IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 553 of 2023

Ambhi Impex Private Limited & Ors.
Versus
Punjab National Bank & Ors.

For the petitioners	:	Mr. Jaydip Kar, Sr. Advocate Mr. Debasish Karmakar, Adv. Mr. Parikshit Lakhotia, Adv. Mr. Satyam Ojha, Adv.
For PNB	:	Mr. Samrat Sen, Sr. Advocate Mr. Abhishek Banerjee, Adv. Ms. Parna Roychudhury, Adv. Ms. Payel Ghosh, Adv.
For the respondent No.3	:	Mr. Bikash Ranjan Bhattacharya Mr. Uday Sankar Chatterjee, Adv. Mr. Suman Sankar Chatterjee, Adv.

Hearing concluded on : 20.03.2025

Judgment on : **19.05.2025**

Shampa Sarkar, J.:-

1. The revisional application arises out of a judgment and order dated January 10, 2023, passed by the learned presiding officer (in charge), Debts Recovery Tribunal-II, Kolkata in S.A. No. 217 of 2021 and I.A.1605 of 2022. SA 217 of 2021, was an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. By the order impugned, the learned tribunal dismissed S.A. 217 of 2021 along with I.A. No.1605 of 2022 on the ground that those applications

were devoid of any merit. Other pending I.As, if any, were also disposed of accordingly. The learned tribunal came to the conclusion that advancement of credit facility to the petitioners by the secured creditor was an admitted fact. The loan had to be repaid in accordance with the terms of the contract. The bank was not only entitled to, but also duty bound to recover the amount, by taking recourse to the provisions of law. The sale was upheld. It was recorded that the sale notice was issued on November 7, 2022. The sale was conducted on November 28, 2022, through e-auction and the secured asset had been sold to one Mr. Ashok Kumar Ghosh, the opposite Party No. 3 in this proceeding, for an amount of Rs.5,53,22,000/- against the reserved price of Rs.3,03,97,000/-.

3. No irregularity had been detected in the entire procedure adopted by the secured creditor. It was held that upon compliance of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as 'SARFAESI Act') and the Rules framed thereunder, the sale had been concluded.

4. The learned tribunal further held that the demand notice dated January 18, 2021, for an amount of Rs.7,97,88,824.96/- was issued after calculating the interest upto November 31, 2022.

5. Mr. Jaydip Kar, the learned Senior Advocate, appearing on behalf of the petitioners submitted that the order impugned was without jurisdiction as the same was passed in violation of the principles of natural justice. The application bearing No. I.A. 1605 of 2022 was fixed for hearing on December 15, 2022, upon allowing a put up petition dated December 14, 2022. Accordingly, I.A No. 1605 of 2022 was listed on December 15, 2022. By the said application, the sale notice dated November 7, 2022, had been

challenged by the petitioner on various grounds. The sale was scheduled to be held on November 28, 2022. The application was heard upon exchange of affidavits.

6. According to Mr. Kar, the order would reflect that the learned tribunal had heard I.A. 1605 of 2022 and directed the parties to file their written notes of arguments. Arguments were advanced on the validity of the sale notice. While impressing upon the court as to why the sale notice was unsustainable in law, submissions were made on the merits of S.A. 217 of 2022. The notes of arguments and the submissions had substantial reference to the S.A, in order to point out the illegalities on the part of the bank in proceeding against the petitioners under the SARFAESI Act. On the relevant date, the application challenging the sale notice was actually fixed for hearing. Upon conclusion of the arguments of the respective parties, the tribunal directed filing of written notes. The order sheets would clearly reflect that the S.A. was not fixed for hearing on the said date. However, ignoring the submissions which were made on the sale notice and the validity thereof, the learned tribunal, after the conclusion of the hearing of the I.A., by order dated January 10 2023, dismissed S.A. 217 of 2021 as also I.A. 1605 of 2022. Other connected applications were accordingly disposed of.

