Gupta Hardware Store And Others Vs Union Of India And Others

Court: High Court Of Himachal Pradesh

Date of Decision: Jan. 10, 2025

Acts Referred: Constitution of India, 1950 â€" Article 226, 329
Securitisation and Reconstruction Assets of Financial and Enforcement of Security Interest Act, 2002 â€" Section 2(1)(m)(iv), 13, 13(2), 13(4), 14, 17
Companies Act, 1956 â€" Section 4A
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 â€" Section 2(h)(ii)
Reserve Bank of India Act, 1934 â€" Section45(I)(f)

Hon'ble Judges: Tarlok Singh Chauhan, J; Rakesh Kainthla, J

Bench: Division Bench

Advocate: Sunil Kumar Kaundal, Lokinder Paul Thakur, Dheeraj K. Verma,

Final Decision: Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following reliefs:-

Ã¢â‚¬Å“A. Issue an appropriate writ, order or direction including a writ in the nature of certiorari and setting aside/quash the impugned Symbolic possession taken

after Notice dated 27.07.2024 (ANNEXURE P-2) passed by the respondent no. 2 under Section 13 (4) of Securitisation and Reconstruction Assets of Financial

and Enforcement of Security Interest Act, 2002 under Rule 8 of Security Interest (Enforcement) demand Notice Rules, 2002 and dated 19.03.2024 (ANNEXURE P-

1) under Section 13 (2) of Reconstruction Securitisation and of Financial Assets and Enforcement Security Interest Act, 2002 issued by the of respondents

Financial Institution with regard to shop property comprised n Khata No. 1442/264, Khasra no. 1150 having land measuring 38-00 Sq. Mtrs. LE Gair Mumkin

Dukan pakki situated at Mohal Sunni Pratham, Tehsil Sunni, District Shimla, H.P. as per Jamabandi for the year 2010-11 and other subsequent action

proceedings initiated by respondent Financial Institution as the same have been initiated in complete contravention of Securitisation and reconstruction of

financial Assets and Enforcement of security interest Act, 2002 and rules framed there under which are illegally, unjustified, erroneous, unwarranted, null and

void and arbitrarily in manner, in the interest of justice.

B. Further prayer a issuance of the writ in the nature of certiorari quashing the impugned possession notice dated 27.07.2024 (Annexure P-2) under Rule 8 of

Security Interest Enforcement) Rules, 2002, vide which respondent nos.2 & have issued notice of possession qua the demised premises of the petitioners and

taking further coercive method against the petitioners and their properties;Ã¢â‚¬â€‹

2. Shorn of unnecessary details, the petitioners secured a loan of Rs.25,00,000/- (Rupees twenty lac) from Shriram City Union Finance Limited (for

short Ã¢â‚¬Ëœfinance companyÃ¢â‚¬â„¢) and had been paying monthly EMI of Rs.72083/-regularly, but later defaulted, constraining the finance company to

issue demand notice to the petitioner dated 27.07.2024 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (for short Ã¢â‚¬ËœSARFAESI ActÃ¢â‚¬â„¢), raising a total demand of Rs.18,45,198/-.

3. Petitioners submitted reply to the said notice, but to no avail.

4. The moot question before this Court is whether the financial company is justified in resorting to provisions of SARFAESI Act for recovery of the

outstanding dues from the petitioners, when it is lower than the monetary threshold of Rs.20,00,000/- (Rupees twenty lac); a bar fixed by the Central

Government (Ministry of Finance) for Non-Banking Financing Company (for short Ã¢â‚¬ËœNBFCÃ¢â‚¬â„¢).

CONTENTIONS ON BEHALF OF THE PETITIONERS

5. The petitioners have questioned the jurisdiction and authority of the finance company to institute SARFAESI proceedings as a Ã¢â‚¬Ëœsecured

creditorÃ¢â‚¬â„¢ of the loan amount lent by a financial institution (for short Ã¢â‚¬ËœFIÃ¢â‚¬â„¢) under the SARFAESI Act, 2002. It has been contended that the

proceedings under the SARFAESI Act could not be invoked by the finance company, since the company, admittedly, is an NBFC and the debt owed

was less than Rs.20 lac.

