(2011) 08 CAL CK 0010

Calcutta High Court

Case No: C.A.N. No. 3497 of 2010; M.A.T. No. 494 of 2010; W.P. No. 6012 (W) of 2010

Anil Kumar Banerjee		APPELLANT
	Vs	
Indiabulls Housing Finance Ltd.		RESPONDENT

Date of Decision: Aug. 25, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 92, 103
- Companies Act, 1956 - Section 2, 4A
- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 11, 12, 17, 2, 3
- National Housing Bank Act, 1987 - Section 2, 29A
- Reserve Bank of India Act, 1934 - Section 2(ZD), 45(NC), 45I
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, 13(2), 13(3A), 13(4), 13A
- Specific Relief Act, 1963 - Section 6

Citation: (2011) 5 CHN 30

Hon'ble Judges: Shukla Kabir (Sinha), J; Pinaki Chandra Ghose, J

Bench: Division Bench

Advocate: Saktinath Mukherjee, Reetobroto Mitra, Uddalok Bhattacharjee, for the Appellant; Jayanta Kumar Mitra, Paritosh Sinha, Amitava Mitra, for the Respondent

Final Decision: Dismissed

Judgement

Pinaki Chandra Ghose, J.

This appeal is directed against an order dated 24th March, 2010 passed by the Hon''ble Single Judge when His Lordship was pleased to dismiss the writ petition on the ground that the writ petitioner/ appellant herein has defaulted in repayment of loan and proceedings have been initiated u/s 13 of the SARFAESI Act (hereinafter referred to as the said Act) and he has been dispossessed from his dwelling house. The Hon''ble Single Judge passed the said order on the ground that there is no

statutory violation has been demonstrated. However, remedy provided by the Act shall be open to the writ petitioner/appellant to pursue such remedy.

2. Being aggrieved, this appeal has been filed by the appellant.

3. The facts of the case briefly are as follows :

At the instance of the writ petitioner/appellant loan was granted by the ICICI Bank. The outstanding loan shown as on 23rd February, 2007 was Rs.58,24,055/-. The said loan amount was taken up by the respondent on the same date after execution of the document between the parties. On 14th March, 2007 the respondent handed over a cheque for Rs. 16,93,512/- which was credited in the account of the appellant and it is a case of the writ petitioner/appellant that for the purpose of availing of such credit facilities the petitioner/appellant credited an equitable mortgage over and in respect of Flat No. 10E, 10th Floor, Neelkamal Apartment at No. 41, Elgin Road, Kolkata.

4. It is admitted by the appellant that in two loan accounts Rs. 58,24,055/-and Rs. 16,93,512/- respectively were granted by the Bank and the appellants were required to pay Rs.78,333/- and Rs.23,164/- respectively as the Equated Monthly Installments (EMI). Such EMI in respect of first loan account commenced from 5th March, 2007 and would have been paid upto 5th February, 2023. In respect of second loan account, EMI commenced from 5th April, 2007 and would have been continued till 5th March, 2023. It is their case that they have paid Rs. 19,44,905/- in respect of the first loan agreement and Rs.8,70,094/ - in respect of the second loan agreement.

5. It is also admitted that due to adverse business condition, the petitioner/ appellant approached the respondent for re-scheduling of the loan and for certain concession including reduction in the rate of interest. However, no steps were taken by the respondent in the matter and on 3rd March, 2009 the respondent issued notices claiming u/s 13(2) of the said Act on the petitioner/ appellant.

6. On 30th March, 2009 the appellants made representation before the respondent u/s 13(3A) of the said Act which was turned down by the respondent on 8th April, 2009 and thereafter on 17th June, 2009 the respondent issued notices u/s 13(4) of the said Act.

7. It is the case of the appellant that on 18th February, 2010 an order was passed by the learned Chief Judicial Magistrate, Alipore, District South 24-Parganas, on an application being filed u/s 14 of the said Act by the respondent. An order was passed by the said Court resulting the possession of the said residential flat was taken over by the respondent on 19th March, 2010. Hence, the writ petition was filed.