7. According to the petitioners, the order was passed in an unfair manner, without putting the petitioners on notice. The learned tribunal disposed of S.A. 217 of 2021, upon considering the merits thereof, without giving an opportunity to the petitioners to advance arguments on the S.A. Only because the written notes of arguments had discussions on the merits and parties had submitted on the merits of S.A. 217 of 2021 as well, learned

tribunal could not have proceeded to decide S.A. 217 of 2021. The records would reveal that the learned tribunal had fixed only the application No. I.A. 1605 of 2022 for hearing and not the SA. The merits of S.A. 217 of 2021, were not even argued by the petitioners to their satisfaction. Passing reference to the merits of the proceedings initiated by the bank under the SARFAESI Act, was made only to substantiate that the sale notice was defective. Emphasis was laid on the fact that the entire process by which the bank sought to recover the loan, was flawed. The illegalities in the actions of the bank, which led to the issuance of the sale notice, were pointed out. Support was drawn from the objection taken in the SA, in order to establish that the sale notice was violative of the statutory provisions. The submissions of the petitioners were that the sale notice was an outcome of a totally illegal SARFAESI action. Thus, arguments were advanced on the merits of S.A. 217 of 2021, to substantiate before the learned tribunal and to convince the learned tribunal why the sale notice could not have been issued under the circumstances narrated in the S.A. Attempt was made to establish before the learned tribunal that, the sale notice was illegal and the sale could not go through in view of such illegalities in the process of recovery of the loan. That, such actions were in violation of the undertakings given by the bank in an earlier S.A, to the effect that the Bank would not proceed against the petitioners. The submissions were made on the merits of the case, with the understanding that those submissions would be necessary to drive home the fact that the sale notice was issued without any authority of law, illegally and in violation of the undertakings given by the bank. The learned tribunal did not have the occasion to decide the merits of the S.A. The tribunal ought to have only dealt with the submissions made

on the S.A, to adjudicate the validity and legality of the sale notice and not beyond.

8. Mr. Kar submitted that the order should be set aside and the S.A. should be remanded for further hearing on its own merits.

9. Mr. Kar specially placed reliance on ground No.XXIX at page 22 of the revisional application, in support of his contentions. Learned Senior Advocate urged that the revisional application was maintainable before this court, in view of the perversity, procedural irregularity and wrongful assumption of jurisdiction. The provision of a statutory appeal would not operate as a bar in the facts of the case. The order was amenable to the jurisdiction of this court under Article 227 of the Constitution of India. Violation of the principles of natural justice vitiated the order. Mr. Kar called upon the court to allow the said application.

10. Reliance was placed on the following decisions:-

1. ***Atin Arora vs Oriental Bank of Commerce*** reported in ***2020 SCC Online Cal 2656,***
2. ***Ajay Singh and Another vs State of Chattisgarh and Another*** reported in ***(2017) 3 SCC 330,***
3. ***Achutananda Baidya vs Prafullya Kumar Gayen and Others*** reported in ***(1997) 5 SCC 76,***
4. ***Varimadugu Obi Reddy vs B. Sreenivasulu and Ors. reported in (2023) 2 SCC 168,***
5. ***South Indian Bank Ltd. and Ors. vs Naveen Mathew Philip and Anr. Reported in 2023 SCC Online SC 435.***

11. Referring to the above decisions, Mr. Kar submitted that the law did not impose an absolute bar on the power vested upon the High Court under

Article 227 of the Constitution of India, if the order under challenge occasioned miscarriage of justice. The litigant should be protected. The supervisory jurisdiction of the court should be exercised in order to advance the cause of justice and uproot injustice. Disposing of the main S.A, when the interlocutory application had been fixed for hearing, was a jurisdictional error.

12. Mr. Kar urged that there were no limits, fetters or restrictions on the power of superintendence of this court. The court was the custodian of justice and was armed with a weapon that could be wielded to ensure that justice was meted out fairly and properly by courts and tribunals, under its jurisdiction. In this case, the order was not dictated in open court. The application was heard virtually and the order was reserved. The order was uploaded on January 10, 2023 and the petitioners were taken by surprise, when they found that the S.A. had been disposed of on merits, although, the court had only heard I.A. 1605 of 2021.

