REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2010
(Arising out of SLP(C) No.10145 of 2010)

United Bank of India ...Appellant

Versus

Satyawati Tondon and others ...Respondents

J U D G M E N T

1. Leave granted.

2. With a view to give impetus to the industrial development of the country, the Central and State Governments encouraged the banks and other financial institutions to formulate liberal policies for grant of loans and other financial facilities to those who wanted to set up new industrial units or expand the existing units. Many hundred thousand took advantage of easy financing by the banks and other financial institutions but a large number of them did not repay the amount of loan, etc. Not only this, they instituted frivolous cases and succeeded in persuading the Civil Courts to pass orders of injunction against the steps taken by banks and financial institutions to recover their dues. Due to lack of adequate infrastructure and non-availability of manpower, the regular Courts could not accomplish the task of expeditiously adjudicating the cases instituted

by banks and other financial institutions for recovery of their dues. As a result, several hundred crores of public money got blocked in unproductive ventures. In order to redeem the situation, the Government of India constituted a committee under the chairmanship of Shri T. Tiwari to examine the legal and other difficulties faced by banks and financial institutions in the recovery of their dues and suggest remedial measures. The Tiwari Committee noted that the existing procedure for recovery was very cumbersome and suggested that special tribunals be set up for recovery of the dues of banks and financial institutions by following a summary procedure. The Tiwari Committee also prepared a draft of the proposed legislation which contained a provision for disposal of cases in three months and conferment of power upon the Recovery Officer for expeditious execution of orders made by adjudicating bodies. The issue was further examined by the Committee on the Financial System headed by Shri M. Narasimham. In its First Report, the Narasimham Committee also suggested setting up of special tribunals with special powers for adjudication of cases involving the dues of banks and financial institutions.

After considering the reports of the two Committees and taking cognizance of the fact that as on 30-9-1990 more than 15 lakh cases filed by public sector banks and 304 cases filed by financial institutions were pending in various Courts for recovery of debts, etc. amounting to Rs.6000 crores, the Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the DRT Act'). The new legislation facilitated

creation of specialised forums i.e., the Debts Recovery Tribunals and the Debts Recovery Appellate Tribunals for expeditious adjudication of disputes relating to recovery of the debts due to banks and financial institutions. Simultaneously, the jurisdiction of the Civil Courts was barred and all pending matters were transferred to the Tribunals from the date of their establishment.

An analysis of the provisions of the DRT Act shows that primary object of that Act was to facilitate creation of special machinery for speedy recovery of the dues of banks and financial institutions. This is the reason why the DRT Act not only provides for establishment of the Tribunals and the Appellate Tribunals with the jurisdiction, powers 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 Courts in relation to the matters specified in Section 17. The Tribunals and the Appellate Tribunals have also been freed from the shackles of procedure contained in the Code of Civil Procedure. To put it differently, the DRT Act has not only brought into existence special procedural mechanism for speedy recovery of the dues of banks and financial institutions, but also made provision for ensuring that defaulting borrowers are not able to invoke the jurisdiction of Civil Courts for frustrating the proceedings initiated by the banks and other financial institutions.

For few years, the new dispensation worked well and the officers appointed to man the Tribunals worked with great zeal for ensuring that cases involving recovery of the dues of banks and financial institutions are decided expeditiously. However, with the passage of time, the proceedings before the Tribunals became synonymous with those of the regular Courts and the lawyers representing the borrowers and defaulters used every possible mechanism and dilatory tactics to impede the expeditious adjudication of such cases. The flawed appointment procedure adopted by the Government greatly contributed to the malaise of delay in disposal of the cases instituted before the Tribunals.

The survey conducted by the Ministry of Finance, Government of India revealed that as in 2001, a sum of more than Rs.1,20,000/- crores was due to the banks and financial institutions and this was adversely affecting the economy of the country. Therefore, the Government of India asked the Narasimham Committee to suggest measures for expediting the recovery of debts due to banks and financial institutions. In its Second Report, the Narasimham Committee noted that the non-performing assets of most of the public sector banks were abnormally high and the existing mechanism for recovery of the same was wholly insufficient. In Chapter VIII of the Report, the Committee noted that the evaluation of legal framework has not kept pace with the changing commercial practice and financial sector reforms and as a result of that the economy could not reap full benefits of the reform process. The Committee made various suggestions for bringing about radical changes in the existing