6. Relying upon the Notification issued under Section 21(m) (iv) of the SARFAESI Act, specifically the latest Notification dated 12.02.2021

(Annexure P-5), the petitioner vehemently argue that the finance company is one of the sub-species of larger category of NBFCs, and therefore,

having once been categorized as such bound is by the Gazette Notifications.

7. It is contended that the competent authority issued a list of NBFCs, but later on superseding all the earlier Notifications on 12.02.2021, it was held

and directed that if any NBFC intends to kickstart SARFAESI proceedings, then, the same will be applicable to loan net worth amounting to

Rs.20,00,000/- (Rupees twenty lac) and more. Thus, in the present case, when the loan amount sought to be recovered is less than Rs.20 lac,

SARFAESI proceedings could not have been initiated for recovery by the finance company.

CONTENTIONS ON BEHALF OF THE RESPONDENTS

8. It is contended by the respondents that the present petition is not maintainable and that the petitioners have to avail statutory remedy available under

Section 17 of the SARFAESI Act by approaching the Debt Recovery Tribunal, which is equally competent to decide on the issue of applicability of

provisions of SARFAESI Act to the loan arrangement in question.

9. The finance company is entitled to invoke and resort to SARFAESI Act being FI under the Act of 2002, resultantly being a Ã¢â‚¬Ëœsecured

creditorÃ¢â‚¬â„¢ and jurisdictional monetary threshold of Rs.20 lac as applicable in the case of NBFC, shall not be applicable to the respondents.

MAINTAINABILITY OF THE WRIT PETITION

10. Ordinarily the writ Court is loath to entertain writ petitions directly, when challenge is laid to proceedings initiated under SARFAESI Act, and

parties are always advised to resort to alternative remedy available under the enactment itself and resort to Section 14 thereof before the Debt

Recovery Tribunal, more particularly, in view of the two recent judgments of the HonÃ¢â‚¬â„¢ble Supreme Court in Celir LLP vs. Bafna Motors

(Mumbai) Pvt. Ltd. and others, AIR 2023 SC 4568 and PHR Invent Educational Society vs. Uco Bank and others, AIR 2024 SC 18, 9w3hich,

in turn, has repeatedly been followed.

11. Reference in this regard can conveniently be made to the judgment passed by a Division Bench of this Court, of which, one of us (Justice Tarlok

Singh Chauhan, Judge) was a member, in CWP No.1500 of 2024 titled asH DB Financial Services Ltd. vs. District Magistrate-cum- Deputy

Commissioner, Shimla and others, decided on 30. 09.2024, wherein, it was observed as under:-

Ã¢â‚¬Å“The instant petition was entertained only on the ground that it was jointly represented by the parties that they are making an endeavour to settle the matter

amicably, as is borne out from order dated 02.09.2024 and thereafter order dated 06.09.2024. Evidently, no settlement has been arrived at between the parties.

2. Since the instant petition questions the proceedings under the provisions of SARFAESI Act, 2002, therefore, the same is not maintainable on the ground of

availability of an alternate and efficacious remedy.

3. We need not multiply the authorities, suffice it to refer to the recent judgments of the HonÃ¢â‚¬â„¢ble Supreme Court in Celir LLP vs. Bafna Motors (Mumbai) Pvt.

Ltd. and others, AIR 2023 SC 4568 and PHR Invent Educational Society vs. Uco Bank and others, AIR 2024 SC 1893.

4. Consequently, the instant petition is dismissed being not maintainable, so also the pending applications, if any.Ã¢â‚¬â€‹

12. However, the aforesaid case does not cover the instant case and the said routine course may not be followed as the petitioners question the very

jurisdiction and applicability of the SARFAESI proceedings and raises a pure question of law pertaining to invocation of Section 13 proceedings by the

finance company, when admittedly, the debt stands to be below the prescribed pecuniary threshold of Rs.20 lacs.

13. It is trite that when the questions of jurisdiction are raised to the maintainability of any proceedings or pure questions of law arise with respect to

existence, exercise of power by any authority/Tribunal created under a statute, then alternate remedy is no bar and is rendered a mere technicality.

The writ Court can extend the large arms of its jurisdiction and powers to address and undo the wrong or illegal usurpation of powers by any statutory

authority.

