusion i.e., sale of the secured asset through auction sale, it would be open to the secured creditor to file application under Section 19 of the 1993 Act which can only be filed for recovery of the balance amount i.e., amount still due to be paid after sale of the secured asset in auction sale. He has also referred to Section 35 of the SARFAESI Act which shows that provisions of the SARFAESI Act would have over-riding effect over other laws, which provision has to be read with Section 37 of the SARFAESI Act which allows application of other laws including the 1993 Act in addition to the SARFAESI Act. To support his contentions learned counsel for the petitioner has placed reliance on the following two decisions:

(1) **MAHARASHTRA TUBES LIMITED VS. STATE INDUSTRIAL & INVESTMENT CORPORATION OF MAHARASHTRA LIMITED**[1]

(2) **RANVIR DEWAN VS. RASHMI KHANNA**[2]

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[1] **(1993) 2 SCC 144**
[2] **AIR 2018 SC 62**

53. We are afraid we can accept such contention of the petitioner. As a matter of fact, this issue is also no longer res-integra and therefore, we are in agreement with the views expressed by the Debts Recovery Tribunal-I, Hyderabad, dated 27.08.2021 rejecting I.A.No.236 of 2021 filed by the petitioner. Incidentally, this Order is not under impugnment in any of the proceedings.

54. In **TRANSCORE VS. UNION OF INDIA**[3], the question which fell for consideration before the Supreme Court was whether withdrawal of Original Application filed under Section 19 (1) of the 1993 Act was a condition precedent for taking recourse to the SARFAESI Act. In other words, whether the secured creditor having elected to seek its remedy in terms of the 1993 Act would still be entitled to invoke provisions of the SARFAESI Act for realizing the outstanding dues without withdrawing or abandoning the Original Application filed under Section 19 of the 1993 Act. After a threadbare analysis of both the enactments, Supreme

[3] (2008) 1 SCC 125

Court held that it would be wrong to say that the two enactments provide parallel remedies. Remedy under the 1993 Act falls short as compared to the SARFAESI Act, which refers to acquisition and assignment of the receivables to the asset reconstruction company and which authorizes banks and financial institutions to take possession over the management which is not there in the 1993 Act. It is for this reason that the SARFAESI Act is treated as an additional remedy which is not inconsistent with the 1993 Act. Examining the *doctrine of election*, Supreme Court held that since the SARFAESI Act is an additional remedy to the 1993 Act, together they would constitute one remedy. Therefore, the *doctrine of election* would not apply. It was held as follows:-

> *"In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d Vol. 25, page 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the Debts Recovery Tribunal Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Equity (Thirty-first Edition, page 119), the doctrine of election of remedies is applicable only*

when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application".

55. This issue was also examined by the Supreme Court in **MATHEW VARGHESE Vs. M. AMRITHA KUMAR**[4], whereafter it was answered that simultaneous proceedings under the two enactments can go on. It was held as follows:

"45. A close reading of Section 37 shows that the provisions of the SARFAESI Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act. Section 35 of the SARFAESI Act states that the provisions of the SARFAESI Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of the RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely the SARFAESI Act and the RDDB Act, would be complimentary to each other. In this context, reliance can be placed upon the decision of Transcore V. Union of India [(2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116]. In para 64 it is stated as under after referring to Section 37 of the SARFAESI Act: (SCC p.162)

64. ... According to American Jurisprudence, 2d, Vol.25, p.652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the Debts Recovery Tribunal Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p.119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.

46. A reading of Section 37 discloses that the application of the SARFAESI Act will be in addition to and not in derogation of the

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[4] **(2014) 5 SCC 610**

provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws are not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force".

56. Again in **MD. FROZEN FOODS EXPORTS PRIVATE LIMITED Vs. HERO FINCORP LIMITED**[5], Supreme Court after analyzing the decisions in **Transcore (3 supra)** and **Mathew Varghese (4 supra)** *vis-a-vis* Sections 35 and 37 of the SARFAESI Act concluded that the issue is no more *res-integra*. The aforesaid two acts i.e., the SARFAESI Act and the 1993 Act are complimentary to each other and it is not a case of election of remedy.

57. A Division Bench of the then High Court of Andhra Pradesh in **M/S. SWETHA EXPORTS VS. BANK OF INDIA**[6] also dwelled on this issue and held as follows:

"29. It is not as if the bank/financial institution is precluded from instituting proceedings either under the SARFAESI Act or the

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[5] **(2017) 16 SCC 741**
[6] **(2017) SCC Online Hyderabad 326**

RDDB Act merely because they had invoked the provisions of the other enactment earlier. There are three elements to the doctrine of election, namely, existence of two or more remedies; inconsistencies between such remedies; and a choice of one of them. If any one of the three elements does not exist, the doctrine will not apply. The doctrine of election of remedies is applicable only when there are two or more co-existent remedies, available to the litigants at the time of election, which are repugnant and inconsistent. As there is neither repugnancy nor inconsistency between the two remedies under the SARFAESI Act and the RDDB Act, the doctrine of election has no application. (Transcore1; Snells Principles of Equity (31st Edn., p.119).