13. According to Mr. Kar, the order impugned did not have any legal effect, inasmuch as, the order was neither declared in open court nor signed on the said date. It was urged that courts and tribunals should conduct proceedings with dignity, objectivity, rationality, and finally determine the issues involved in accordance with law. A reasoned verdict should be given, upon adherence to the essential principle of *audi alteram partem*. A fair hearing should lead to pronouncement of a judgment. In the instant case, the concept of fair hearing was totally missing, as the learned tribunal disposed of the main S.A without even fixing a date for hearing of the same and without allowing the parties to advance proper arguments. The procedure followed by the learned tribunal was contrary to law and

antithetic to the very concept of a fair hearing. Those were adequate grounds for this court to exercise its power of judicial review and set aside the order, by remanding the hearing of the main application on merits. The duty of the High Court was to ensure that the tribunals must act within the limits of its jurisdiction and in accordance with law.

14. According to Mr. Kar, although rejection of the I.A. may be appellable, but the entire order being a composite disposal of the I.A. and the SA, would be amenable to the jurisdiction of this court for the reasons mentioned herein above.

15. Mr. Samrat Sen, learned Senior Advocate, appeared on behalf of the bank and submitted that the jurisdiction of the High Court under Article 227 of the Constitution of India, should not be exercised in this case. He submitted that the proceedings were governed by the SARFAESI Act. The SARFAESI Act was a comprehensive legislation and the sole repository of all rights, duties and powers which could be exercised by the parties, in respect of proceedings under the said Act. The order impugned was passed by the tribunal in a proceeding under Section 17 of the SARFAESI Act and the same was appealable under Section 18 of the said Act. The provisions of the SARFAESI Act would have overriding effect. The jurisdiction of a civil court was barred under Section 34 of the said Act. Although the constitutional powers of the High Court under Articles 226 and 227 did not stand abrogated, the constitutional courts always exercised self-restraint and refrained from entertaining such applications, in view of the efficacious, alternative and effective remedy under the SARFAESI Act.

16. According to Mr. Sen, the petitioners failed to establish how the alternative statutory remedy was not efficacious. The petitioners had invited

the tribunal to take into consideration the issues and grounds raised by them in the S.A. Having done so, the tribunal proceeded to dispose of the entire proceeding. When the order had gone against the petitioners, the petitioners challenged the order on the ground of perversity.

17. There was no infirmity in the order impugned. The petitioners themselves, had invited the tribunal to consider the grounds and issues raised in the S.A. From the first paragraph of the order dated January 10, 2023, it would appear that the tribunal had recorded that the counsel for the petitioners had referred and argued on the objections taken in the S.A as well. The order recorded that upon hearing the parties, the tribunal proceeded to adjudicate the matter. The tribunal proceeded to decide all the issues raised by the petitioners, considered, evaluated and adjudicated the same in great detail. Nothing further remained to be decided in the S.A. If the petitioners were aggrieved by the findings, their remedy would be to file an appeal before the appellate tribunal.

18. Mr. Sen relied on the following decisions:-

(i) ***State Bank of Patiala and Others vs S.K.Sharma*** reported in ***(1996) 3 SCC 364,***

(ii) ***State Bank of India vs Jah Developers Private Limited and Ors.*** reported in ***(2019) 6 SCC 787,***

(iii) ***Commissioner of Income Tax and Ors. vs Chhabil Dass Agarwal*** reported in ***(2014) 1 SCC 603,***

(iv) ***PHR Invent Educational Society vs UCO Bank and Ors.*** reported in ***(2024) 6 SCC 579,***

(v) ***Phoenix Arc Private Limited vs Vishwa Bharati Vidya Mandir and Ors.*** reported in ***(2022) 5 SCC 345,***

(vi) ***United Bank of India vs Satyawati Tondon and Ors.*** reported in ***(2010) 8 SCC 110,***

(vii) ***Punjab National Bank vs O.C. Krishnan and Ors.*** reported in ***(2001) 6 SCC 569,***

(viii) ***State of Maharashtra and Ors. vs Greatship (India) Limited*** reported in ***2022 SCC Online SC 1262,***

(ix) ***Divisional Manager, Plantation Division, Andaman and Nicobar Islands vs Minu Barrick and Ors.*** reported in ***(2005) 2 SCC 237***

19. It was further submitted that the petitioners could not display the prejudice they had suffered. Mere allegation that the principle of natural justice had been violated, was not adequate. It was imperative for the petitioners to show sufferance and prejudice. Mr. Sen prayed for dismissal of the SA.

20. Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate for the auction purchaser opposite party No. 3, also submitted that the civil revisional application was not maintainable on the ground that there was an efficacious remedy under the law. The challenge to the impugned order was entirely on the merits of the S.A. Thus, in effect, the petitioners were inviting this court to decide the merits of the order passed by the tribunal, in a circuitous manner, by raising a plea that the SA was disposed of without the tribunal fixing the same for hearing. Mr. Bhattacharya submitted that only to avoid the pre-deposit, the application had been filed before this court. Due to the pendency of the application and the interim order passed, the auction purchaser who had invested a lot of money, had been suffering. The Hon'ble Apex Court, time and again deprecated such practice of the High

Courts, in entertaining applications challenging the orders passed under the SARFAESI Act, by ignoring the alternative remedy available to the aggrieved party. The powers guaranteed by the Constitution, should be exercised with circumspection and restraint. This was not an extraordinary case, which required the court to intervene and set aside the order. Commercial matters, involving the lender and the borrower, should be decided as per the mechanism provided by the legislature under the SARFAESI Act.

21. Considered the rival contentions of the respective parties. Records reveal that the learned tribunal had fixed December 15, 2022, for hearing of I.A. 1605 of 2022. The order dated December 15, 2022, indicates that the case was listed before the tribunal for hearing of I.A.1605 of 2022. In the said IA, the sale notice dated November 7, 2022, had been challenged on various grounds. In the order impugned, the tribunal recorded that the sale had already taken place. The bank had filed an affidavit-in-opposition to the said application and the petitioners filed a reply. Learned counsel for the parties were heard. The court directed the parties to file their written notes of arguments to I.A.1605 of 2022, within December 31, 2022. The process of sale was directed to continue, but the sale was made subject to the outcome of I.A.1605 of 2022.

22. It was also recorded that the matter would be listed on January 10, 2023, for passing order and the order would be uploaded in the tribunal's website. The order dated January 10, 2023, recorded that counsel for the petitioners had advanced arguments on all points, including all objections raised in the S.A. Written objections to the I.A as well as the S.A had been filed by the bank.

23. Mr. Nimish Mishra, Ankit Chatterjee and Mr. Gaurav Singh and Mr. Debasis Chakraborty along with Ms. Anindita Das, entered appearance for the respective parties. They were heard by the tribunal and written notes had been filed. The learned tribunal narrated the facts in brief and decided the matter under following heads:-

(i) Estoppel,
(ii) Barred by Law of limitation,
(iii) Principle of promissory estoppel and legitimate expectancy,
(iv) Non-performing asset,
(v) Compliance of Section 13(3A) of SARFAESI Act,
(vi) 13(2) Notice of SARFAESI Act,
(vii) Encumbrances,
(viii) Low Valuation of the property,
(ix) Opportunity to redeem the property and
(x) One time settlement.

24. Each and every issue raised by the petitioners in the S.A. as well as the I.A, were taken up one by one, discussed and conclusions were arrived at. The petitioners had submitted that, prior to S.A. 217 of 2021, S.A. 91 of 2015 had been filed. The bank appeared and had undertaken not to take any steps under the SARFAESI Act. Accordingly, S.A. 91 of 2015 was disposed of. The petitioners urged before the tribunal that, the bank had undertaken to take steps under the Recovery of Debts and Bankruptcy Act, 1993, but proceeded under the SARFAESI Act. The SARFAESI proceeding was hit by the principle of estoppel. The learned tribunal considered the submissions of the parties and held that the principle of estoppel would not apply as the bank had the right to proceed under the SARFAESI Act, even during the pendency of an O.A. before the Debts Recovery Tribunal. The tribunal found that the bank had undertaken at the time of disposal of S.A. 91 of 2015, that it would not give effect to the order passed by the District Magistrate under Section 14 of the SARFAESI Act and nothing beyond.