14. Reliance in this regard can conveniently be made to a recent judgment of the HonÃ¢â‚¬â„¢ble Apex Court in Civil Appeal No.5393 of 2010 titled as

M/s Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and others, AIR 2023 SC 781 w,herein the question of

maintainability of the writ petition on the ground of availability of alternative remedy was dealt with and it was observed as under:-

4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come

across certain orders passed by the high courts holding writ petitions as Ã¢â‚¬Å“not maintainableÃ¢â‚¬ merely because the alternative remedy provided by the relevant

statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in

nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329

and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power

to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the

action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not

pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in

mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power

under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and

efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which

the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition

Ã¢â‚¬Å“not maintainableÃ¢â‚¬. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to

the Ã¢â‚¬Å“maintainabilityÃ¢â‚¬ of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy,

convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that Ã¢â‚¬Å“entertainabilityÃ¢â‚¬ and Ã¢â‚¬Å“maintainabilityÃ¢â‚¬ of a writ

petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to Ã¢â‚¬Å“maintainabilityÃ¢â‚¬ goes to the

root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the

other hand, the question of Ã¢â‚¬Å“entertainabilityÃ¢â‚¬ is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition

despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a

sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the

petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not

be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 (State of Uttar Pradesh vs. Mohd. Nooh)

had the occasion to observe as follows:

Ã¢â‚¬Å“10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no

other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by

statute, (HalsburyÃ¢â‚¬â„¢s Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy

may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to

quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has

exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy,

convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved

party had other adequate legal remedies. ***Ã¢â‚¬â€‹

6. At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation vs. Registrar of Trade Marks,

Mumbai and Others) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party

approaching it not having availed the alternative remedy provided by the statute. The same read as under:

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

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 (Assistant Commissioner of State Tax vs. M/s. Commercial Steel Limited) has

reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.)

and (2000) 10 SCC 482 (Union of India vs. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within

an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its

discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not

interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting

the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it

does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the

ground of an alternative remedy being available.

9. Now, reverting to the facts of this appeal, we find that the appellant had claimed before the High Court that the suo motu revisional power could not have been

exercised by the Revisional Authority in view of the existing facts and circumstances leading to the only conclusion that the assessment orders were legally

correct and that the final orders impugned in the writ petition were passed upon assuming a jurisdiction which the Revisional Authority did not possess. In fine,

the orders impugned were passed wholly without jurisdiction. Since a jurisdictional issue was raised by the appellant in the writ petition questioning the very

competence of the Revisional Authority to exercise suo motu power, being a pure question of law, we are of the considered view that the plea raised in the writ

petition did deserve a consideration on merits and the appellantÃ¢â‚¬â„¢s writ petition ought not to have been thrown out at the threshold.

10. Reliance placed by the High Court on the decision in Titagarh Paper Mills (supra), in our view, was completely misplaced. The respondent Electricity Board

had levied coal surcharge on the appellant company in terms of an agreement. Such agreement contained an arbitration agreement in clause 23. Instead of

pursuing its remedy in arbitration, the appellant company unsuccessfully invoked the writ jurisdiction. This Court was approached whereupon it was held that in

view of the issues raised, there was no reason why the appellant company should not pursue its remedy in arbitration, having solemnly accepted clause 23 of the

agreement, and instead invoke the extraordinary jurisdiction of the high court under Article 226 of the Constitution to determine questions which really form the

subject matter of the arbitration agreement. This decision could not have been of any relevance having regard to the issue presented for resolution before the

High Court by the appellant, particularly when the disputes inter se were not referable to arbitration.

11. We have reasons to believe, considering the nature of objection raised by the respondents as recorded by the High Court in the impugned order, that the High

Court had mistakenly referred to Titagarh Paper Mills (supra) while intending to rely on a different decision of this Court on an appeal preferred by the same

party, reported in (1983) 2 SCC 433 (Titaghur Paper Mills Co. Ltd. vs. State of Orissa). While upholding the impugned order of dismissal of the writ petition,

where an order passed by the Sales Tax Officer was under challenge, this Court in Titaghur Paper Mills Co. Ltd. (supra) held that the challenge being confined to

the regularity of proceedings before the Sales Tax Officer and there being no suggestion that the concerned officer had no jurisdiction to make an assessment, the

decision in Mohd. Nooh (supra) was clearly distinguishable since in that case there was total lack of jurisdiction. This Court also held that under the scheme of

the relevant Act, there was a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of and that

since the authority of the concerned officer to make an assessment was not in question, recourse ought to be taken by initiating proceedings thereunder. As noted

above, the very jurisdiction of the Revisional Authority having been questioned in the writ petition, the impugned order of the High Court dismissing the writ

petition without examining the merits of the challenge cannot be sustained even if the High Court were to rely on Titaghur Paper Mills Co. Ltd. (supra) to support

such order.

