

Bombay High Court

Mr. Nageshwar Rao S/O Rajshekhar ... vs Collector, Collector Office ... on 17 March, 2023

Bench: Vinay Joshi, Vrushali V. Joshi

1

4wp762.22.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 762/2022

1. Mr. Nageshwar Rao S/o. Rajshekhar  
Rao Neti, aged 64 yrs., Occ. Rtd. Scientist,  
R/o. Swapnil Trisha Apartment (Navketan  
Co-operative Housing Society), Plot No.126-A,  
Buty Layout, Laxmi Nagar, Nagpur-440022.
2. Mrs. Sumita Rao W/o. Nageshwar Rao Neti,  
Aged 56 yrs., Occ. Service, R/o. Swapnil  
Trisha Apartment (Navketan Co-operative  
Housing Society), Plot No.126-A,  
Buty Layout, Laxmi Nagar, Nagpur-440022.
3. Mrs. Vandana Bhaskar Bajirao,  
aged 50 yrs., Occ. Service, R/o. Swapnil  
Trisha Apartment (Navketan Co-operative  
Housing Society), Plot No.126-A,  
Buty Layout, Laxmi Nagar, Nagpur-440022.
4. Mrs. Sujata w/o. Suhaas Kulkarni,  
aged 57 yrs., Occ. House Wife,  
R/o. Swapnil Trisha Apartment (Navketan  
Co-operative Housing Society), Plot No.126-A,  
Buty Layout, Laxmi Nagar, Nagpur-440022.
5. Mr. Yogesh Manohar Lokhande,  
aged 45 yrs., Occ. Pvt Job, R/o. Swapnil  
Trisha Apartment (Navketan Co-operative  
Housing Society), Plot No.126-A,  
Buty Layout, Laxmi Nagar, Nagpur-440022.
6. Mr. Kamlesh Kishanchand Arya,  
about 38 yrs., Occ. Doctor,  
R/o. Swapnil Trisha Apartment (Navketan  
Co-operative Housing Society), Plot No.126-A,  
Buty Layout, Laxmi Nagar, Nagpur-440022.

PETITIONERS

VERSUS

2

4wp762.22.odt

1. Collector, Collector Office,  
Civil Lines, Nagpur.

2. Additional Collector, Collector Office,  
Civil Lines, Nagpur.
3. Tehsildar, Nagpur having office  
At Akashwani Chowk, Civil Lines,  
Nagpur.
4. State Bank of India, through General  
Manager/authorized officer, M.S.E.  
Hingana Branch, Plot No.X-43, MIDC  
Area, Nagpur-440016.
5. M/s. Swapnil Promoters and  
Developers, Pvt Ltd, through authorized  
person Mr. Vivek Dattatray Deshpande,  
having office at 363, Swapnil Swaranand  
Apartment, 1-N.F.R. Mac Azad Road,  
Nagpur.

RESPONDENTS

-----  
Mr. S.P. Bhandarkar, Advocate for petitioners.  
Mr. H. D. Dubey, Additional Public Prosecutor for respondent Nos. 1 to  
3.  
Mr. M. Anilkumar, Advocate for respondent No. 4.  
Mr. U.M. Aurangabadkar, Advocate for respondent No.5.

CORAM

: VINAY JOSHI AND  
MRS.VRUSHALI V. JOSHI JJ.

JUDGMENT RESERVED ON  
JUDGMENT PRONOUNCED ON

: 18.11.2022  
: 17.03.2023

JUDGMENT (PER VINAY JOSHI, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for respective parties.

3 4wp762.22.odt

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek to challenge the impugned communication dated 07.09.2022 issued by respondent No. 3 Tehsildar and Executive Magistrate in pursuance of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act').