8. It is the case of the appellant that the respondent has acted arbitrarily and mala fide and initiated action u/s 14 of the said Act. It is further stated in respect of the loan agreement being agreement No. HEKOL 12014, the account was not declared as a NPA on 31st December, 2009. Therefore no action in law could have been

initiated u/s 14 of the said Act in respect of said loan amount. Hence, the order passed by the Chief Judicial Magistrate on 18th February, 2010 is required to be set aside and/or quashed. 10. It is further stated that the order of the learned Chief Judicial Magistrate, South 24-Parganas in case No. 1208 of 2010 and the order passed thereon dated 18th February, 2010 is void abinitio and is required to be set aside and/ or quashed.

9. Mr. Saktinath Mukherjee, learned Senior Advocate appearing on behalf of the appellant contended that possession cannot be taken away forcibly. According to him, the possession of a tenant who has ceased to be a tenant is protected by law. It is true that he may not have a right to continue in possession after the termination of the tenancy his possession is juridical and that possession is protected by statute. In support of his such contention, Mr. Mukherjee relied on the following judgments:-

(i) 51 Indian Appeals 293 (Midnapur Zamindary company Ltd. vs. Naresh Narayan Roy & Ors.);

(ii) AIR 1968 SC 620 (Lalli Yeshwant Singh vs. Rao Jagdish Singh and Ors.);

(iii) Yar Muhammad and Another Vs. Lakshmi Das and Others,

(iv) Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another,

(v) M.C. Chockalingam and Others Vs. V. Manickavasagam and Others,

(vi) 1986 (2) CHN 350 (of Dipak Kumar Munshi vs. Smt. Mira Chatterjee);

(vii) Smt. Usha Ghosh Vs. Rabindra Nath Das and others,

11. Our attention has also been drawn to section 6 of the Specific Relief Act, 1963 by Mr. Mukherjee and contended that a person in possession cannot be dispossessed without his consent and must be in accordance with law.

12. He drew our attention to Order 21 Rules 92 to 103 of the CPC and submitted that where a question of title is raised by a person in possession requiring an adjudication at the execution stage that can be decided by the Executing Court. No person shall be deprived of his property save by the authority of law (see 300A of the Constitution of India).

13. Mr. Mukherjee further urged that the order passed by the learned Chief Judicial Magistrate is bad in law. He has also drawn our attention to the provisions of sections 13 and 14 of the SARFAESI Act. Mr. Mukherjee submitted that under the said Act in the Metropolitan area the Chief Judicial Magistrate has jurisdiction to pass order u/s 14 of the said Act but except in metropolitan area the power lies with the District Magistrate and not with the Chief Judicial Magistrate.

14. Therefore, according to him, the respondent approached before an authority who had no jurisdiction in the matter and according to him, except District Magistrate the said power cannot be exercised by any other judicial officer. Chief

Judicial Magistrate cannot substitute in the position of a District Magistrate. Therefore, the said order should be set aside.

15. Where a borrower hands over the property to a secured creditor without any objection then section 14 of the SARFAESI Act has no application. Hence, he submitted that the decision of Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, has no application in the facts and circumstances of this case.

16. He further contended that the District Magistrate has given power under the statute. The said power cannot be delegated in favour of any other persons and in support of such contention he relies upon the following decisions:

(i) The The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others,

(ii) A.K. Roy and Another Vs. State of Punjab and Others,

(iii) Paresh Nath Mondal Vs. Bijan Behari Mondal and Others,

17. Relying on a decision of Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another, Mr. Mukherjee submitted that the decision without reason cannot be treated as precedent.

18. During the hearing a supplementary affidavit has been filed on behalf of the appellant and it is contended by Mr. Mukherjee that the respondent is not qualified to invoke the provisions of the SARFAESI Act, 2002. The respondent is not authorized or empowered to carry on its business as a financial institution as defined under the Act of 2002. He further submitted that an enquiry was made on behalf of the appellant from the Reserve Bank of India and it has been indicated by the Reserve Bank of India vide their letter dated 27th January, 2011 that the respondent is not registered under the Reserve Bank of India Act, 1934. Hence, he submitted that the respondent is not entitled to carry on its business as a financial institution and as a non-banking financial company within the meaning of the Reserve Bank of India Act, 1934.