12. The High Court by dismissing the writ petition committed a manifest error of law for which the order under challenge is unsustainable. The same is,

accordingly, set aside.Ã¢â‚¬â€‹

15. Therefore, the preliminary objections regarding maintainability of the writ petition in the instant case are rejected, holding that writ petition to

decide upon such pure questions of law; touching upon the jurisdiction, existence and exercise of powers by the finance company as maintainable.

APPLICABILITY OF THE SARFAESI ACT

16. The SARFAESI Act, 2002 was brought in by the Parliament to tackle the problem of sluggish pace of recovery of defaulting loans and mounting

levels of non-performing assets of Banks and FIÃ¢â‚¬â„¢s to give proper impetus to industrial development and designed toward ensuring commercial

stability of Banks and other FIs, swifter mechanisms of recovery were ushered in through the SARFAESI Act. It was brought into force to solve the

problem of recovering large debts in non-performing assets (NPAÃ¢â‚¬â„¢s). The background and silent features of the SARFAESI Act have been

extensively discussed, analyzed, and elaborated by the HonÃ¢â‚¬â„¢ble Supreme Court in the matter of Mardia Chemicals Ltd. vs. Union of India

(2004) 4 SCC 311, United Bank of India vs. Satyavati Tandon (2010) 8 SCC 110 and other judgments, including the one referred to hereinabove

in paragraph 10 (supra).

17. Thus, the very rationale was to provide an expeditious procedure, wherever there was a security interest. It is to provide a quicker remedy to the

lender against the borrower, who defaults in repayment of the loan. The objective therefore, is clearly laudable viz. to fix the bad debts and non

performing loans that become a burden upon the economic fabric of the society and the country both. Therefore, the SARFAESI Act must receive an

interpretation that furthers its object and not a self defeating one. However, despite trying to give a broad power and adopting purposive approach, we

find that the financial institutions cannot resort to the remedy under the SARFAESI Act, in view of Notification dated 12.02.2021.

18. We may now refer to some of the provisions of the SARFAESI Act, 2002 in the present case:-

Section 2(1)(m) defines Financial Institution as follows :-

[(m) ""Financial Institutions"" means- a public financial institution within the meaning of Section 4-A of the Companies Act, 1956 (1 of 1956);

ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of Section 2 of the Recovery of Debts Due to Banks and Financial

Institutions Act, 1993 (51 of 1993);

iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958);

(iiia) a debenture trustee registered with the Board and appointed for secured debt securities; (iiib) asset reconstruction company, whether acting as such or

managing a trust created for the purpose of securitization or asset reconstruction, as the case may be;]

(iii) any other institution or non-banking financial company as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the

Central Government may, by notification, specify as financial institution for the purposes of this Act;

[(ma) ""financial lease"" means a lease under any lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of

lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where the lessee becomes the owner of the

such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be;]

Section 2 (zd) defines Secured Creditor thus: -

[(zd) ""secured creditor"" means-

(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or

intangible asset as specified in clause (1)

ii) debenture trustee appointed by any bank or financial institution; or

iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or

reconstruction, as the case may be, or

iv) debenture trustee registered with 5 [the Board and appointed for secured debt securities; or

v) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created by any borrower for due repayment

of any financial assistance.]