30. The RDDB and the SARFAESI Acts do not provide parallel remedies. The SARFAESI Act is treated as an additional remedy (Section 37) which is not inconsistent with the RDDB Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. (Transcore1). As the remedy under the SARFAESI Act, in view of Section 37 thereof, is an additional remedy, it is open to the bank/financial institution to simultaneously take recourse to both the provisions of the RDDB and the SARFAESI Act, and it is not obligatory for them to elect either one or the two remedies. Further, Section 13 (10) of the SARFAESI Act enables the secured creditor, in cases where the dues are not fully satisfied with the sale proceeds of the secured asset, to file an application to the Debts Recovery Tribunal in the form and manner prescribed. It is evident therefore that the secured creditor can invoke either of the two enactments i.e., the SARFAESI Act or the RDDB Act or both".

58. As a matter of fact, the question before the Court was whether a secured creditor would be disabled from continuing to take action under the SARFAESI Act merely because it had later on filed an application under Section 19 (1) of the 1993 Act for recovery of its dues. As noticed above, the question was answered in the negative by the High Court by holding that nothing prevents a bank or a financial institution from continuing with the proceedings initiated by

it earlier under the SARFAESI Act even if it has subsequently invoked the jurisdiction of the Debts Recovery Tribunal under Section 19 (1) of the 1993 Act. Such a contention of bar of jurisdiction under the SARFAESI Act merely because the secured creditor has instituted proceedings under the 1993 Act after having initiated proceedings under the SARFAESI Act earlier does not merit acceptance.

59. Therefore, from the above it is crystal clear that the contention urged by learned counsel for the petitioner is without any substance. In so far the two decisions are concerned in **Maharastra Tubes Limited (1 supra)**, the question was in a case where an industrial concern makes any default in repayment of any loan or advance or otherwise fails to meet its obligations with the said financial corporation under any agreement, can the latter take recourse to Sections 29 and 31 of the Financial Corporations Act, 1951 notwithstanding the bar of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985? As seen from the question framed, the issue in **Maharastra**

Tubes Limited (1 supra) was completely different from the one which we are dealing with in the present proceeding. In that case it was held that both the enactments were subject statutes dealing with different situations. Therefore, in the case of sick industrial undertakings provisions of the 1985 Act would ordinarily prevail and govern.

59.1. Likewise, in **RANVIR DEWAN (2 supra)** provisions of Hindu Succession Act, 1956 were in issue. The dispute was essentially between mother, son and daughter relating to a residential house in Delhi.

60. We are afraid neither of the above two decisions can be made applicable to the facts of the present case.

61. However, in **S. VANITHA VS. DEPUTY COMMISSIONER**[7] Supreme Court observed that principles of statutory interpretation dictate that in the event of two special acts containing non-obstante clauses, ordinarily the later law will prevail. However, in the event of a conflict

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[7] **(2020) SCC Online SC 1023**

between two special acts the dominant purpose of both the statutes would have to be analyzed to ascertain which one should prevail over the other. Primary effort of the interpreter must be to harmonize, not excise.

62. Insofar the 1993 Act and the SARFAESI Act are concerned, there is no doubt that both are special enactments. However, as has been held by the Supreme Court, both the enactments are complimentary to each other. There is no question of any conflict between the two. Together they provide one remedy to the secured creditor. It is immaterial as to which remedy the secured creditor opts first. Both can proceed simultaneously or either of the remedies can proceed after the other enactment is invoked.

63. In the light of the above discussion, issue No.3 is answered against the petitioner.

64. This brings us to the fourth issue i.e.,

ISSUE NO.4:-

Is there any suppression of material facts by the petitioner? And if so, whether the same would disentitle the petitioner to any relief from the Writ Court?

65. We have already noted that there is serious suppression of material facts by the petitioner. Petitioner has not mentioned about filing of S.A.No.275 of 2018 as well as I.A.Nos.3968 of 2018, 6263 of 2018 and 427 of 2019 in the said securitization application. Petitioner has also not mentioned about the conditional stay orders passed by the Tribunal in the said I.As on 24.08.2018, 28.12.2018 and 01.02.2019 as well as the fact that it has not complied with the conditions imposed by the Tribunal in those orders. Further, petitioner has not mentioned about filing of W.P.Nos.22775 of 2018, 31208 of 2018, 39508 of 2018 and 13873 of 2019 which were all dismissed by this Court.

66. Relief under Article 226 is discretionary. It is therefore fundamental that a litigant approaching the Court under Article 226 of the Constitution of India should come with clean hands and disclose all material facts. Non disclosure

or suppression of material facts would disentitle a litigant from any relief by the Court. In **HARI NARAIN Vs. BADRI DAS**[8], Supreme Court emphasized that in making material statements care must be taken not to make any statements which are in-accurate, untrue or misleading.