19. Mr. Mukherjee further contended that respondent was not declared as a Financial Institution u/s 2(1)(m)(iv) of the SARFAESI Act. Therefore, respondent is not empowered to invoke the provisions of the said Act of 2002. He further pointed out that on 28th December, 2005 Reserve Bank of India had granted a Certificate of Registration to the respondent u/s 29A of the National Housing Bank Act, 1987, to commence and carry on their business as a Housing Financial Institution without accepting public deposits. Therefore, Mr. Mukherjee submitted that the respondent cannot claim themselves to be a Nonbanking Financial Institution within the meaning of section 451(f) of the Reserve Bank of India Act, 1934.

20. Mr. Mukherjee also stated that since the date of the loan agreement was 29th January, 2007 which is prior to the date of notification, therefore, they cannot have any advantage to take benefit under the SARFAESI Act.

21. On the contrary, Mr. Jayanta Kumar Mitra, learned Senior Advocate appearing on behalf of the respondent contended and answered the first point which has been urged by Mr. Mukherjee that the respondent cannot claim themselves as a "Financial Institution" u/s 2(1)(m)(iv) of the SARFAESI Act. To counter the same, Mr. Mitra placed before us the notification dated 19th September, 2007 which was published in the Gazette of India on 23rd September, 2007 and by the said notification he submitted that the respondent has specified as a Financial Institution for the purpose of the SARFAESI Act by the Central Government in exercise of its power u/s 2(1)(m)(iv) of the SARFAESI Act. He further claims that the respondent is also a Financial Institution within the meaning of section 451 (c) of the Reserve Bank of India Act, 1934. Our attention has also been drawn to a certificate dated 28th December, 2005 by Mr. Mitra to show that the respondent is entitled to carry on its business as a Nonbanking Financial Company and performing as a Financial Institution under the said Act. Therefore, he contended that the respondent has a right to invoke the provisions of the said Act.

22. It is further pointed out that the SARFAESI Act applies to all Public Financial Institutions as defined u/s 4A of the Companies Act. The Financial Institutions as defined in other laws are covered by the SARFAESI Act, if they are:

(i) declared as public financial institutions under sub-section (2) of the section 4A of the Companies Act; or

(ii) As financial institutions for the purpose of Recovery of Debts Due to Banks and Financial Institutions Act, 1993; or

(iii) Specified as financial institutions for the purpose of SARFAESI Act.

23. Therefore, it is submitted that the respondent''s sole business is of providing finance for housing. The respondent is thus a housing finance institution under the National Housing Bank Act, 1987. The respondent is duly registered with the National Housing Bank and a certificate in such regard has been issued by the National Housing Bank u/s 29A of the National Housing Bank Act, 1987. The Reserve Bank of India has, vide Notification DFC (COC) No 112 ED (SG)/97 read with circular DFC(COC) No.4438/02.04/ 96-97 dated June 18, 1997, exempted a non-banking financial company which is a housing finance institution as defined in section 2(d) of the National Housing Bank Act, 1987 from the provisions of Chapter III B of the Reserve Bank of India Act, 1934. Our attention has also been drawn to the Master Circular issued by the Reserve Bank of India on or about 1st July, 2009 and it is also annexed to the supplementary affidavit filed in this connection.

24. On the question whether the respondent can be treated as a Financial Institution or not under the SARFAESI Act we find that the respondent recognized as a Housing Financial Institutions on 20th December, 2005 and the loan agreement with the appellant was on 29th January, 2007 and the loan was against the Residential Flat which has been stated specifically. A notice was also issued thereof.

