(2023) 08 SHI CK 0001

High Court Of Himachal Pradesh

Case No: Civil Writ Petition No. 4831 Of 2023

M/s Kartik Food	APPELLANT
Vs	
State Of H.P. & Anr	RESPONDENT

Date of Decision: Aug. 1, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 12, 136, 226, 227
- Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 - Section 13(2), 13(4), 14, 17, 17(1), 18, 20

Hon'ble Judges: Tarlok Singh Chauhan, J; Satyen Vaidya, J

Bench: Division Bench

Advocate: Vishal Thakur, Parv Sharma, Abhishek Thakur

Final Decision: Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Of late, it has become a trend that when a case either not maintainable or is too weak on merits, prayer clause in the petition would be couched in

such a manner so that the Court is confused and does not come to know the actual controversy in question. The instant case is one such example

where the prayer clause reads as under:-

i. That a writ in the nature of certiorari may kindly be issued and the impugned decision of the respondent bank in classifying the

petitioner's account bearing reference number CC A/C 403656974254, T/L 40356908622, GECL-40574576356 as Non-Performing Asset,

communication dated 03.04.2023 (Annexure P-3), Notice dated 06.04.2023 (Annexure P-4), Notice dated 15.06.2023(Annexure P-5) and

letter dated 11.07.2023 (Annexure P-6) may kindly be quashed.

ii. That a writ in the nature of mandamus may kindly be issued directing the respondent bank to regularize the petitioner's account bearing

reference number CC A/C 403656974254, T/L 40356908622, GECL-40574576356.

iii. That an appropriate order or direction may kindly be issued declaring all proceedings initiated against the petitioner by respondent

bank in pursuance of the illegal declaration of the petitioner's account as NPA.â€

2 Now, in case we advert to Annexure P- 3 dated 3.4.2023, it is a communication addressed by the respondent-Bank to the petitioner-Unit requesting

it to settle its accounts or else Bank would have to initiate legal action including action under the Securitization and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 (for short, â€œ the Actâ€).

3 As regards Annexure P-4, it is a notice dated 6.4.2023 issued by the respondent-Bank under section 13(2) of the Act calling upon the petitioner-Unit

to discharge its liability of Rs.2,99,12,227.75/- (Two Crore Ninety Nine Lakh Twelve Thousand Two Hundred Twenty Seven and Seventy Five Paise)

along with charges, as applicable. In addition thereto, the petitioner was also apprised about liability to pay future interest at the contractual rate on the

aforesaid amount together with incidental expenses., cost, charges etc.

4 Now, adverting to Annexure P-5, the same is possession notice issued under Section 13(4) of the Act read with Rules 8 & 9 of the Rules framed

thereunder taking symbolic possession of the property on 15.6.2023.

5 Lastly, adverting to Annexure P-6, which is a letter dated 11.7.2023 issued by the respondent-Bank informing the petitioner as under:-

â€œWith reference to above, we advise that MSME revival and rehabilitation meeting for the stressed accounts was held on 06.07.2023

wherein M/s Kartik foods was also discussed. Committee members scrutinised the facts and documents related to exposure of M/s Kartik

foods. In light of bank providing GECL loan amounting to Rs 0.60 crores during COVID for COVID 19 related stress and again an adhoc

limit of Rs 2159750 (Rupees Twenty one lakhs and fifty nine thousands seven hundred and fifty only) for reviving the unit in the month of

January. The unfortunate fire incident at the unit premises on 15.01.2023 was also discussed.

As many attempts to revive and rehabilitation failed the committee has recommended for next step i.e, recovery. You may request for review

of the decision by the committee within a period of 10 working days from the date of receipt of the decision of the committee. This is for your

kind information.â€

6 What would be evidently clear from the aforesaid narration of facts is that the proceedings stand initiated against the petitioner-Unit by the

respondent-Bank by resorting to not only Section 13(2), but also Section 13(4) of the Act. In such circumstances, moot question is whether the instant

petition is maintainable. Before deciding the question of law, certain minimal facts need to be noticed.

7 The petitioner on 9.8.2021 was granted financial assistance of cash credit limit of Rs.1.25 crore and term loan of Rs.0.97 crore by the respondent-

Bank. The petitioner on 13.8.2021 got the flourmill, machinery along with stock insured. Later, on 23.8.2022, insurance policy of the petitioner was

renewed.