25. The next issue was limitation, which was again decided by the learned tribunal on its own merits. The decision cited by the petitioners, viz, ***B.K. Educational Services Private Limited vs Parag Gupta and Associates*** decided in ***Civil Appeal No. 23988 of 2017*** and ***Gaurav Hargovindbhai Dave vs Asset Reconstruction Company (India) Ltd. And Anr.*** reported in ***(2019) 13 SCR 224***, as also the decisions cited by the bank in the cases of ***Akshat Commercial Pvt. Ltd. & Anr. vs Kalpana Chakraborty & Ors.*** reported in ***AIR 2010 Calcutta 138*** and ***Dr. Dipankar Chakraborty vs Allahabad Bank and Ors.*** decided in ***WP No. 16511 (W) of 2016***, were held to be inapplicable.

26. The tribunal gave its own reasons and held that the proceeding initiated by the secured creditor under the SARFAESI Act, was not barred by limitation.

27. The applicability of the principles of promissory estoppel and legitimate expectation, were also decided upon taking note of the pre-disbursal conditions, the factum of sanction of loan, quantum of money sanctioned and the contents of the loan recall notice. It was held that the doctrine of promissory estoppel and or estoppel would not apply against banks or financial institutions. Banks were held to be custodians of public money, and could not be estopped from proceeding under the relevant laws, for recovery of the loan. It was decided that even if some of the pre-disbursal conditions had not been fulfilled, as the non-payment of the loan was an admitted fact, the bank could proceed under the law.

28. The next question dealt with was, declaration of the account of the petitioners as a non-performing asset. No irregularity was detected. Thereafter, the issue of compliance of Section 13 (3A) of the SARFAESI Act,

was taken up. It was held that, the said issue was not required to be adjudicated on the ground that, the proviso to sub-Section 3A of Section 13 of the SARFAESI Act, clearly stated that communications by the secured creditor would not confer any right on the borrower to prefer an application either under Section 17 or 17A of the SARFAESI Act.

29. The other issues dealt with were on the validity of the notice under Section 13(2), encumbrances, the low valuation of the property, opportunity to redeem the property, one time settlement etc. Ultimately, the learned tribunal came to the conclusion that, the sale notice dated November 7, 2022, was the second sale notice. The earlier sale notices and the scheduled dates for sale had become infructuous due to inadequate number of bidders. At that time, the petitioners did not show any intention or willingness to liquidate the amount, by tendering all dues. As such, the plea of the petitioners that they did not get adequate opportunity to redeem the property, was not accepted by the learned tribunal.

30. With regard to the allegation of low valuation of the property, the learned tribunal found that the sale was confirmed in favour of the opposite party No.3 at a price of Rs.5,53,22,000/- against the reserve price of Rs.3,03,97,000/-. It was held that the opposite party No.3 was the highest bidder and the learned tribunal accepted the valuation report filed by the bank. With regard to the one-time settlement, it was found that the default clause in the bank's proposal, had been invoked as the OTS stood cancelled. The clause is quoted below :-

> "**3. Default Clause:** OTS will automatically stand cancelled in case of default in payment of settled dues and non compliance of other terms of sanction and Bank will revert the dues prior to the settlement along with further interest thereon, without further reference to the borrower(s)/Guarantor(s)."

31. The learned tribunal observed that although the petitioners had deposited 35 lakhs as per the payment plan after the OTS, initial deposit of 30 lakhs and monthly instalments of 50 lakhs starting from January 2020, were required to be made within June 2020. It was held that the petitioners had failed to conform to the said payment plan. The learned tribunal held that, the bank, as the financial creditor, had proceeded in accordance with law. Accordingly, the S.A. and the I.A were dismissed.

32. The order recorded that arguments were advanced by both parties on both the S.A. and the I.A. The objections of the petitioners which were raised in the S.A. were decided under separate heads. Issues were framed both on the merits of the S.A. and the I.A. Each and every contention of the petitioners was taken up, discussed and findings were arrived at. Thus, upon perusal of the said order, it cannot be conclusively held that the tribunal had only restricted the hearing to the limited issue of the validity of the sale notice, and the petitioners were deprived of an opportunity to address on the merits of the SA. The conduct of the petitioners reflects otherwise.

33. In my view, a passing reference to the merits of the S.A. and the proceedings initiated by the bank under the SARFAESI Act, would not persuade the tribunal to frame issues on the merits of the S.A., unless those points were elaborately urged. It also appears that judgments were cited on the merits of the S.A. and the learned tribunal had been called upon to consider those judgments. The tribunal had dealt with the judgments. The question whether the findings are correct and whether the merits of the case

have been properly appreciated, must be decided in the statutory appeal. The law has provided an alternative, efficacious remedy.