3. The facts leading to the filing of the petition are as under:-

4. Petitioner Nos. 1 to 5 are flat purchasers, whilst respondent No. 5 M/s. Swapnil Promoters and Developers Pvt. Ltd. is builder who has developed and constructed apartment in the name and style as Swapnil Trisha Apartment (Navketan Co-operative Housing Society), situated at Plot No. 126-A, Buty Layout, Laxmi Nagar, Nagpur. Petitioners have purchased respective residential flat from respondent No. 5 Developer under registered agreement to sell and power of attorney. Some of the petitioners have availed loan for purchasing respective flats. On the basis of registered agreements, revenue entries have been taken as well as the electric meters were obtained in their name. Learned counsel for petitioners would submit that the petitioners are bonafide purchasers for value and possession was delivered to them on payment of valuable consideration.

4 4wp762.22.odt

5. It is petitioners' case that that the impugned communication has been pasted on the respective flats by the respondent No. 3 Tehsildar intending to take possession of subject flats. The said order was passed in pursuance of Section 14 of the SARFAESI Act, on the ground that respondent No. 5 Builder has failed to pay the outstanding loan availed from respondent No. 4 Creditor Bank. According to the petitioners, the authority has not followed the prescribed procedure for taking possession in terms of Section 14 of the SARFAESI Act. Moreover, the order has been passed in violation of the principles of natural justice, as the petitioners have not been heard.

6. Respondent No. 4 Creditor Bank has resisted the petition vide its reply dated 03.11.2022. At the inception, objection has been raised to the maintainability of the writ petition on the premise that equally efficacious remedy under Section 17 of the SARFAESI Act is available. It is the case of respondent No. 4 Creditor Bank that, respondent No. 5 builder/borrower availed loan/credit facility from the Bank. The loan was secured by executing equatable mortgage dated on 30.03.2015. Secured interest within the meaning of Section 2(zf) of the SARFAESI Act has been created in respect of the subject property, which became secured assets within the meaning of Section 2(zc), in favour of secured creditor (the Bank) within the meaning of Section 2(zd). It is the contention of Bank that alleged agreements are not binding on the 5 4wp762.22.odt secured creditor, as those have been executed during the subsistence of mortgage.

7. Respondent No. 4 Bank contended that irrespective of sufficient opportunity, the loan account of borrower was not regular and became a non-performing asset ('NPA'). Since the borrower committed default, the Bank has issued notice dated 30.01.2017 in terms of Section 13(2) of the SARFAESI Act, directing borrower to discharge the liability within the stipulated period of 60 days. In response, though the borrower has paid certain installments, however there was failure on their part to comply demand notice. The Bank has taken symbolic possession of the secured asset on 30.01.2018. The borrower has approached to the Debt Recovery Tribunal ('DRT'), in which he was directed to deposit certain sum in equal installments. The parties have arrived at settlement, however as per terms recorded before the DRT, the borrower failed to pay.

8. The Bank has approached to the District Magistrate in terms of Section 14 of the SARFAESI Act for taking possession. On verifying the claim of secured creditor, the District Magistrate has passed order dated 08.08.2022 directing to take possession of secured assets in terms of Section 14(2) of

the SARFAESI Act. The impugned communication dated 07.09.2022 is mere an intimation that the possession shall be taken in pursuance of the order of the District Magistrate dated 6 4wp762.22.odt 08.08.2022. It is also contended that the petition is not tenable as it involves disputed question of facts. Moreover, the Bank being first Mortgagee, all subsequent transfers are not sustainable in the eyes of law.

9. Respondent No. 5 borrower also filed reply-affidavit. It is contended that the respondent No. 5 has availed credit facility from respondent No. 4 Bank in the year 2015. The credit facility was to the tune of Rs. 17 crores. In order to secure the interest of creditor, equitable mortgage has been created in favour of Bank. It is borrower's contention that due to unforeseen circumstances, the account ran into NPA. The borrower gave one time settlement proposal, however it was not considered. The borrower has made substantial payment and willing to settle the matter finally. It is stated that impugned communication does not spell out the details of the property in respect of which the action is contemplated. Though flats have been mortgaged, however for sale of some of flats, the Bank has issued no objection certificate.