adjudicatory mechanism. By way of illustration, the Committee referred to the scheme of mortgage under the Transfer of Property Act and suggested that the existing laws should be changed not only for facilitating speedy recovery of the dues of banks, etc. but also for quick resolution of disputes arising out of the action taken for recovery of such dues. The Andhyarujina Committee constituted by the Central Government for examining banking sector reforms also considered the need for changes in the legal system. Both, the Narasimham and Andhyarujina Committees suggested enactment of new legislation for securitisation and empowering the banks and financial institutions to take possession of the securities and sell them without intervention of the court. The Government of India accepted the recommendations of the two committees and that led to enactment of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), which can be termed as one of the most radical legislative measures taken by the Parliament for ensuring that dues of secured creditors including banks, financial institutions are recovered from the defaulting borrowers without any obstruction. For the first time, the secured creditors have been empowered to take steps for recovery of their dues without intervention of the Courts or Tribunals.

3. Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest. Sub-section (1) thereof lays down that notwithstanding anything contained in Sections 69 or 69-A of the Transfer of

Property Act, 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 this Act. Sub-section (2) of Section 13 enumerates first of many steps needed to be taken by the secured creditor for enforcement of security interest. This sub-section provides that if a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt and his account in respect of such debt is classified as non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of the notice with an indication that if he fails to do so, the secured creditor shall be entitled to exercise all or any of its rights in terms of Section 13(4). Sub-section (3) of Section 13 lays down that notice issued under Section 13(2) shall contain details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank or financial institution. Sub-section (3-A) of Section 13 lays down that the borrower may make a representation in response to the notice issued under Section 13(2) and challenge the classification of his account as non-performing asset as also the quantum of amount specified in the notice. If the bank or financial institution comes to the conclusion that the representation/objection of the borrower is not acceptable, then reasons for non-acceptance are required to be communicated within one week. Sub-section (4) of Section 13 specifies various modes which can be adopted by the secured creditor for recovery of secured debt. The secured creditor can take possession of the secured assets of the borrower and transfer the same by way of lease,

assignment or sale for realising the secured assets. This is subject to the condition that the right to transfer by way of lease, etc. shall be exercised only where substantial part of the business of the borrower is held as secured debt. If the management of whole or part of the business is severable, then the secured creditor can take over management only of such business of the borrower which is relatable to security. The secured creditor can appoint any person to manage the secured asset, the possession of which has been taken over. The secured creditor can also, by notice in writing, call upon a person who has acquired any of the secured assets from the borrower to pay the money, which may be sufficient to discharge the liability of the borrower. Sub-section (7) of Section 13 lays down that where any action has been taken against a borrower under sub-section (4), all costs, charges and expenses properly incurred by the secured creditor or any expenses incidental thereto can be recovered from the borrower. The money which is received by the secured creditor is required to be held by him in trust and applied, in the first instance, for such costs, charges and expenses and then in discharge of dues of the secured creditor. Residue of the money is payable to the person entitled thereto according to his rights and interest. Sub-section (8) of Section 13 imposes a restriction on the sale or transfer of the secured asset if the amount due to the secured creditor together with costs, charges and expenses incurred by him are tendered at any time before the time fixed for such sale or transfer. Sub-section (9) of Section 13 deals with the situation in which more than one secured creditor has stakes in the secured assets and lays down that in the case of financing a financial asset

by more than one secured creditor or joint financing of a financial asset by secured creditors, no individual secured creditor shall be entitled to exercise any or all of the rights under sub-section (4) unless all of them agree for such a course. There are five unnumbered provisos to Section 13(9) which deal with *pari passu* charge of the workers of a company in liquidation. The first of these provisos lays down that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of Section 529-A of the Companies Act, 1956. The second proviso deals with the case of a company being wound up on or after the commencement of this Act. If the secured creditor of such company opts to realise its security instead of relinquishing the same and proving its debt under Section 529(1) of the Companies Act, then it can retain sale proceeds after depositing the workmen's dues with the liquidator in accordance with Section 529-A. The third proviso requires the liquidator to inform the secured creditor about the dues payable to the workmen in terms of Section 529-A. If the amount payable to the workmen is not certain, then the liquidator has to intimate the estimated amount to the secured creditor. The fourth proviso lays down that in case the secured creditor deposits the estimated amount of the workmen's dues, then such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited with the liquidator. In terms of the fifth proviso, the secured creditor is required to give an undertaking to the liquidator to pay the balance of the workmen's dues, if any. Sub-section (10) of Section 13 lays down that where dues of the secured creditor are not

