REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 338-340 OF 2011
(Arising out of S.L.P. (Crl.) Nos.4436-4438 of 2009)

KANAIYALAL LALCHAND SACHDEV & ORS. — APPELLANTS

VERSUS

STATE OF MAHARASHTRA & ORS. — RESPONDENTS

J U D G M E N T

D.K. JAIN, J.:

Leave granted.

2. Challenge in these appeals, by special leave, is to the judgments and orders dated 28th April, 2009 and 1st July, 2009 delivered by the High Court of Bombay in W.P. No. 707 of 2009, and Criminal Application No. 178 of 2009 in W.P. No. 707 of 2009, respectively whereby it has dismissed the writ petition filed by the appellants herein, and also declined to extend the status-quo order granted by it to them.

3. Briefly stated, the facts, material for adjudication of the present appeals, may be stated thus:

Respondent No. 3, viz. the State Bank of India had advanced a loan of `4,50,00,000/- to appellant No. 6 on an equitable mortgage by deposit of the title deeds of certain properties, subject matter of these appeals, on 6th February, 2006. Appellant Nos.1 to 5 and one Mr. Lalchand Sachdeo stood as personal guarantors to the said loan.

4. On default of re-payment of loan amount, respondent No. 3 issued a notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 on 18th November, 2006. On 12th February, 2007, the officers of respondent No. 3 dispossessed the appellants of one of the secured properties viz. T-125, CTS, No. 1729. Being aggrieved, the appellants filed a writ petition being CRL. W.P. No.286 of 2007 before the Bombay High Court, *inter-alia*, contending that the notice issued by respondent No. 3 was illegal, no action could be taken in pursuance thereof, and if at all, the respondent wanted to take any action, it was required to approach the Chief Metropolitan Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act").

5. Before the High Court, respondent No. 3 offered to withdraw the notice dated 18th November, 2006 without prejudice to the rights and contentions advanced by them, and to return the possession of the said property to the appellants, subject to the appellants and all adult members furnishing an undertaking to the effect that they shall not alienate, encumber, transfer, dispose of and/or create any third party interest in the said premises for a period of six months. Accepting the statement made on behalf of respondent No. 3, the High Court dismissed the writ petition vide order dated 7th March, 2007.

6. Thereafter, on 11th April, 2007 respondent No. 3 issued to the appellants a notice under Section 13(2) of the Act. The appellants replied to the said notice on 23rd May, 2007. Vide letter dated 29th May, 2007, respondent No. 3, communicated its reasons for not accepting the reply. Subsequently, respondent No. 3 issued a public notice in newspapers, informing the appellants of the issuance of notice under Section 13(2) of the Act.

7. In pursuance thereof, respondent No.3, filed C.C. No. 223/M/2008 before the Chief Metropolitan Magistrate under Section 14 of the Act for taking possession of the secured assets. Vide order dated 3rd February, 2009, the Magistrate allowed the said application and directed the Assistant

Registrar, Kurla Centre of Courts, to take possession of the mortgaged properties after issuing notice to the appellants.

8. Vide notice dated 27th February, 2009, the Assistant Registrar, directed the appellants to hand over the possession of the mortgaged properties to respondent No. 3 within 15 days from the receipt of the said notice. At this juncture, it would be expedient to extract the relevant portions of the said notice:

> "Whereas, the Chief Metropolitan Magistrate, Esplanade, Mumbai has passed the following order on 3.2.2009 on the application filed before him by State Bank of India, Mazda Complex, Parsi Agari Lane, Thana (W) 400601 through its Authorized Officer Fazlur Rehman Sheikh.
>
> ORDER
>
> The Application is allowed. Asst. Registrar, Mr. P.A. Tendolkar, Kurla Centre of Court after issuing notice of taking possession of the secured assets……
> ……
> ……
> ……"

It is manifest from a bare perusal of the said notice that the order passed by the Magistrate dated 3rd February, 2009 was referred to by the Assistant Registrar in his notice.

9. Being aggrieved by the said notice, the appellants herein again approached the High Court. As afore-stated, the High Court dismissed

the said writ petition, vide order dated 28th April, 2009, on the ground that an alternative remedy was available to the appellants under Section 17 of the Act. Nevertheless, the High Court directed the respondents to maintain status quo in the matter for a period of 10 weeks from the date of its order, so as to enable the appellants to approach the Debts Recovery Tribunal (for short the "DRT") under Section 17 of the Act.

10. Thereafter, the appellants filed Criminal Application No. 178 of 2009 in W.P. No. 707 of 2009 seeking an extension of the status quo period granted vide order dated 28th April, 2009. As afore-stated, the High Court rejected the said application filed by the appellants.

