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*** THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH**
&
THE HON'BLE Ms. JUSTICE B. S. BHANUMATHI

\+ WRIT PETITION No. 30161 OF 2021

% 18.02.2022

1. M/s. Mangalagiri Textile Mills Private Limited,
Rep. by its Chairman, Dr. Goli Nagasaina Rao,
A company registered under Companies Act,
Having its registered office at H. No.6/224/8,
Chinakakani, Mangalagiri - 522 503, Guntur District.

2. Dr. Goli Nagasaina Rao, S/o. Late Mr. G. Viswanadham,
Aged 62 years Occ: Doctor, Chairman and Managing Director of
M/s. Mangalagiri Textile Mills Private Limited,
R/o. H. No.2-2-647/276 Srinivasa Nagar Colony,
Baghamberpet, Hyderabad - 500 013.

.... Petitioners

Versus

$ 1. The State Bank of India,
Rep. by its Authorized Officer,
Stressed Assets Management Branch – II,
Office at H. No.3-4-1013/A, 1st Floor,
CAC, TS RTC Bus Station, Kachiguda,
Hyderabad - 500 027.

2. The Authorized Officer,
State Bank of India,
Stressed Assets Management Branch – II,
Office at H. No.3-4-1013/A 1st Floor,
CAC, TS RTC Bus Station, Kachiguda,
Hyderabad - 500 027.

.... Respondents

! Counsel for the Petitioners: Mr. T. Lakshmi Narayana, Advocate

^ Counsel for the respondents: Mr. Satyanarayana Moorthy, Advocate

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> Head Note:

? Cases Referred:
1. (2021) 2 SCC 392
2. (2010) 8 SCC 110
3. (2014) 6 SCC 1
4. (2018) 3 SCC 85

5. (2019) 13 SCC 497
6. Special Leave to Appeal (C) 10911/2021, 16.12.2021
7. 2022 SCC Online SC 44
8. 2020 SCC OnLine Pat 4312
9. 2021 SCC OnLine Pat 1243
10. 2021 SCC OnLine Pat 1205
11. (2013) 9 SCC 620
12. (2019) 20 SCC 47
13. 2021 SCC OnLine Del 5209
14. 2021 SCC OnLine Del 4911
15. MANU/DE/0491/2021
16. (1989) 3 SCC 483
17. (2007) 11 SCC 363
18. (2016) 4 SCC 47
19. (2017) 7 SCC 729
20. (1981) 3 SCC 528
21. (1988) 3 SCC 449
22. (1997) 9 SCC 377
23. (2013) 4 SCC 690
24. (2008) 14 SCC 58
25. 2017 SCC OnLine Del 6394

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 30161 of 2021

Between:

M/s. Mangalagiri Textile Mills Private Limited and another

…. Petitioners

Versus

The State Bank of India, Rep. by its Authorized Officer
And another

…..Respondents

DATE OF JUDGMENT PRONOUNCED: ***18.02.2022***

SUBMITTED FOR APPROVAL:

THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH
&
THE HON'BLE Ms. JUSTICE B. S. BHANUMATHI

1. *Whether Reporters of Local newspapers may be allowed to see the Judgments?* *Yes/No*

2. *Whether the copies of judgment may be marked to Law Reporters/Journals* *Yes/No*

3. *Whether Your Lordships wish to see the fair copy of the Judgment?* *Yes/No*

AHSANUDDIN AMANULLAH, J

B. S. BHANUMATHI, J

THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH
AND
THE HON'BLE Ms. JUSTICE B. S. BHANUMATHI

WRIT PETITION No. 30161 of 2021

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Versus

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CAC, TS RTC Bus Station, Kachiguda,
Hyderabad - 500 027.

.... Respondents

Counsel for the Petitioners : Mr. T. Lakshmi Narayana, Advocate

Counsel for the respondents : Mr. Satyanarayana Moorthy, Advocate

ORAL JUDGMENT

Date: 18.02.2022

(Per Hon'ble Mr. Justice Ahsanuddin Amanullah)

Heard Mr. T. Lakshmi Narayana, learned counsel for the petitioners and Mr. Satyanarayana Moorthy, learned counsel for the respondents – State Bank of India (hereinafter referred to as the 'SBI').

2. By the instant writ petition, the petitioners assail the action(s) taken by the SBI under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Act') alleging violation of the procedure prescribed therein as well as non-conformity with The Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules').