fully satisfied by the sale proceeds of the secured assets, the secured creditor may file an application before the Tribunal under Section 17 for recovery of balance amount from the borrower. Sub-section (11) states that without prejudice to the rights conferred on the secured creditor under or by this section, it shall be entitled to proceed against the guarantors or sell the pledged assets without resorting to the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets. Sub-section (12) of Section 13 lays down that rights available to the secured creditor under the Act may be exercised by one or more of its officers authorised in this behalf. Sub-section (13) lays down that after receipt of notice under sub-section (2), the borrower shall not transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice without prior written consent of the secured creditor. In terms of Section 14, the secured creditor can file an application before the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction the secured asset or other documents relating thereto are found for taking possession thereof. If any such request is made, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is obliged to take possession of such asset or document and forward the same to the secured creditor.

4. Section 17 speaks of the remedies available to any person including borrower who may have grievance against the action taken by the secured creditor under sub-section (4) of Section 13. Such an aggrieved person can make

an application to the Tribunal within 45 days from the date on which action is taken under that sub-section. By way of abundant caution, an Explanation has been added to Section 17(1) and it has been clarified that the communication of reasons to the borrower in terms of Section 13(3-A) shall not constitute a ground for filing application under Section 17(1). Sub-section (2) of Section 17 casts a duty on the Tribunal to consider whether the measures taken by the secured creditor for enforcement of security interest are in accordance with the provisions of the Act and the Rules made thereunder. If the Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that the measures taken by the secured creditor are not in consonance with sub-section (4) of Section 13, then it can direct the secured creditor to restore management of the business or possession of the secured assets to the borrower. On the other hand, if the Tribunal finds that the recourse taken by the secured creditor under sub-section (4) of Section 13 is in accordance with the provisions of the Act and the Rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor can take recourse to one or more of the measures specified in Section 13(4) for recovery of its secured debt. Sub-section (5) of Section 17 prescribes the time-limit of sixty days within which an application made under Section 17 is required to be disposed of. The proviso to this sub-section envisages extension of time, but the outer limit for adjudication of an application is four months. If the Tribunal fails to decide the application within a maximum period of four months, then either party can move the Appellate Tribunal for

issue of a direction to the Tribunal to dispose of the application expeditiously. Section 18 provides for an appeal to the Appellate Tribunal.

5. Section 34 lays down 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. Section 35 of the SARFAESI Act is substantially similar to Section 34(1) of the DRT Act. It declares that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

6. However, effective implementation of the SARFAESI Act was delayed by more than two years because several writ petitions were filed in the High Courts and this Court questioning its vires. The matter was finally decided by this Court in **Mardia Chemicals v. Union of India** (2004) 4 SCC 311 and the validity of the SARFAESI Act was upheld except the condition of deposit of 75% amount enshrined in Section 17(2). The Court referred to the recommendations of the Narasimham and Andhyarujina Committees on the issue of constitution of special tribunals to deal with cases relating to recovery of the dues of banks etc. and observed:

> "One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of assets. It is thus to be seen that the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field. In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the Report of the Narasimham Committee, yet another Committee was constituted headed by Mr. Andhyarujina for bringing about the needed steps within the legal framework. We are, therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in operation it was uncalled for to have yet another legislation for the recovery of the mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy."
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> (emphasis supplied)

This Court then held that the borrower can challenge the action taken under Section 13(4) by filing an application under Section 17 of the SARFAESI Act and a civil suit can be filed within the narrow scope and on the limited grounds on which they are permissible in the matters relating to an English mortgage enforceable without intervention of the Court. In paragraph 31 of the judgment, the Court observed as under:

> "In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debts Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned

> provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would subserve the public interest."
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> (emphasis supplied)

7. In the light of the above, we shall now consider whether the Division Bench of the High Court was justified in restraining the appellant from proceeding under Section 13(4) of the SARFAESI Act against the property of respondent No.1.

8. A perusal of the record shows that the appellant sanctioned a term loan of Rs.22,50,000/- in favour of M/s. Pawan Color Lab [through its proprietor Pawan Singh (respondent No.2)] some time in November, 2004. Respondent No.1 gave guarantee for repayment of the loan and mortgaged her property bearing House No. 752/062, Bakshi Khurd, Daraganj, Pargana and Tehsil Sadar, District Allahabad by deposit of title deeds. She also submitted an affidavit dated 28.12.2004 and executed agreement of guarantee dated 29.12.2004 making herself liable for repayment of the loan amount with interest.