34. Going through the written notes of arguments filed by the petitioner, which has been annexed to this application, this court finds that, although it was sought to be filed in I.A. No. 1605 of 2022, the merits of the entire case had been elaborately discussed in the said written notes. Point no.1 dealt with the principle of estoppel. Arguments of the parties on the principle of estoppel were discussed. Point no.2 was with regard to limitation and the judgments in support of such contentions were relied upon. The arguments of the bank and the petitioner's reply were put forward. Point no.3 were the contentions of the petitioner with regard to violation of Section 13(3A) of the SARFAESI Act. The judgments relied upon were discussed. The arguments advanced by the bank and the reply of the petitioners to the same, were also mentioned. Similarly, issues under different heads, i.e., that the proceeding was hit by the principles of promissory estoppel and legitimate expectation, the loan account was wrongly classified as a non-performing asset, etc. were discussed in the form of arguments. The decisions relied upon with regard to the low reserve price and the valuation of the property etc., were also urged. Encumbrances, OTS settlement etc., were all highlighted and elaborately discussed.

35. The concluding part of the written notes, is reproduced below :-

> "in light of the above grounds, the steps and the measures taken by the defendant bank in respect of the said property in question under the grab of the SARFAESI Act is illegal, unlawful and bad in law. The impugned actions taken by the defendant bank are in derogation and contrary to the law and thus liable to be dismissed with cost.
> In such a pretext, the instant IA should be allowed in the interest of Justice and the auction sale be quashed and cancelled."

36. The concluding submission of the petitioner was that the steps and the measures taken by the bank in respect of the property in question, under the garb of the SARFAESI Act were illegal, unlawful, bad in law. The actions of the bank were in derogation to the law and were liable to be set aside with cost. In such context, the petitioners prayed that the I.A. should also be allowed in the interest of justice and the auction sale should be quashed and cancelled.

37. The conduct of the parties, the nature of submissions made before the learned tribunal, the contents of the written notes, persuades this court to hold that although, the I.A. was fixed for hearing on the point of validity of the sale notice, the hearing actually proceeded on the merits of the case and entire matter were argued by both parties. Thereafter, the learned tribunal allowed the parties to file their written notes and passed its orders. Thus, I do not find any arbitrariness in the manner in which the matters were disposed of. I do not find that the tribunal proceeded in a manner which has caused any injustice, thereby requiring this court to interfere with the order.

38. This court is not inclined to exercise jurisdiction under Article 227 of the Constitution of India and the points which have been raised by the petitioners before this court, are also available under Section 18 of the SARFAESI Act, before the learned appellate tribunal, including all challenges to the merits of the decision arrived at. The grounds taken in the revisional application, some of which are quoted below, are entirely on the merits of the order impugned, as also the merits of the S.A.

> **"VIII** FOR THAT the Learned Presiding Officer (In-Charge) of the Tribunal below should have appreciated and erred by failing to appreciate that S.A. No. 91 of 2015 had been disposed of by the Learned Tribunal on a clear and specific undertaking given by the opposite parties not to proceed against the petitioners under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 any further.

IX FOR THAT the Learned Presiding Officer (In-Charge) of the Tribunal below ought to have appreciated and failed to exercise the jurisdiction vested in him by law by failing to appreciate that after giving an unequivocal undertaking, as recorded in the order passed by the Learned Tribunal in S.A. No. 91 of 2015 on 15th June, 2017, the respondents/opposite parties were absolutely debarred from taking any further recourse to the said Act of 2002 against the petitioners in the guise of recovery of any unpaid secured debt.