25. It is further pointed out that on 19th September, 2007 the respondent was declared as a financial institution for the purpose of the said Act of 2002 and, therefore, it appears to us that on 18th June, 1997 the Non-banking Financial Companies which are Housing Financial Institutions have been exempted from the Reserve Bank of India, Act in terms of the notification bearing No. DFC (COC) No. 112 ED(SG)/97 read with Circular DFC (COC) No.4438/ 02.04/96-97 dated 18th June, 1997 and the Master Circular dated 1st July, 2009 it appears to us that the respondent company has already been exempted u/s 45NC of the Reserve Bank of India Act. We have also noticed that the secured creditor has been defined in section 2(zd) of the said act which is reproduced hereunder:-

secured creditor'' means any bank or financial institution or any consortium or group of banks of financial institutions and includes--

(i) debenture trustee appointed by any bank or financial institution; or

[(ii) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or]

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

We have also noticed that the financial institution that has been defined in section 2(1)(m)(iv) of the said Act which is reproduced hereunder:-

Any other institution or non-banking financial company as defined in clause (f) of section 45I 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.

We have also noticed that section 45-I(f) of the Reserve Bank of India Act has defined non-banking financial company which is reproduced hereunder:

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 Gazette, specify.

26. Therefore, it appears to us that in the light of the aforesaid provisions any non-banking financial company which qualify and comes within the definition of non-banking company in terms of section 45-I(f) of the Reserve Bank of India Act, the respondent becomes the financial institutions in terms of section 2(m) of the SARFAESI Act.

27. Hence, we do not have any hesitation to hold that the respondent is a financial institution which is a secured creditor in terms of section 2(zd) of the said Act. Therefore, entitled to invoke the provisions of sections 13 and 14 of the said Act for the purpose of taking possession of the security interest under the said Act. Therefore, on the question, as raised by Mr. Mukherjee that the respondent is not entitled nor authorized to carry on business as a Financial Institution as defined in the SARFAESI Act and under the Reserve Bank of India Act, 1934 or the respondent is not entitled to invoke the provisions of the said Act cannot be accepted by us. In the given facts, we hold that the respondent is entitled and authorized to carry on business as a financial institution in accordance with the provisions of the SARFAESI Act and under the Reserve Bank of India Act, 1934.

28. Therefore, we accept the contention raised on behalf of the respondent and negatived the argument put forwarded before us by Mr. Mukherjee on this question.

29. Mr. Mitra submitted that the points which tried to be raised by Mr. Mukherjee is that when the loan agreement was entered into on that point of time the respondent was not declared as a Financial Institution cannot be allowed to urge by him at this stage because such point was not taken in the writ petition or in the affidavit or before the learned Trial Court and the said ground has also not been taken in the Memorandum of Appeal. Therefore, on the basis of the verbal submission, at this stage Court will not permit to take such point. There is no foundation in the pleadings and the point tried to be raised only to confuse the Court and in any event all these questions should be decided by the learned Tribunal and the appellant is amply protected under the provisions of law and in ventilating its grievances on such question. Mr. Mitra further submitted that this point cannot be treated as a point of law.

30. It is further submitted that any financial institutions which lends money to the borrower, will become a "Secured Creditor" upon its qualifying in terms of section 2(1)(m)(iv). Once it gets so qualified, in terms of the said Act, such financial institution will be entitled to proceed against the property mortgaged, charged, hypothecated etc. in the manner provided in sections 13 and 14 of the said Act. When the Act is applicable there can not be any lawful objection to rely upon the

provisions of the said Act, for expeditious recovery of its dues.

31. According to him the right to adopt the procedure under the Act accrued to the respondent after it was notified as a "Financial Institution". In the instant case, the respondent was recognized as a "Financial Institution" on 19th September, 2007 while it was published in the Official Gazette on 29th September, 2007. The notices u/s 13(2) of the said Act were issued on 3rd March, 2009. The appellant replied to the said notice on 30th March, 2009. The respondent after duly considering the reply on 8th April, 2009, issued a notice u/s 13(4) of the said Act on 17th June, 2009 and the order u/s 14 of the Act by the Chief Judicial Magistrate was passed on 18th February, 2010.

32. It is further submitted that the procedure adopted by the respondent for enforcement of the ''Security Interest'' in terms of the said Act is perfectly justified and legal.

33. The respondent became a Financial Institution and therefore, is a "Secured Creditor", before the appellant became a defaulter and its assets became Nonperforming Asset and thereafter steps were taken under the provisions of section 13(2), section 13(4) and section 14 of the said Act. Therefore, the said provisions rightly invoked against the appellant.