11. Hence, the present appeals against both the said orders.

12. Ms. Kranti Anand, learned counsel appearing on behalf of the appellants, while assailing the impugned orders, strenuously urged that apart from the fact that the notice issued by the Assistant Registrar was vague, it was never served on the appellants. In fact, appellants received a copy of the order of the Magistrate during the proceedings before the High Court, pleaded the learned counsel. Learned counsel also urged that the notice issued by the Assistant Registrar was vitiated on account of non-compliance with Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short "the 2002 Rules") as well. It was argued that the High

Court had also erred in equating action under Section14 of the Act with action under Section 13(4)(a) of the Act. It was thus, asserted that for all these reasons, the impugned orders deserve to be set aside.

13. *Per contra,* Mr. Buddy A. Ranganadhan, learned counsel appearing on behalf of respondent No.3—Bank, supporting the impugned judgments, contended that in light of the decision of this Court in ***Transcore*** *Vs.* ***Union of India & Anr.***[1], no fault could be found with the impugned judgments. It was also urged that the appellants having already availed of the remedy of approaching the DRT, they are estopped from challenging the decision of the High Court.

14. Mr. Sushil Karanjakar, learned counsel appearing on behalf of the State of Maharashtra contended that Rule 8 of the 2002 Rules was inapplicable in the instant case, in as much as it deals with sale of secured assets. According to the learned counsel, it was Rule 4 which was applicable to the facts of the instant case. In support, reliance was placed on the decision of this Court in ***Mardia Chemicals Ltd. & Ors.*** *Vs.* ***Union of India & Ors.***[2].

15. Having bestowed our anxious consideration to the facts at hand, we are of the opinion that the appeals are utterly misconceived.

[1] (2008) 1 SCC 125
[2] (2004) 4 SCC 311

16. Section 13 of the Act deals with enforcement of security interest, providing that notwithstanding anything contained in Sections 69 or 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the court's intervention, by such creditor in accordance with the provisions of the Act. Section 13(2) of the Act provides that when 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, failing which the secured creditor shall be entitled to exercise all or any of the rights given in Section 13(4) of the Act. Section 13(3) of the Act provides that the notice under Section 13(2) of the Act shall give details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank. Section 13(3-A) of the Act was inserted by Act 30 of 2004 after the decision of this Court in ***Mardia Chemicals*** (supra), and provides for a last opportunity for the borrower to make a representation to the secured creditor against the classification of his account as a non-performing asset. The secured creditor is required to consider the representation of the borrowers, and if the secured creditor comes to the conclusion that

the representation is not tenable or acceptable, then he must communicate, within one week of the receipt of the communication by the borrower, the reasons for rejecting the same. Section 13(4) of the Act provides that if the borrower fails to discharge his liability within the period specified in Section 13(2), then the secured creditor, may take recourse to any of the following actions, to recover his debt, namely-

> "(*a*) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
>
> (*b*) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:
>
> Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:
>
> Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;
>
> (*c*) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
>
> (*d*) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt."

Section 14 of the Act provides that 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. (See: ***United Bank of India*** *Vs.* ***Satyawati Tondon & Ors.***[3]). Therefore, it follows that a secured creditor may, in order to enforce his rights under Section 13(4), in particular Section 13(4)(a), may take recourse to Section 14 of the Act.

17. Section 17 of the Act which provides for an appeal to the DRT, reads as follows:

> "**17. Right to appeal**.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:
>
> Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.
>
> *Explanation*.—For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or

[3] (2010) 8 SCC 110

objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of Section 17.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder."

18. The 2002 Rules, enacted under sub-section (1) and clause (b) of sub-section (2) of Section 38 read with sub-sections (4), (10) and (12) of Section 13 of the Act, set down the procedure for enforcing a security interest. Rule 4 of the 2002 Rules deals with the possession of movable assets, whereas Rule 8 deals with the possession of immoveable assets. It is manifest that Rule 4 has no application to the facts of the instant case, as contended by the learned counsel for the State.

19. In ***Authorised Officer, Indian Overseas Bank & Anr.*** *Vs.* ***Ashok Saw Mill***[4], the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated under Section 13(4) of the Act? On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court, held as under :

[4] (2009) 8 SCC 366

"**35.** In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

……..

39. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."

(Emphasis supplied by us)

20. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person

affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

21. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: ***Sadhana Lodh*** *Vs.* ***National Insurance Co. Ltd. & Anr.***[5]***; Surya Dev Rai*** *Vs.* ***Ram Chander Rai & Ors.***[6]***; State Bank of India*** *Vs.* ***Allied Chemical Laboratories & Anr.***[7]). In ***City and Industrial Development Corporation*** *Vs.* ***Dosu Aardeshir Bhiwandiwala & Ors.***[8], this Court had observed that:

> "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;

[5] (2003) 3 SCC 524
[6] (2003) 6 SCC 675
[7] (2006) 9 SCC 252
[8] (2009) 1 SCC 168

(*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."

22. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.

23. For the foregoing reasons, the impugned judgments cannot be flawed, warranting interference by this Court. Accordingly, the appeals, being devoid of any merit, are dismissed with costs, quantified at `20,000/-.

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(D.K. JAIN, J.)

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(H.L. DATTU, J.)

NEW DELHI;

FEBRUARY 7, 2011.
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