10. The learned counsel appearing for petitioners on the point of maintainability submitted that by virtue of Section 14(3) of the SARFAESI Act, the act of the District Magistrate done in pursuance of Section 14 of the SARFAESI Act cannot be called in question in any Court or before any authority and therefore, the petitioners have no 7 4wp762.22.odt alternate remedy. It is argued that the borrower has already sold and created interest in their favour by way of valid agreement, therefore, without hearing the petitioners, action cannot be initiated. It is argued that the remedy of applying under Section 17 of the SARFAESI Act, is available to the borrower, Guarantor or mortgagor, which the petitioners cannot avail. It is submitted that the term "any person" employed in Section 17 must have a proximity or nexus with the transaction and therefore, the petitioners cannot fall within the sweep of the term of "any person" to avail remedy of appeal. It is petitioners' contention that they are aggrieved by the action initiated under Section 14 of the SARFAESI Act and therefore, the remedy under Section 17 cannot be resorted which is for challenging the action under Section 13(4) of the SARFAESI Act. To support said contention, the petitioners have relied on various decisions.

11. Moreover, it has been submitted that the petitioners have not been heard before passing the impugned order and thus, there is blatant violation of the principles of natural justice. It is argued that notice under Section 13(2) of the SARFAESI Act, was issued by the Bank long back in the year 2017, however there was compromise in between the secured creditor and borrower, but the terms of compromise have not been acted upon. It is submitted that the remedy under Section 17 of the SARFAESI Act is available only after losing possession. According 8 4wp762.22.odt to the petitioners, they became owner of the property by valid registered instrument which created independent right in their favour, thus, the impugned action is not sustainable in the eyes of law.

12. The learned counsel appearing for the Creditor Bank strongly resisted the maintainability of the petition. It is submitted that the petitioners are not the owner of the subject flats, as merely an agreement has been executed in between them. It is submitted that though Bank has given no objection to sell some of the flats, however it was with a rider that the sale proceeds shall be credited to the Bank which the borrower did not. The builder/borrower has secured loan by mortgaging

subject property on 30.03.2015 i.e. much prior to the execution of agreements to sell. It is submitted that the petitioners have alternate remedy under Section 17 of the SARFAESI Act, as the term "any person" is of wide import which encompasses all aggrieved persons. According to the respondent, hearing of the interested person is not contemplated before the District Magistrate while initiating action under Section 14(2) of the SARFAESI Act. The learned counsel appearing for the respondent Bank also relied on various decisions to substantiate his stand.

13. There is no dispute that the borrower has created mortgage in the year 2015 and by mortgaging several flats, a secured interest has been created in respect of subject flats. The record indicates that 9 4wp762.22.odt agreement to sell of Flat No. 102 has been executed in favour of petitioner Nos 1 and 2, Flat No. 103 in favour of petitioner No.3, Flat No. 703 in favour of petitioner No.4 and flat No. 603 in favour of petitioner No.5 of which collateral security has been created by the equitable mortgage.

14. It is petitioners' contention that, in terms of Section 14(3) of the SARFAESI Act, the order passed by the District Magistrate done in pursuance of Section 14 SARFAESI Act cannot be questioned in any Court or before any authority, therefore petitioners being remedy-less, the writ is available. For the sake of convenience, the relevant provision is extracted herein below:-

"Section 14(1).....

(2).....

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate (any officer authorized by the Chief Metropolitan Magistrate or District Magistrate) done in pursuance of this section shall be called in question in any Court or before any authority."

Section 17 of the SARFAESI Act provides a remedy of filing an application to the DRT by any aggrieved person regarding the measures taken in pursuance of Section 13(4) of the SARFAESI Act. The term "Court" or "authority" cannot be equated with the "Debts Recovery Tribunal" within the meaning of Section 2(i) of the SARFAESI Act which is constituted in terms of Section 3(1) of the Recovery of Debts Due to Banks and Financial Institutions Act. Essentially challenge to the steps 10 4wp762.22.odt taken under Section 14 of the SARFAESI Act flows from the action taken under Section 13(4) of the SARFAESI Act and therefore, the remedy is under Section 17 of the SARFAESI Act. In view of that, the submission in this regard is not acceptable.