9. After one year and six months, the appellant sent letter dated 6.5.2006 to respondent Nos.1 and 2 pointing out that repayment of loan was highly irregular. After another one year, the account of respondent No.2 was classified as Non-Performing Asset. On 19.7.2007, the appellant sent separate letters to

respondent Nos. 1 and 2 requiring them to deposit the outstanding dues amounting to Rs.23,78,478/-. Thereupon, respondent No.1 deposited a sum of Rs.50,000/- and gave written undertaking to pay the balance amount in instalments. However, she did not fulfil her promise to repay the remaining amount. This compelled the appellant to issue notice to respondent Nos.1 and 2 under Section 13(2) requiring them to pay Rs.23,22,972/- along with future interest and incidental expenses within 60 days. Upon receipt of the notice, respondent No.1 offered to pay a sum of Rs.18 lakhs for settlement of the loan account, but the appellant did not accept the offer and filed an application under Section 14 of the SARFAESI Act, which was allowed by District Magistrate/Collector, Allahabad vide his order dated 25.8.2008. Thereafter, the appellant issued notice dated 21.1.2009 to respondent Nos.1 and 2 under Section 13(4) of the SARFAESI Act.

10. Faced with the imminent threat of losing the mortgaged property, respondent No.1 filed C.M.W.P. No.55375 of 2009 and prayed that the appellant herein may be restrained from taking coercive action in pursuance of the notices issued under Section 13(2) and (4) and order dated 25.8.2008 passed by District Magistrate/Collector, Allahabad. She pleaded that the notices issued by the appellant for recovery of the outstanding dues are ex facie illegal and liable to be quashed because no action had been taken against the borrower i.e., respondent No.2 for recovery of the outstanding dues.

11. In the counter affidavit filed on behalf of the appellant, it was pleaded that action initiated against respondent No.1 was consistent with the provisions of SARFAESI Act and writ petitioner (respondent No.1 herein) was bound to discharge her obligations to pay the outstanding dues and there was no merit in her challenge to the notices issued under Section 13(2) and 13(4) or the order passed under Section 14. It was further pleaded that the writ petition is liable to be dismissed because an alternative remedy is available to the petitioner under Section 17 of the SARFAESI Act.

12. The Division Bench of the High Court did not even advert to the appellant's plea that the writ petition should not be entertained because an effective alternative remedy was available to the writ petitioner under Section 17 of the SARFAESI Act and passed the impugned order restraining the appellant from taking action in furtherance of notice issued under Section 13(4) of the SARFAESI Act. The reason which prompted the High Court to pass the impugned interim order and operative portion thereof are extracted below:

> "Learned counsel for the petitioner has urged that the loan was taken by respondent No.4 for opening a colour lab at 50/43, Raj Complex, K.P. Kakkar Road, Allahabad, but the loan has not been repaid by respondent No.4 and the bank is proceeding against the petitioner who is the guarantor of the loan. It is not clear from the documents produced by learned counsel for the bank as to what steps have been taken by the bank against the borrower of the loan and merely issuance of notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the borrower is not sufficient. The bank should have proceeded against the borrower and exhausted all the remedies against him and thereafter the bank could have proceeded against the guarantor.

> Until further orders of this court, the respondents are restrained from proceeding under section 13(4) of the Act 2002 with regard to petitioner's property who was the guarantor of the loan. However, if any possession has been taken by the bank then the property shall not be sold to any one else and the petitioner shall be continued in possession of the property."

13. We have heard learned counsel for the appellant and perused the record. Normally, this Court does not interfere with the discretion exercised by the High Court to pass an interim order in a pending matter but, having carefully examined the matter, we have felt persuaded to make an exception in this case because the order under challenge has the effect of defeating the very object of the legislation enacted by the Parliament for ensuring that there are no unwarranted impediments in the recovery of the debts, etc. due to banks, other financial institutions and secured creditors.

14. The question whether the appellant could have issued notices to respondent No.1 under Section 13(2) and (4) and filed an application under Section 14 of the SARFAESI Act without first initiating action against the borrower i.e., respondent No.2 for recovery of the outstanding dues is no longer *res integra*. In **Bank of Bihar Ltd. v. Damodar Prasad** (1969) 1 SCR 620, this Court considered and answered in affirmative the question whether the bank is entitled to recover its dues from the surety and observed:

> "It is the duty of the surety to pay the decretal amount. On such payment he will be subrogated to the rights of the creditor under Section 140 of the Indian Contract Act, and he may then recover the amount from the principal. The very object of the guarantee is defeated if the creditor is asked to postpone his remedies against

> the surety. In the present case the creditor is banking company. A guarantee is a collateral security usually taken by a banker. The security will become useless if his rights against the surety can be so easily cut down."