3. The factual matrix may first be adverted to. The petitioners obtained loan from the SBI. The account having become a Non-Performing Asset (hereinafter referred to as 'NPA'), the petitioners applied for One-Time Settlement (hereinafter referred to as 'OTS'), whereunder the total amount to be paid was Rs.10,36,25,840.82. The application money of Rs.52,00,000/- was paid and SBI also issued sanction letter dated 23.11.2020. Though as per the terms of OTS, the first instalment to be paid was Rs.1.04 crores by 23.12.2020, the petitioners paid only Rs.32,00,000/- on 23.12.2020. As a consequence, SBI issued letter dated 29.12.2020 informing cancellation of OTS and asking the petitioners to deposit the entire Bank dues with interest at contracted rate. The request of the petitioners by letter dated 03.01.2021 for extension of time for payment of balance amount of first instalment of Rs.72,00,000/- was rejected by the SBI *vide* letter dated 21.01.2021. The same is pending challenge in W.P.No.2512 of 2021, before this Court. As the petitioners had defaulted, the SBI, prior to sanctioning OTS, on 27.02.2019 had already moved before the Chief Metropolitan Magistrate (hereinafter referred to as the 'CMM'), Guntur, in Crl.M.P. No.201 of 2019, under Section 14 of the Act for taking physical possession of the secured asset/property, in which the following order was made on 28.12.2020:

> *"The petition is filed under Section 14(1) of the SARFAESI Act to appoint an Advocate Commissioner to take possession of the petition schedule property and to deliver the possession to the petitioner bank.*

Heard and perused the record.

It seems that the petitioner bank followed the procedure contemplated under the Act to proceed against the mortgaged property for realization of loan amount due to the petitioner bank. Therefore, the petition has to be allowed.

In the result, the petition is allowed. ***Sri K. Veera Bhaskar, Sri P. Koteswara Rao, Sri/Smt. V. Sreelatha, Sri/Smt. J. Rama Lakshmi****, Advocates are appointed as Commissioners to take possession of the petition schedule property and to deliver the possession to the petitioner bank. Their fee are fixed at Rs.10,000/- each payable by the petitioner bank. The Commissioner shall issue notice to both parties and advocates on record before execution of warrant. Commissioner is at liberty to break open the schedule for execution of warrant with aid of police when ever required. Warrant returnable with Report by 15.02.2021.*

Warrant shall be issued on payment of commissioner fee and process on or before on 04.01.2021"

4. On 04.01.2021, the matter was adjourned, for payment of Commissioner fee and process, to 05.01.2021, on which date it was recorded as under:

> *"Process memo and fee receipt of Commissioner are filed. Hence, issue warrant along with Police Aid to the Advocate-Commissioner. Placed before Officer as and when report is filed"*

5. Thereafter, on 17.12.2021, the Advocate Commissioners took possession of the property.

6. Learned counsel for the petitioners submitted that the order passed by the CMM was beyond 60 days of filing of the application under Section 14 of the Act, which is impermissible in view of Section 14 of the Act. It was further contended that even thereafter, as per order dated 28.12.2020 of the CMM, the warrant was to be executed latest by 15.02.2021, which was the returnable date fixed. He submitted that 'return' in Black's Law Dictionary has been defined as '*A court officer's bringing back of an instrument to the court that issued it*'. Thus, learned counsel submitted that without the CMM extending the validity of the warrant, the same lost its force and was incapable of being executed and

the same having been done is patently illegal and requires interference by this Court.

7. *Per contra*, learned counsel for the SBI opposed the petitioners' submissions and urged for dismissal of the petition. His first objection was that the Advocate Commissioners have not been made party. He submitted that the delay in execution of the warrant was due to the petitioners filing a number of cases. Learned counsel submitted that the period of 60 days was directory, as held by the Hon'ble Supreme Court in ***C Bright v District Collector*, (2021) 2 SCC 392**.

8. Based on the rival contentions to which learned counsel confined their submissions, three important questions arise for consideration and determination:

(a) Whether the instant writ petition ought to be entertained?
(b) Whether the time-limit under Section 14 of the Act of 30 days to pass an order, extendable in aggregate to 60 days, is mandatory or directory?
(c) Whether, once the time specified in the warrant had elapsed, could possession of the property in question still be taken over, under the same warrant?

9. We survey the judicial precedents first. In ***United Bank of India v Satyawati Tondon*, (2010) 8 SCC 110**, the Hon'ble Supreme Court observed:

> *"43. 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 a 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, the 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.*

44. 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.

45. 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.