15. The learned counsel appearing for petitioners by placing relying on the decision of the Supreme Court in case of Standard Chartered Bank Vs. V. Noble Kumar and others with connected matter, (2013) 9 SCC 620 would submit that the remedy under Section 17 of the SARFAESI Act is available to the borrower, only after losing possession of secured assets. In the said decision, it is observed that the secured creditor Bank can directly approach to the District Magistrate for taking possession. It is observed that the borrower can avail remedy of application under Section 17 of the SARFAESI Act, only after losing possession of secured asset. Section 14 of the SARFAESI Act lays a mechanism

which provides safeguard to secure the interest of the borrower. In case at hand, the petitioners are not the borrower to apply under Section 17 of the SARFAESI Act after losing possession, but interest has been created in their favour by way of agreement, therefore being distinct facts, the said decision would not apply to the facts of the case.

16. The petitioners have relied on the decision of the Supreme Court in case of Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others, (2014) 6 SCC 1, which all together stands on different footing. The Supreme Court has considered the rights of a lessee of borrower in possession, of secured asset. The lease granted by the borrower has been classified into three classes. It has been ruled that if the lease is created prior to the mortgage creating secured asset, and a lease created after mortgage, but prior to the receipt of notice under Section 13(2) of the SARFAESI Act, then possession of lessee cannot be delivered to secure creditor until lease has been validly determined. In said context, it has been observed that there is no remedy available to lessee of borrower under Section 17 of the SARFAESI Act. The facts in hand are all together different as it is not a case that the petitioners are lessee of borrower, but rights have been created during subsistence of valid mortgage.

17. The petitioners have relied on the decision of this Court in case of Ravi Commercial Urban Co-operative Bank Limited, Nagpur Vs. the learned District Magistrate, Nagpur District, Nagpur and others (Criminal Writ Petition No. 595/2011 and Criminal Application [APPW] No. 146/2014, dated 05.08.2014), wherein a secured creditor has applied to this Court against the borrower. In peculiar facts, the order of the District Magistrate was set aside and remanded back to the authority for fresh decision which would not assist the petitioners.

18. Our attention has been invited to the decision of this Court in 12 4wp762.22.odt case of M/s. Trade Well, a Proprietorship Firm, Mumbai & anr. Vs. Indian Bank and ann. 2007 SCC Online Bom 1232, wherein the question fell for consideration is whether the District Magistrate is required to give notice or right of hearing to the borrower or any person who may be in possession of secured assets. In that context, after considering various decisions, it has been observed that, the District Magistrate acting under Section 14 of the SARFAESI Act, is not required to give notice either to the borrower or to the third party, as there is no adjudication of any kind at that stage. Moreover, it is specifically ruled that remedy provided under Section 17 of the SARFAESI Act, is available to the borrower as well as to the third party. The conclusion has been drawn in para 89 of the decision which reads as below:-

"89. Following conclusions emerge from the above discussion:

1. The bank or financial institution shall, before making an application under Section 14 of the NPA Act, verify and confirm that notice under Section 13(2) of the NPA Act is given and that the secured asset falls within the jurisdiction of CMM/DM before whom application under Section 14 is made. The bank and financial institution shall also consider before approaching CMM/ DM for an order under Section 14 of the NPA Act, whether Section 31 of the NPA Act excludes the application of Sections 13 and 14 thereof to the case on hand.

2. CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the 3rd party.

3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication of any kind at that stage.

13 4wp762.22.odt

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14.

5. Remedy provided under Section 17 of the NPA Act is available to the borrower as well as the third party.

6. Remedy provided under Section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised.

7. In view of the fact that efficacious alternative remedy is available to the borrower as well as to the third party, ordinarily, writ petition under Articles 226 and 227 of the Constitution of India should not be entertained.