In **State Bank of India v. M/s. Indexport Registered and others** (1992) 3 SCC 159, this Court held that the decree-holder bank can execute the decree against the guarantor without proceeding against the principal borrower and then proceeded to observe:

> "The execution of the money decree is not made dependent on first applying for execution of the mortgage decree. The choice is left entirely with the decree-holder. The question arises whether a decree which is framed as a composite decree, as a matter of law, must be executed against the mortgage property first or can a money decree, which covers whole or part of decretal amount covering mortgage decree can be executed earlier. There is nothing in law which provides such a composite decree to be first executed only against the [principal debtor]."

In **Industrial Investment Bank of India Limited v. Biswanath Jhunjhunwala** (2009) 9 SCC 478, this Court again held that the liability of the guarantor and principal debtor is co-extensive and not in alternative and the creditor/decree-holder has the right to proceed against either for recovery of dues or realization of the decretal amount.

15. In view of the law laid down in the aforementioned cases, it must be held that the High Court completely misdirected itself in assuming that the appellant could not have initiated action against respondent No.1 without making efforts for recovery of its dues from the borrower – respondent No.2.

16. The facts of the present case show that even after receipt of notices under Section 13(2) and (4) and order passed under Section 14 of the SARFAESI Act, respondent Nos.1 and 2 did not bother to pay the outstanding dues. Only a paltry amount of Rs.50,000/- was paid by respondent No.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 Section 13(2) and 13(4) and by filing an application under Section 14 cannot be faulted on any legally permissible ground and, in our view, the Division Bench of the High Court committed serious error by entertaining the writ petition of respondent No.1.

17. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a

petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. 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. 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. 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 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 Corporation v. Registrar of Trade Marks, Mumbai** (1998) 8 SCC 1 and **Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others** (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

19. In **Thansingh Nathmal v. Superintendent of Taxes** (1964) 6 SCR 654, the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under:

> "The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

20. In **Titaghur Paper Mills Co. Ltd. v. State of Orissa** (1983) 2 SCC 433, a three-Judge Bench considered the question whether a petition under Article 226 of the Constitution should be entertained in a matter involving challenge to the order of the assessment passed by the competent authority under the Central Sales Tax Act, 1956 and corresponding law enacted by the State legislature and answered the same in negative by making the following observations:

> "Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford in the following passage:
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> > "There are three classes of cases in which a liability may be established founded upon statute. . . . But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. . .the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."
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> The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. and has been

> reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd. and Secretary of State v. Mask & Co. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

21. The views expressed in **Titaghur Paper Mills Co. Ltd. v. State of Orissa** (supra) were echoed in **Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others** (1985) 1 SCC 260 in the following words:

> "Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

22. In **Punjab National Bank v. O.C. Krishnan and others** (2001) 6 SCC 569, this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed:

> "5**.** In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions

> Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.
>
> 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."

23. In **CCT, Orissa and others v. Indian Explosives Ltd.** (2008) 3 SCC 688, the Court reversed an order passed by the Division Bench of Orissa High Court quashing the show cause notice issued to the respondent under the Orissa Sales Tax Act by observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy.

24. In **City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwala and others** (2009) 1 SCC 168, the Court highlighted the parameters which are required to be kept in view by the High Court while

exercising jurisdiction under Article 226 of the Constitution. Paragraphs 29 and 30 of that judgment which contain the views of this Court read as under:-

> "29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.
>
> 30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:
>
> (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
>
> (b) the petition reveals all material facts;
>
> (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
>
> (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
>
> (e) ex facie barred by any laws of limitation;
>
> (f) grant of relief is against public policy or barred by any valid law; and host of other factors.
>
> The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or

> statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

25. In **Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another** (2010) 4 SCC 772, the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed:

> "31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.
>
> 32. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum."

26. In **Modern Industries v. Steel Authority of India Limited** (2010) 5 SCC 44, the Court held that where the remedy was available under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, the High Court was not justified in entertaining a petition under Article 226 of the Constitution.

27. 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 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.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act.

29. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy.

.....J.
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi
July 26, 2010.