8 Unfortunately, on 15.1.2023, fire broke out in the factory premises causing loss of around 7000-8000 quintal of stock lying in the form of wheat and

other grains as per the version of the petitioner. Though, the petitioner apprised the Insurance Company as well as the respondent-Bank about this

fact, yet the respondent-Bank on 1.4.2023 classified/declared the petitionerâ€™s account as Non Performing Asset (NPA). This decision was

communicated to the petitioner on 3.4.2023 and immediately thereafter on 6.4.2023, the petitioner was served upon a notice under Section 13 (2) of

the Act. The petitioner replied to the notice vide communication, dated 15.5.2023 and objected to course being adopted by the respondent-Bank.

9 The respondent-Bank vide letter dated 15.6.2023 issued notice under Section 13(4) of the Act. The petitioner replied to the same vide letter dated

28.6.2023, however the respondent-Bank served another letter dated 6.7.2023 upon the petitioner. The petitioner on 10.7.2023 represented to the

District Magistrate Una bringing to its notice the factum of fire having broken out in the factory premises and later, the petitioner also brought these

facts to the notice of the respondent-Bank on 24.7.2023 wherein apart from factual scenario, the petitioner again expressed its willingness for revival

and rehabilitation of its account otherwise declared as NPA and immediately thereafter filed this petition before this Court on 25.7.2023 for the reliefs

as quoted above.

10 Learned counsel for the petitioner would vehemently argue that the proceedings under the Act can only be initiated on fulfilling three conditions as

discernible from Section 13 (2) of the Act itself and in support thereof, would place reliance upon the judgment of the Honâ€™ble Supreme Court in

Keshavlal Khemchand and sons vs. Private Limited and ors. vs Union of India & ors., (2015) 4 SCC 770.

11 In addition thereto, he would contend that as per judgment rendered by the Honâ€™ble Supreme court in Mardia Chemicals Ltd. vs. Union of India

(2004) 4 SCC 31, the secured creditor cannot classify the account of a borrower as NPA at its whims and fancies and the Bank is bound to follow

guidelines laid down by the Reserve Bank of India , therefore, RBI circular applies to it, which, in turn, protects the petitionerâ€™s arbitrary

classification as NPA.

12 We are not at all impressed by the aforesaid submissions. As observed above, lawful proceedings have been initiated against the petitioner by

issuance of notices under Section 13(2) as well as Section 13(4) of the Act and in case it wants to assail the same, then it is required to approach

appropriate authority and not this Court by invoking the extra ordinary jurisdiction of this Court.

13 The Honâ€™ble Supreme Court has repeatedly held that the writ petition involving private individuals over a financial transaction is not

maintainable and such parties cannot defeat the objectives of the Act by approaching the High Court and seeking its interference. The alternative

remedy being effective and efficacious, the extraordinary jurisdiction under Article 226 of the Constitution of India, either be a writ of certiorari or

mandamus, ought not to have been invoked.

14 Equally settled is the position of law that where an effective and efficacious Forum in commercial matter has been constituted through a statute,

then the interference by the High Court under Article 226 of the Constitution is not permissible.

15 The objects and reasons behind the Act are very clear and were considered in Chemicals Ltd.â€™s case (supra) and all these aspects

have been duly taken note by the Honâ€™ble Supreme Court in its very recent judgment in M/s South Indian Bank Ltd. & ors. vs. Naveen

Mathew Philip & anr. 2023 6 SCALE 224. It shall be apt to reproduce paras 15 to 18 thereof, which read as under:-

â€œ15. The object and reasons behind the Act 54 of 2002 are very clear as observed by this Court in Mardia Chemicals Ltd. v. Union of

India, (2004) 4 SCC 311. While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a

fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to

set aside an illegal order, and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs.

Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression ""any person"", who could approach the Tribunal.

16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus

is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a

financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India.When

a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the

noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative. We

wish to quote with profit a recent decision of this Court in Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771,

25. In this background, it becomes necessary for this Court, to dwell on the ""rule of alternate remedy"" and its judicial exposition. In

Whirlpool Corpn. v. Registrar of Trade Marks (1998) 8 SCC 1, a two-Judge Bench of this Court after reviewing the case law on this point,

noted: (SCC pp. 9-10, paras 14-15)

14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision

of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus,

prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but

also for ""any other purpose"".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to

entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious

remedy is available, the High Court would not normally exercise its jurisdiction.