34. Our attention has been drawn to the said sections by the learned Senior Advocate on behalf of the respondent and submitted that the said Act is a procedural law enacted for the purpose of reducing accumulated Non-performing Assets of the Banks and Financial Institution. In respect of rights which may have been created prior to the coming into force of the said Act, the procedure for securitisation was evolved for quick realization of the security interest. Chapter III of the said Act deals with "Enforcement of Security Interest" is procedural in nature. It is a procedural right which can be expeditiously adopted for enforcement of an already existing right.

35. Mr. Mitra further relied upon the following decisions in support of his contention:-

(i) Pradeep Kumar Gupta and Another Vs. State of U.P. and Others,

(ii) Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.,

(iii) Transcore Vs. Union of India (UOI) and Another,

36. We have also noticed the aforesaid decisions, therefore, the issue which has been raised before us whether the respondent can act as a Financial Institution, and had authority to take steps in accordance with the said Act. On such question we hold in favour of the respondent and answer the issue in the affirmative.

37. After considering the materials placed before us and after scrutinizing such materials and the submissions made before us we find that the Act of 2002 was

enacted to the purpose of reducing accumulated non-performing assets to the Bank and Financial Institution, The appellants have raised a question of applicability of the provisions of the said Act of 2002 for scrutinizing the mortgage assets secured for recovery of financial assistance given by the respondent prior to the notification dated 19th September, 2007 by the Central Government issued, declaring the respondent a financial institution u/s 2(1)(m)(iv) of the Act of 2002.

38. We have also noted that the said Act of 2002 was enacted to regulate the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest and for the matters connected therewith or incidental thereto with effect from 17th December, 2002 replacing the ordinance notified on 21st June, 2002.

39. It appears to us that the Act is a procedural law which gives a right to the Bank to take possession of the property for non-payment of dues without intervention of the Court providing a remedy for an appeal to the learned Tribunal when a possession has been taken by the Financial Institution or Bank wrongly and without any authority.

40. It is not in dispute that whether the security was credited prior to the enforcement of the Act or by any notification by which the banking company is notified with regard to the applicability of the Act in question shall not make any difference. In fact, the provisions relating to the registration of Securitisation or Reconstruction Company must be reached with a retrospective effect. The securitisation is nothing but a procedure for which the rights may have created prior to the enforcement of the Act. It is only the enforcement of those rights then the Act comes to play its role. It does not create a fresh right in the matter of procedures of securitisation. Therefore, we hold that secured interest created at the time of grant of financial assistance either before enforcement of Act or before notification u/s 2(1)(m)(iv) of the Act, would not affect remedies made available to a secured creditor for securitisation of financial assets and enforcement of the secured interest under the Act of 2002.

41. Therefore, in our considered opinion, we hold that the said issue also to be answered in the affirmative in favour of the respondent and we hold that the action taken by them cannot be questioned by the appellant on the ground that prior to the enforcement of the Act the respondent was not notified as a financial institution by the Central Government. It would not stand in the way of the secured creditor to take steps in accordance with the SARFAESI Act.

42. The third issue, as it pointed out by Mr. Mukherjee, is that the Chief udicial Magistrate has no power to pass any order u/s 14 of the said Act. On such question Mr. Mitra learned Senior Counsel appearing on behalf of the respondent contended that the proper reading of sections 6, 8, 11, 12 and 17 read with sections 2(k) and 3 of the Criminal Procedure Code will clearly indicate that the Chief Judicial Magistrate in a Non-Metropolitan area stands on the same footing as of a Chief Metropolitan

Magistrate in a Metropolitan area and, therefore, he is vested all powers of a Chief Metropolitan Magistrate in a Metropolitan Area.