46. 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 (sic will) 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 Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

47. In Thansingh Nathmal v. Supdt. of Taxes [AIR 1964 SC 1419 : (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: (SCC p. 1423, para 7)
"7. … 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 to 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."

48. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] 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 the negative by making the following observations: (SCC pp. 440-41, para 11)
"11. 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 [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)
'… There are three classes of cases in which a liability may be established founded upon a 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.'
The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd. [1935 AC 532 (PC)] and Secy. of State v. Mask & Co. [(1939-40) 67 IA 222] 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."

49. The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433 : 1983 SCC (Tax) 131] were echoed in CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] in the following words: (SCC p. 264, para 3)

"3. … 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."

50. In Punjab National Bank v. O.C. Krishnan [(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: (SCC p. 570, paras 5-6)

"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."

51. In CCT v. Indian Explosives Ltd. [(2008) 3 SCC 688] the Court reversed an order passed by the Division Bench of the 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.

52. In City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala [(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. Paras 29 and 30 of that judgment which contain the views of this Court read as under: (SCC pp. 175-76)

"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."

53. In Raj Kumar Shivhare v. Directorate of Enforcement [(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: (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."

54. In Modern Industries v. SAIL [(2010) 5 SCC 44 : (2010) 2 SCC (Cri) 280] 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.

55. 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 the 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."

10. In ***Harshad Govardhan Sondagar v International Asset Reconstruction Company Limited,*** **(2014) 6 SCC 1**, it was stated:

"29. Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. To quote, the observations of this Court in Columbia Sportswear Co. v. Director of Income Tax [(2012) 11 SCC 224] : (SCC p. 234, para 17)
"17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245-S of the Act insofar as it makes the advance ruling of the authority binding on the applicant, in respect of the transaction and on the Commissioner and Income Tax Authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the authority."

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law'"

11. In ***Authorised Officer, State Bank of Travancore v Mathew K C*, (2018) 3 SCC 85**, it was held:

"9. Even prior to the Sarfaesi Act, considering the alternate remedy available under the DRT Act it was held in Punjab National Bank v. O.C. Krishnan [Punjab National Bank v. O.C. Krishnan, (2001) 6 SCC 569] that: (SCC p. 570, para 6)
"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."

10. In Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] the High Court had restrained [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp. 123 & 128, paras 43 & 55)
"43. 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 a 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, the 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.

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12. The same view was reiterated in Kanaiyalal Lalchand Sachdev v. State of Maharashtra [Kanaiyalal Lalchand Sachdev v. State of Maharashtra, (2011) 2 SCC 782 : (2011) 1 SCC (Civ) 570] , observing: (SCC p. 789, para 23)

"23. In our opinion, therefore, the High Court rightly dismissed [Kanaiyalal Lalchand Sachdev v. State of Maharashtra, 2009 SCC OnLine Bom 2388] 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 v. National Insurance Co. Ltd. [Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762] , Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] and SBI v. Allied Chemical Laboratories [SBI v. Allied Chemical Laboratories, (2006) 9 SCC 252] .)"

13. In Ikbal [Sri Siddeshwara Coop. Bank Ltd. v. Ikbal, (2013) 10 SCC 83 : (2013) 4 SCC (Civ) 638] it was observed that the action of the bank under Section 13(4) of the Sarfaesi Act available to challenge by the aggrieved under Section 17 was an efficacious remedy and the institution directly under Article 226 was not sustainable, relying upon Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] observing: (Ikbal case [Sri Siddeshwara Coop. Bank Ltd. v. Ikbal, (2013) 10 SCC 83 : (2013) 4 SCC (Civ) 638] , SCC pp. 94-95, paras 27-28)

"27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented.

28. … In our view, there was no justification whatsoever for the learned Single Judge [Ikbal v. Registrar of Coop. Societies, 2011 SCC OnLine Kar 4456] to allow the borrower to bypass the efficacious remedy provided to him under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts indicated above. The Division Bench [Sri Siddeshwara Coop. Bank Ltd. v. Ikbal, 2012 SCC OnLine Kar 8816] also erred in affirming the erroneous order of the Single Judge."

14. A similar view was taken in Punjab National Bank v. Imperial Gift House [Punjab National Bank v. Imperial Gift House, (2013) 14 SCC 622] , observing: (SCC p. 622, paras 3-4)
"3. Upon receipt of notice, the respondents filed representation under Section 13(3-A) of the Act, which was rejected. Thereafter, before any further action could be taken under Section 13(4) of the Act by the Bank, the writ petition was filed before the High Court.
4. In our view, the High Court [Imperial Gift House v. Punjab National Bank, 2008 SCC OnLine P&H 2209] was not justified in entertaining the writ petition against the notice issued under Section 13(2) of the Act and quashing the proceedings initiated by the Bank."