19. Likewise, we may now refer to the provisions of the RBI Act, 1934, which governs the running of banking activities in the country:-

Chapter III-B titled as ""Provisions Relating To Non - Banking Institutions Receiving Deposits And Financial Institutions"" contains various provisions regulating

entities and institutions indulging into receiving of deposits. Section 45 (I) is the definition clause, specially enacted for Chapter III-B, where under vide Section

45 (I) (c) 'Financial Institution' is defined; vide Section 45 (I) (e) 'Non Banking Institution' is defined, and vide Section 45 (I) (f), 'NBFC' is defined. They read as

follows:

Section 2 Definitions -In this Chapter, unless the context otherwise requires,-

[(c) ''financial institution'' means any non- banking institution which carries on as its business or part of its business any of the following activities, namely:-

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own:

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature:

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire- Purchase Act, 1972:

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in

any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lumpsum or otherwise, by way of subscriptions or by sale

of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from

whom monies are collected or to any other person, 3 [but does not include any institution, which carries on as its principal business,-

(a) agricultural operations; or

(aa) industrial activity; or]

(b) the purchase or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of

purchases, constructions or sales of immovable property by other persons;]

[Explanation.- For the purposes of this clause, "industrial activity" means any activity specified in sub-clauses (i) to (xviii) of clause

(c) of section 2 of the Industrial Development Bank of India Act, 1964;]

(d) "firm" means a firm as defined in the Indian Partnership Act, 1932 2 [* * *]; (e) "non-banking institution" means a company, corporation 3 [or cooperative

society]

(e) "non-banking institution" means a company, corporation 3 [or cooperative society]

(f) "non-banking financial company" means- (i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any

other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification

in the Official Gazettee, specify;]Ã¢â‚¬â€‹

20. Under Section 2(1)(m)(iv) of SARFAESI Act, a 'financial institution' shall include 'any other institution' or 'NBFC' as defined under Section 45(I)

(f) of the RBI Act. Thus, Section 45(I)(f) of RBI Act applies to NBFC defined under it. However other than NBFC, there can be multiple other

institutions also, which may be so notified by the Central Government. Therefore notification by the Central Government in the Official Gazette is a

pre-condition for any NBFC or other institutions to be treated as FI under the SARFAESI Act. Respondents No.2 and 3 are defined as finance

company under Section 2(1)(m)(iv) of SARFAESI Act.

21. Section 45 (I) & other provisions of Chapter III-B (Provisions Relating to Non-Banking Institutions Receiving Deposits and Financial Institutions)

may not stricto senso apply to such financial institutions. Therefore, the notification issued under sub-clause (iv) of clause (m) of sub-section 1 of

section 2 of the SARFAESI Act would not only apply, but bind the financial company i.e. respondents No.2 and 3, therefore, once these respondents

seek to enforce the claim under the SARFAESI Act, as such, they are bound by the Notification dated 12.02.2021, which reads as under:-

MINISTRY OF FINANCE

(Department of Financial Services)

NOTIFICATION

New Delhi, the 12th February, 2021

S.O. G52 (E).- In exercise of the powers conferred by sub- clause (iv) of clause (m) of sub section (1) of section 2 of the Securitization and Reconstruction of

reconstruction of Financial Assets and Enforcement of security interest act, 2002 (54 of 2002), the Central Government hereby makes the following amendment in

the notification of the Government of India, Ministry of Finance (Department ofÃ, Financial Services), number S.O. 856 (E), dated the 24th February, 2020,

published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 25th February, 2020, namely:-

In the said notification, for the words, ""rupees fifty lakh and above"" the words ""rupees twenty lakh and above"" shall be substituted.

(F.No. 31/52/2018-DRT)

VANDITA KAUL, Jt.Secy.

Note: The Principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 856 (E) dated the 24th

February, 2020.

22. Since the claim of respondents No.2 and 3 i.e. finance company is admittedly, less then threshold of Rs.20 lac, obviously, the proceedings initiated

under the SARFAESI Act are not maintainable.

23. In view of the aforesaid discussion, we find merit in this petition and the same is accordingly allowed. The symbolic possession taken by

respondents No.2 and 3 after notice dated 27. 07.2024Ã, (AnnexureÃ, P-2)Ã, andÃ, demandÃ, noticeÃ, dated 19. 03.2024 (Annexure P-1) under

Section 13(2) of the SARFAESI Act, are quashed and set aside and the respondents are restrained from resorting to any coercive method against the

petitioners or other properties, save and except in accordance with law.

24. The writ petition stands disposed of in the aforesaid terms, so also the pending applications, if any.