XIV FOR THAT while passing the impugned judgment and order, the Learned Presiding Officer (In-Charge) of the Tribunal below also acted illegally and with material irregularities in observing that the undertaking given by the opposite parties, as recorded in the order passed on 15th June, 2017, was confined to the order of the District Magistrate dated 28th May, 2015. The Learned Presiding Officer (In-Charge) of the Tribunal below failed to exercise the jurisdiction vested in him by law by failing to appreciate that had the undertaking given by the opposite parties been restricted only to the order obtained from the District Magistrate on 28th May, 2015, there would have been no occasion for the Learned Tribunal to dispose of S.A. No. 91 of 2015 as a whole holding the same to have become infructuous inasmuch as S.A. No.91 of 2015 was not directed solely against the order of the District Magistrate alone, but was also directed against the several other steps taken by the opposite parties allegedly under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

XVI FOR THAT while passing the impugned judgment and order, the Learned Presiding Officer (In-Charge) of the Tribunal below also failed to exercise the jurisdiction vested in him by law by failing to appreciate that inasmuch as the property allegedly mortgaged to the opposite party no. 1 had admittedly been in possession of the Learned Receiver appointed in O.A. No.133 of 2016, the property was custodia legis and there would have been no occasion for the opposite parties to take physical possession of the immovable properties in denial of the Court appointed Receiver's right to remain in possession. The Presiding Officer (In-Charge) of the Tribunal below acted illegally and with material irregularities by not appreciating that the opposite party no. 1 could have taken possession of the alleged mortgaged property, if at all, only from the mortgager and not from a Court appointed Receiver.

XXII FOR THAT the Learned Presiding Officer (In-Charge) of the Tribunal below should have appreciated and failed to exercise the jurisdiction vested in him by law by failing to appreciate that the opposite parties were required to issue a notice of demand, as contemplated under Section 13(2) of the said Act of 2002, positively within a period of 3 years from the date of classification of the concerned loan account as a Non Performing Asset. The Learned Presiding Officer (In-Charge) of the Tribunal below acted illegally and with material irregularities in not appreciating that since in

the present case the notice of demand had been issued after more than 5 years from the classification, of the loan account as NPA the purported debt allegedly owed by the petitioners to the opposite party no. 1 had become hopelessly time barred.

XXIV FOR THAT while passing the impugned judgment and order, the Learned Presiding Officer (In-Charge) of the Tribunal below erroneously exercised a jurisdiction not vested in him by law by wrongly observing that the cause of action of the opposite parties to take recourse to the provisions laid down under the said Act of 2002 was continuous and such cause of action was alive owing to pendency of the proceeding initiated under the Act of 1993 and also because of disposal of the previous round of litigation. The Learned Presiding Officer (In-Charge) of the Tribunal below acted illegally and with material irregularities by not appreciating that the proceeding pending under the Act of 1993 was completely a distinct and separate proceeding altogether and had no bearing on S.A. No. 217 of 2021, nor could have kept the cause of action alive for the opposite parties to issue a notice of demand under the Act of 2002 at any point of time at their leisure or pleasure.

XXX FOR THAT while passing the impugned judgment and order, the Learned Presiding Officer (In-Charge) of the Tribunal below ought to have appreciated and failed to exercise the jurisdiction vested in him by law by failing to appreciate that the opposite party no. 1 could not have withheld an amount of Rs.3 Crore out of the loan amount sanctioned without disbursing such amount to the petitioner no. 1 on a frivolous plea of shortfall of valuation by only Rs.33,00,000/ - (Thirty-Three Lac). The Learned Presiding Officer (In-Charge) of the Tribunal below also acted illegally and with material irregularities in not appreciating that by any stretch of imagination, the opposite party no. 1 could not have withheld an amount out of the sanctioned loan on the plea of the alleged shortfall in valuation.

XXXI FOR THAT while passing the impugned judgment and order, the Learned Presiding Officer (In-Charge) of the Tribunal below failed to exercise the jurisdiction vested in him by law by failing to appreciate that the alleged shortfall of valuation of Rs.33,00,000/- (Thirty Three Lakh) had adequately been taken care of by the petitioners by offering additional securities in excess of what had been contemplated in the letter of sanction. The Learned Presiding Officer (In-Charge) of the Tribunal below ought not to have acted illegally or with material irregularities by overlooking or ignoring the additional securities offered by the petitioners, which were adequate to secure repayment of the entire loan amount sanctioned by the first opposite party.

XXXIV. FOR THAT while passing the impugned judgment and order, the Learned Presiding Officer (In-Charge) of the Tribunal below also failed to exercise the jurisdiction vested in him by law by falling to not appreciate that the loan account in question had been wrongly classified as a Non Performing Asset dehors the prudential norms.