8. In exceptional cases of gravest injustice, a writ petition could be entertained by this Court.

9. Great care and caution must be exercised while entertaining a writ petition because in a given case it may result in frustrating the object of the NPA Act.

10. Even if a writ petition is entertained, as far as possible, the parties should be relegated to the remedy provided under Section 17 of the NPA Act before the DRT by passing an interim order which will protect the secured assets. Adjudication and final order should be left to the DRT as far as possible."

19. In view of above, it is crystal clear that there is no adjudication by the District Magistrate under Section 14 of the SARFAESI Act, therefore notice of hearing is not contemplated. The said decision would not help the petitioners rather it is against the submission made on their behalf. Reliance is also placed on the decision of this Court in case of HDFC Ltd., Vs. Dist. Magistrate, Washim, 2016(5) Mj.L.J. 100 which relates to giving an opportunity by the District Magistrate to the secured creditor to limited extent which has no relevance to the facts of 14 4wp762.22.odt this case.

20. On the other hand, the learned counsel appearing for Creditor Bank placed reliance on various decisions to contend that the Writ Court shall not entertain, due to existence of alternate remedy

provided under statute itself. For this purpose, heavy reliance is placed on the decision of the Supreme Court in case of United Bank of India Vs. Satyawati Tondon and others, 2010(8) SCC 110. After considering the aims and objects of the SARFAESI Act, it has been categorically observed that the High Court must insist that before availing remedy under Article 226 of the Constitution of India, a person must exhaust the remedies available under the relevant statute. These observations made in para 17 are extracted herein below:-

"17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and 15 State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

21. Section 13 of the SARFAESI Act contains exhaustive mechanism for enforcement of secured interest. A creditor may enforce the secured interest without intervention of the Court or the Tribunal in accordance with the provisions of the SARFAESI Act. In terms of Section 14 of the SARFAESI Act, the secured creditor can file an application before the District Magistrate for taking possession thereof. On such application, the District Magistrate is obliged to take possession of such assets and forward the same to the secured Creditor. Section 17 of the SARFAESI Act speaks about the remedies available to any person including borrower who felt aggrieved by the action taken by the secured creditor under Section 13(4) of the SARFAESI Act.

22. In the decision of the Supreme Court in case of Satyawati (supra), it has been specifically ruled that term "any person" used in Section 17(1) is of wide import. Herein the petitioner is obviously aggrieved by the order passed under Section 14 of the SARFAESI Act which very much flows from the order passed under Section 13(4) of the SARFAESI Act, therefore they can avail said remedy.



The Supreme Court clarified that any person who may be affected by the action taken under Section 13(4) of the SARFAESI Act or Section 14 of the SARFAESI Act can avail remedy under Section 17 of the SARFAESI Act. Moreover, in above decision, the Supreme Court has cautioned for not to entertain writ petition without exhausting statutory remedy.

23. The respondent Bank relied on the decision of the Supreme Court in case of Jagdish Singh Vs. Heeralal and others, 2014(1) SCC 479, wherein the auction purchaser has filed civil suit. The Civil Court upheld the objection about maintainability of suit, however the High Court has set aside the objection. In that context, it is observed that the expression "any person" used in Section 17 of the SARFAESI Act is of wide import and takes within its fold not only the borrower, but also guarantor or any other person who may be affected by action taken under Section 13(4) of the SARFAESI Act. Finally, it is held that the Civil Court's jurisdiction is completely barred so far as the measures taken by a secured creditor under Section 13(4) of the SARFAESI Act.

24. Our attention has been invited to the decision of the Supreme Court in case of Kanaiyalal Lalchand Sachdev & ors. Vs. State of Maharashtra & ors, 2011(2) SCC 782, in which it has been observed that the action under Section 14 of the SARFAESI Act constitute the action taken after stage of Section 13(4) of the SARFAESI Act and therefore, the same would fall within the ambit of Section 17(1) of the SARFAESI Act. In view of said decision, it is clear that action under Section 14 of the SARFAESI Act is consequential which flows from the action under Section 13(4) of the SARFAESI Act. Therefore, the remedy under Section 17 of the SARFAESI Act is efficacious remedy for any person who is aggrieved by action under Section 13(4) of the SARFAESI Act as well as Section 14 of the SARFAESI Act.