67. Supreme Court in **PRESTIGE LIGHTS LIMITED Vs. STATE BANK OF INDIA**[9], held that a prerogative writ remedy is not available as a matter of course. In exercising its extra-ordinary powers, a writ Court would need to bear in mind the conduct of the party invoking such jurisdiction. If the applicant does not disclose full facts or suppresses material facts or is otherwise guilt of misleading the Court, the Court may dismiss the action without adjudicating the matter.

68. In **K.D.SHARMA Vs. STEEL AUTHORITY OF INDIA LIMITED**[10], Supreme Court held as follows:

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[8] (1963) AIR SC 1558
[9] (2007) 8 SCC 449
[10] (2008) 12 SCC 481

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35.The underlying object has been succincity stated by Scrutton, L.J., in the leading case of R.v.Kensington Income Tax Commrs.-[1917] 1 K.B.486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words : (KB p.514)

"...it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts---it says facts, not law. He must not misstate the law if he can help it---the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs. (supra), Viscount Reading, C.J. observed : (KB pp.495-96)

"...Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own

protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commrs. (supra) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court".

69. This aspect was also discussed in **RAMJAS FOUNDATION Vs. UNION OF INDIA**[11], whereafter Supreme Court held that if a litigant does not come to the Court with clean hands, he is not entitled to be heard. It was held as follows:

> *"The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case".*

70. Supreme Court in **BHASKAR LAXMAN JADHAV VS. KARAMVEER KAKASAHEB WAGH EDUCATION SOCIETY**[12] has clarified that it is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court.

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[11] **(2010) 14 SCC 38**
[12] **(2013) 11 SCC 531**

71. Finally, in **K. JAYARAM Vs. BANGALORE DEVELOPMENT AUTHORITY**[13], Supreme Court has held as follows:

> *"12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced".*
>
> * * *
>
> *"17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief".*

72. Thus, it is evident that there is blatant suppression of material facts by the petitioner for which he is not entitled to any relief from the Court though we have adjudicated the issues raised by it. Accordingly, this question is also answered against the petitioner.

73. Having answered the issues as framed, we would like to place on record our dis-pleasure in the manner in which

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[13] **MANU/SC/1199/2021**

petitioner has filed one writ petition after the other notwithstanding the fact that earlier writ petitions were dismissed and that he has availed the statutory remedy under Section 17 of the SARFAESI Act. That apart, the way the petitioner is filing one writ petition after the other raising new grounds in each writ petition, as if by installments, cannot be appreciated. This is nothing but an attempt to multiply proceedings and create a web around the secured creditor so that it becomes difficult to extricate there from and recover the outstanding dues. In **K.JAYARAM (13 supra)** Supreme Court also held as follows:

> *"16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law".*

74. Thus on a thorough consideration of all aspects of the matter, we are of the unhesitant view that all the three writ

petitions are devoid of merit; rather filing of the writ petitions is a part of a well orchestrated plan hatched by the petitioner to obfuscate the entire matter relating to recovery of outstanding dues and thereby prevent the secured creditor from realizing the outstanding dues by protracting the litigation.

75. Consequently, all the writ petitions are dismissed. However, having regard to what we have observed above, cost of Rs.50,000/- is imposed on the petitioner to be deposited to the Telangana State Legal Services Authority, Hyderabad within 30 days from today.

MEMORANDUM OF COSTS

W.P.Nos.23067, 27138 of 2019 & 22195 of 2021

	Rs.	Ps.
Cost Quantified by the Hon'ble Court (That the petitioner is directed to pay costs of Rs.50,000/- (Rupees Fifty thousand only) to be paid to the Secretary, Telangana State Legal Services Authority, Hyderabad within 30 days from today.	50,000	00
TOTAL	**50,000**	**00**

SD/-T.TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to THE HON'BLE SRI JUSTICE UJJAL BHUYAN
(For His Lordship's Kind Perusal)

AND

One fair copy to THE HON'BLE SMT JUSTICE P. MADHAVI DEVI
(For Her Lordship's Kind Perusal)

To,

1. The Authorized Officer, State Bank of India, Hoskote SME, Old madras Road, Bangalore rural- 562 114
2. The Branch Manager, State Bank of India, Hoskote SME, Old madras Road, Bangalore rural- 562 114
3. The Debts Recovery Tribunal - I, Hyderabad, Telangana State
4. 11 L.R. Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
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7. One CC to Smt Ch. Vedavani, Advocate [OPUC]
8. One CC to M/s. Pearl Law Associates, Advocate [OPUC]
9. One CC to Sri Minnikanti Laxmiprasad, Advocate [OPUC]
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11. One Spare Copy

CHR

HIGH COURT

DATED:07/06/2022

COMMON ORDER

W.P.Nos.23067, 27138 of 2019

And

W.P.No.22195 of 2021

DISMISSING THE WRIT PETITIONS WITH COSTS