> **XXXV.** FOR THAT the Learned Presiding Officer (In-Charge) of the Tribunal below also acted illegally and with material irregularities by not appreciating that the opposite party no.1 had committed gross illegalities in not upgrading the loan account despite having received substantial amounts from the petitioners post classification of the loan account as a Non Performing Asset.
> **LIV** FOR THAT while passing the impugned judgment and order, the Learned Presiding Officer (In-Charge) of the Tribunal below also acted illegally and with material irregularity by erroneously observing that simultaneously with the issuance of the impugned sale notice, the petitioner had lost their right to redeem the property mortgaged. Such observation made by the Learned Presiding Officer (In-Charge) of the Tribunal below was not only contrary to the statutory provisions, but was also reflective of a closed mind."

39. Only one ground has been dedicated to the issue urged before this court i.e., the matter was taken up on a day when S.A. was not fixed for hearing. The said ground is quoted below:-

> **"XXIX** FOR THAT while passing the impugned judgment and order, Learned Presiding Officer (In-Charge) of the Tribunal below also erred in disposing of the S.A. No.217 of 2021 when argument was advanced and concluded about the I.A. No.1605 of 2022 not against the main S.A. No.217 of 2021. Therefore disposing off the S.A. No.217 of 2021 with the I.A. No.1605 of 2022 Learned Presiding Officer (In-Charge) of the Tribunal below also acted illegally and with material irregularities while adjudicating the same."

40. Although, it was submitted by Mr. Kar that this court should interfere primarily on the ground of violation of the principles of natural justice, this court finds from the grounds taken in the revisional application that, the entire order passed by the learned tribunal has been assailed before this court. The prayer for remand of S.A. for further hearing, for the reason that the petitioners had not argued the S.A. to their fullest satisfaction and had made only passing reference to assert why the sale notice was defective, can be made before the learned appellate tribunal. The challenges to the merits of the order impugned can be raised before the appellate tribunal. Instead of

multiplying proceedings, the proper legal procedure for the petitioners would be to avail of the remedy under Section 18 of the SARFAESI Act. The petitioners will have a wider scope to challenge the entire order on its own merits and also pray for rehearing of the S.A. If the learned appellate tribunal is convinced that the petitioners were prevented from arguing the S.A. on its own merits and the tribunal had acted with perversity in deciding the S.A, necessary orders can always be passed. To the understanding of this court, there is not an exceptional situation which requires interference under Article 227 of Constitution of India. The learned tribunal has neither abused the power vested in it by law, nor has it exceeded its jurisdiction upon wrongful assumption of power. The decisions cited by Mr. Kar, do not apply in the facts of this case.

41. In the matter of ***Phoenix ARC (supra),*** the Hon'ble Apex Court held as follows:-

> **"21.** Applying the law laid down by this Court in Mathew K.C. [State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the Sarfaesi Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the Sarfaesi Act. Filing of the writ petition by the borrowers before the High Court is nothing but an

abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

42. In the matter of ***Punjab National Bank (supra),*** the Hon'ble Apex Court held as follows:-

> **"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."

43. In the matter of ***Greatship (India) Ltd. (supra),*** the Hon'ble Apex Court held as follows:-

> **"13.** ……
>
> 53. In Raj Kumar Shivhare v. Directorate of Enforcement [Raj Kumar Shivhare v. Directorate of Enforcement, (2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712] 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 : (SCC p. 781, paras 31-32)
>
> '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.' "
>
> **14.** Applying the law laid down by this Court in the aforesaid decision, the High Court has seriously erred in entertaining the writ petition under Article 226 of the Constitution of India against the assessment order, bypassing the statutory remedies."

44. Accordingly, the revisional application is dismissed with liberty to the petitioners to approach the learned appellate tribunal in accordance with law. The pendency of the revisional application before this court shall be taken into consideration by the learned appellate tribunal while deciding the issue of limitation. The learned appellate tribunal shall not be influenced by this order.

45. Interim orders, if any, stand vacated.

46. There shall be no order as to costs.

47. Parties are to act on the basis of the sever copy of this order.

(Shampa Sarkar, J.)