25. One another decision of the Supreme Court in case of Authorized officer, State Bank of India of Travancore and another Vs. Mathew K C, 2018 AIR (SC) 676 is cited to contend that a writ shall not be normally entertained when alternate remedy is available. Undoubtedly, the SARFAESI Act is complete Code by itself providing for expeditious recovery of dues arising out of loan granted by financial institutions. The statute provides a remedy to the aggrieved person under Section 17 of the SARFAESI Act before the DRT followed by a right to appeal before the Appellate Tribunal under Section 18 of the SARFAESI Act. In existence of such specific mechanism, it is difficult to accept the petitioners' contention that they being remedy-less, writ shall be entertained.

26. In reported case of Hari Trading Corporation Vs. Bank of Baroda, 2015(3) BankCas 284, the Division Bench of this Court took a view that Section 14 of the SARFAESI Act is not a stage for adjudication of rights and liabilities between the parties before the Magistrate. Though Section 14 of the SARFAESI Act is suffered with an amendment, no such right is created in favour of the borrower. It is observed that the question of giving hearing to the borrower at the stage of taking possession does not arise, as he has remedy under Section 17 of the SARFAESI Act. On the same line, reliance is placed on the decision of this Court in case of Crosscraft Private Ltd., Gautam Amonkar Vs. Authorized Officer, Madgaum Urban Co-Op Bank Ltd., 2019(2) AIR BomR 458, wherein this Court expressed that since the action under Section 14 of the SARFAESI Act is in the nature of a measure under Section 13(4) of the SARFAESI Act, undoubtedly as against such measure, any person aggrieved can file application before the DRT in order to seek redressal.

27. We are conscious of the fact that the powers conferred upon this Court under Article 226 of the Constitution of India, 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 in several decisions. 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 to entertain a petition filed under Article 226 of the Constitution of India ignoring the fact that the petitioners can avail effective remedy particularly contained in the legislation.

28. It is relevant to note the observation of the Supreme Court 19 4wp762.22.odt (para 30) in case of City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla & Ors., 2009 1 SCC 168, following which reads as below:

"The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

29. Even though a provisions under the SARFAESI Act cannot expressly oust jurisdiction of this Court under Article 226 and 227 of the Constitution of India, nevertheless, when there is an alternative remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under the Constitutional provisions. There is hierarchy of appeal provided in the SARFAESI Act itself, namely filing of application under Section 17 of the SARFAESI Act and filing of appeal under Section 18 of the SARFAESI Act.

30. It is clear that instead of applying under Section 17 of the SARFAESI Act, the petitioners have approached in writ jurisdiction. The law in this regard is well settled in above decisions specially in case of Satyawati (supra), exposing a proposition that statutory remedy has to 20 4wp762.22.odt exhaust first instead of filing writ petition. Therefore, we are not inclined to interfere into the impugned order which flows from the action taken by the secured creditor under Section 13 of the SARFAESI Act. In view of above, the writ petition is dismissed with liberty to the petitioners to take out appropriate proceeding before the DRT, if so advised. We are continuing the interim protection

for the period of four weeks from today in order to enable the petitioners to apply for suitable orders before the DRT. Since the petitioners were before this Court up- till-now, if the petitioners apply to the DRT within one month, the same shall not be refused on the ground of bar of limitation. All questions of law and fact remain open for consideration in any application made by the aggrieved before the statutory forum under the SARFAESI Act.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane

Digitally  
signed by  
JITENDRA  
JITENDRA BHARAT  
BHARAT GOHANE  
GOHANE Date:  
2023.03.17  
16:17:27  
+0530