But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the

writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of

natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of

case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the

constitutional law as they still hold the field"". (emphasis supplied)

26. Following the dictum of this Court in Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1], in Harbanslal Sahnia v. Indian

Oil Corpn. Ltd. [(2003) 2 SCC 107], this Court noted that: (Harbanslal Sahnia case, SCC p. 110, para 7)

7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and

therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of

writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite

of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is failure of principles of natural justice; or

(iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar

of Trade Marks [(1998) 8 SCC 1].)

The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread

and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have

been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

(emphasis supplied)

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but

for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is

where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where:

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case

though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be

had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of

exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27. 6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if

the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would

not readily be interfered with.

17. We shall reiterate the position of law regarding the interference of the High Courts in matters pertaining to the SARFAESI Act by

quoting a few of the earlier decisions of this Court wherein the said practice has been deprecated while requesting the High Courts not to

entertain such cases.

Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733,

18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may

be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v)

a company which is financed and owned by the State;

(vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature;

and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

26. A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn

livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive

behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally.

It is a private affair of the company though the case of nationalized banks stands on a different footing.

There may well be companies, in which majority of the share capital may be contributed out of the State funds and in that view of the matter

there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case we

are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the

State. It has its own Board of Directors elected by its shareholders.

It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking

business with a capital of five lakhs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks

undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such

companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance

loans as against securities.

Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the

depositors as well as to maintain the proper financial equilibrium of the national economy. The banking companies have not been set up for

the purposes of building the economy of the State; on the other hand such private companies have been voluntarily established for their

own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in

general.

A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal

policies of the State and for such purposes, guidelines are provided by Reserve Bank so that a proper fiscal discipline, to conduct its affairs

in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of

the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guidelines

and not a participatory dominance or control over the affairs of the company.

For other companies in general carrying on other business activities, maybe manufacturing, other industries or any business, such checks

are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself

may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardized for that

reason.

Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the

private companies. Care is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951 that their

production, which is important for the economy, may not go down, yet the business activity is carried on by such companies or corporations

which only remains a private activity of the entrepreneurs/companies.

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain

circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned

including the private companies.

For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining

proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act,

1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are

bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions.

For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial

Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard.

But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the

private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110,

42. There is another reason why the impugned order should be set aside. If Respondent 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 the 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.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of

the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving

recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions.

In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must

keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves

inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasijudicial bodies

for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy

under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the

Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the

five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no

express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by

this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom

any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the

fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation

contains a detailed mechanism for redressal of his grievance.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability

of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have

serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High

Courts will exercise their discretion in such matters with greater caution, care and circumspection.

State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85,

5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the

Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special

circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute.

The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in

accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate

statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal

[(2014) 1 SCC 603], as follows: (SCC p. 611, para 15)

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory

authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of

judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the

principles of natural justice, the proposition laid down in Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419], Titaghur Paper Mills

Co. Ltd. v. State of Orissa [(1983) 2 SCC 433: 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a

petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under

which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a

statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

8. The Statement of Objects and Reasons of the SARFAESI Act states that the banking and financial sector in the country was felt not to

have a level playing field in comparison to other participants in the financial markets in the world. The financial institutions in India did not

have the power to take possession of securities and sell them.

The existing legal framework relating to commercial transactions had not kept pace with changing commercial practices and financial

sector reforms resulting in tardy recovery of defaulting loans and mounting non-performing assets of banks and financial institutions.

Narasimhan Committee I and II as also the Andhyarujina Committee constituted by the Central Government Act had suggested enactment of

new legislation for securitisation and empowering banks and financial institutions to take possession of securities and sell them without

court intervention which would enable them to realise long-term assets, manage problems of liquidity, asset liability mismatches and improve

recovery.

The proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as ""the DRT Act"")

with passage of time, had become synonymous with those before regular courts affecting expeditious adjudication. All these aspects have

not been kept in mind and considered before passing the impugned order.

9. Even prior to the SARFAESI Act, considering the alternate remedy available under the DRT Act it was held in Punjab National Bank v.

O.C. Krishnan [(2001) 6 SCC 569] that: (SCC p. 570, para 6)

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial

institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure

cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil

suit, which is expressly barred.

Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution,

nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its

jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under

Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

15. It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the

law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly

discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not

sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from

public money generated at the taxpayer's expense.

Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary

capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the

money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required,

as expressed in United Bank of India v. Satyawati Tondon [(2010) 8 SCC 110: (2010) 3 SCC (Civ) 260], has also not been kept in mind

before passing the impugned interim order: (SCC pp. 123-24, para 46)

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees,

etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal

obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted

by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove

detrimental to the economy of the nation.

Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course,

if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v.

Antarim Zila Parishad [AIR 1969 SC 556], Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Harbanslal Sahnia v.

Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant

parameters and public interest, pass an appropriate interim order.

Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345,

18. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - the appellant herein under

Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not

maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a

secured creditor.

The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities.

During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore

the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the

State authorities.

If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the

actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is

maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. v. C.A. Imanual, [(1969) 1 SCC 585] and

Ramesh Ahluwalia v. State of Punjab, [(2012) 12 SCC 331: (2013) 3 SCC (L&S) 45: 4 SCEC 715] relied upon by the learned counsel

appearing on behalf of the borrowers are not of any assistance to the borrowers.

21. Applying the law laid down by this Court in State Bank of Travancore v. Mathew K.C., [(2018) 3 SCC 85: (2018) 2 SCC (Civ) 41] to the

facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the

Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under

Section 13(4).

As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in

view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to

have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to

the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the

extent of approximately Rs 117 crores.

The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the

SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears

that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court

ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable

have been seriously prejudiced.

The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by

the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court

should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances,

the proceedings before the High Court deserve to be dismissed.

Varimadugu Obi Reddy v. B. Sreenivasulu, (2023) 2 SCC 168,

36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application

under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the

compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the

High Court by filing the writ application under Article 226 of the Constitution.

We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the

Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been

adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the 2002 Act.

16 From the aforesaid discussions, it is absolutely clear that if proceedings have been initiated under the Act and/or any proposed action is to be taken

and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the Act and no writ

petition would lie and/or is maintainable and/or entertainable save and except to a limited extent as has been indicated in para 18 of the judgment in

M/s South Indian Bank Ltd.â€™s case (supra).

17 We may at this stage take note of a very recent judgment of the Honâ€™ble Supreme Court in G. Vikram Kumar vs. State Bank of Hyderabad,

AIR 2023 Supreme Court 2359, wherein the Honâ€™ble Supreme Court has again reiterated that the writ petition assailing the action of the Bank

under Section 13(4) of the Act is not maintainable and the aggrieved party has a remedy of an appeal under Section 17 to approach the Debt

Recovery Tribunal. It was further held that the High Court erred in entertaining writ petition since statutory alternative remedy was available. It shall

be apt to reproduce para 8 of the judgment which reads as under:-

8. At the outset, it is required to be noted that what was challenged before the High Court by respondent no.1 in a writ petition under Article

226 of the Constitution of India was the e auction notice which was pursuant to the action initiated by the Bank in exercise of powers under

Section 13(4) of the SARFAESI Act. At this stage it is required to be noted that Civil Appeal Nos. 31523153 of 2023 eauction was

held/conducted on 31.08.2016 in which the appellant participated and was declared as a successful bidder and he made a payment of 25%

of the bid amount on the very day i.e., on 31.08.2016. However, thereafter the respondent no.1 filed the writ petition before the High Court

challenging the eauction notice dated 28.07.2016 on 14.09.2016 that is after conducting of the auction. It is required to be noted that

against any steps taken by the Bank under Section 13(4) of the SARFAESI Act the aggrieved party has a remedy under the SARFAESI Act by

way of appeal under Section 17 of the SARFAESI Act to approach the DRT. Therefore, in view of the availability of the alternative statutory

remedy available by way of Civil Appeal Nos. 31523153 of 2023 proceedings/appeal under Section 17 of the SARFAESI Act, the High

Court ought not to have entertained the writ petition under Article 226 of the Constitution of India in which the e auction notice was under

challenge. Therefore, the High Court has committed a very serious error in entertaining the writ petition under Article 226 of the

Constitution of India challenging the eauction notice issued by the Bank in exercise of power under Section 13(4) of the SARFAESI Act.

18 In view of the aforesaid discussions, we are clearly of the view that the instant petition is not maintainable as remedy, if any, of the petitioner is

before the concerned Debt Recovery Tribunal.

19 The instant petition is dismissed, in the aforesaid terms, so also the pending application(s), if any.