43. It is further submitted that the said provisions are procedural provisions and the power exercised by a Chief Metropolitan Magistrate or a District Magistrate u/s 14 of the said Act is executory in nature, and not adjudicatory. He also placed reliance on the following decisions in support of his contention on such question:-

(i) Solaris Systems Pvt. Ltd. vs. Oriental Bank of Commerce, 2006(8) Ker. Law Times 121;

(ii) Muhammed Ashraf & Anr. vs. Union of India Unreported decision of a Division Bench judgement of the Kerala High Court decided on 13th August, 2008;

(iii) Authorized Officer, Indian Overseas Bank and Another Vs. Ashok Saw Mill,

(iv) Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others,

(v) United Bank of India Vs. Satyawati Tondon and Others,

44. We find that the Act itself is a complete Code, which provides for alternative Forum for redressal of all disputes raised by the appellant herein. In the given facts, in our opinion, the Writ Court should not exercise its extraordinary jurisdiction in entertaining such disputes or contentions when the Debt Recovery Tribunal has been clothed with all such powers.

45. The Supreme Court in United Bank of India Vs. Satyawati Tondon and Others, held that the provisions of the DRT Act shows the primary object of that Act was to facilitate creation of special machinery for speedy recovery of the dues of the banks and financial institutions. For that reason Tribunals and Appellate Tribunals were established with the jurisdiction, power and authority to make summary adjudication of applications made by banks or financial institutions and specifies the modes of recovery of the amount determined by the Tribunal or the Appellate Tribunal but also bars the jurisdiction of all Courts except the Supreme Court and the High Court in relation to the matters specified in section 17 of the Act.

46. In the said decision the Supreme Court narrated the effect of section 13 of the SARFAESI Act which contains detailed mechanism for enforcement of security interest, any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court or Tribunal, by such creditor in accordance with the provisions of the said Act. The steps needed to be taken by the secured creditor for enforcement of security interest has been specifically enumerated in sub-section 13(2) of the said Act. The power and jurisdiction u/s 17 of the Tribunal has also been enumerated by the Supreme Court in the said decision. The Supreme Court also at the time of dealing with section 34 pointed out that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Tribunal or Appellate Tribunal is empowered to determine. It

further lays down that no injunction shall be granted by any court or other authority in respect of any action taken or to be taken under the SARFAESI Act or the DRT Act. In the said decision the Supreme Court also held as follows:-

41. The facts of the present case show that even after receipt of notices under sections 13(2) and (4) and order passed u/s 14 of the SARFAESI Act, respondents 1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs. 50,000/- was paid by respondent 1 on 29.10.2007. She did give an undertaking to pay the balance amount in installments but did not honour her commitment. Therefore, the action taken by the appellant for recovery of its dues by issuing notices under sections 13(2) and 13(4) and by filing an application u/s 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed a serious error by entertaining the writ petition of respondent 1.

The Supreme Court also held as follows :

There is another reason why the impugned order should be set aside. If respondent 1 had any tangible grievance against the notice issued u/s 13(4) or action taken u/s 14, then she could have availed remedy by filing an application u/s 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 u/s 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.

The Supreme Court further held as follows :

30. The Court while exercising its jurisdiction under Article 226 is dutybound to consider whether;

(a) adjudication of writ petition involves any complex and disputed question 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.

47. After considering the facts and circumstances of this case, we find that the Court is duty bound to consider the test laid down by the Supreme Court while exercising its jurisdiction under Article 226 of the Constitution of India and after applying such test we find that there are factors which can not allow the writ petitioner/appellant to have an order in this jurisdiction and the appellants have an alternative remedy to redress their grievances before the Debt Recovery Tribunal.

48. In these circumstances, we do not find any merit in this appeal. Hence, we dismiss the appeal. However, this order will not stand in the way to file any application by the appellant to take steps before the Debt Recovery Tribunal in accordance with the law.

49. For the reasons stated hereinabove, the appeal is dismissed.

50. Since the appeal is dismissed, the connected application for stay (being C.A.N, No. 3497 of 2010) has become infructuous and the same is dismissed accordingly.

51. Photostat certified copy of this judgment, if applied for, be supplied to the parties.

LATER:

Stay of the operation of the order is granted for four weeks as prayed by Mr. Reetobroto Mitra, learned Advocate appearing on behalf of the appellant.

Shukla Kabir (Sinha), J.: I agree.