12. In ***ICICI Bank Limited v Umakanta Mohapatra*, (2019) 13 SCC 497**, in view of ***State Bank of Travancore*** (*supra*), the writ petition was held not maintainable.

13. In ***State Bar Council of Madhya Pradesh v Union of India*, Petition for Special Leave to Appeal (C) 10911/2021**, *vide* **Order dated 16.12.2021**, the Hon'ble Supreme Court directed as follows:

"With a view to resolve the problem being faced by the parties, for the time being and purely as a stop-gap arrangement, we request the concerned High Court(s) to entertain the matters falling within jurisdiction of DRTs and DRATs under Article 226 of the Constitution of India, till further orders.

We make it clear that once the Tribunal(s) is/are constituted, the matters can be relegated to the Tribunals by the High Court(s)."

14. In ***Phoenix ARC Private Limited v Vishwa Bharati Vidya Mandir*, 2022 SCC OnLine SC 44**, it was opined:

"38. Assuming that the communication dated 13.08.2015 can be said to be a notice under Section 13(4) of the SARFAESI Act, in that case also, in view of the statutory remedy available under Section 17 of the SARFAESI Act and in view of the law laid down by this Court in the cases referred to hereinabove, the writ petitions against the notice under Section 13(4) of the SARFAESI Act was not required to be entertained by the High Court. Therefore, the High Court has erred in entertaining the writ petitions against the communication dated 13.08.2015 and also passing the ex-parte ad-interim orders directing to maintain the status quo with respect to possession of secured properties on the condition directing the borrowers to pay Rs. 1 crore only (in all Rs. 3 crores in view of the subsequent orders passed by the High Court extending the exparte ad-interim order dated 26.08.2015) against the total dues of approximate Rs. 117 crores. Even the High Court ought to have considered and disposed of the application for vacating the ex-parte ad-

interim relief, which was filed in the year 2016 at the earliest considering the fact that a large sum of Rs. 117 crores was involved.

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40. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of Praga Tools Corporation (supra) and Ramesh Ahluwalia (supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

15. The aforesaid discussion sums up the law. Ordinarily, we must defer to the procedure under the Act. However, Article 226 is, in no manner, effaced by the Act, being an integral part of the basic structure of the Constitution, and still, recourse thereto can be had by an aggrieved party.

16. One of us (Ahsanuddin Amanullah, J.), whilst at the Patna High Court, taking note of the guidance laid down by the Hon'ble Supreme Court, had the occasion to examine, to an extent, the scope and amplitude of powers under Article 226 in, *inter alia*, ***Lalit Narain Mithila University v National Council for Teacher Education*, MANU/BH/0888/2020 | 2020 SCC OnLine Pat 4312 | (2021) 1 BLJ 542 (PHC) | (2021) 1 PLJR 450** and ***Sonalika Rani v the Central Board of Secondary Education*, 2021 (2) BLJ 699 | 2021 SCC OnLine Pat 1243 | (2021) 2 PLJR 396**.

17. Taking into consideration the discussions made in ***Lalit Narain Mithila University*** (*supra*) and ***Sonalika Rani*** (*supra*), in ***Saurav Kumar***

***Sharma v State of Bihar*, 2021 SCC OnLine Pat 1205 | (2021) 4 BLJ 165 (PHC) | (2021) 226 AIC 765**, Amanullah, J. held:

> *"10. There is no cavil with the proposition that when a statutory remedy of appeal is provided under any enactment, ordinarily, the High Court ought to be circumspect in interfering under Article 226 of the Constitution of India. However, it is no longer res integra that any such circumspection and/or restraint is merely self-imposed and is not, nor can it be, construed as a total bar to exercise of powers in extraordinary writ jurisdiction.*
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> *11. In M.P. State Agro Industries Development Corpn. Ltd. v. Jahan Khan, (2007) 10 SCC 88, the Hon'ble Supreme Court opined:*
> *'12. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution.* ***There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion.*** *In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1], HarbanslalSahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107], State of H.P. v. Gujarat Ambuja Cement Ltd. [(2005) 6 SCC 499] and Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd. [(2005) 8 SCC 242])'*
>
> *(emphasis supplied)*
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> *12. The principles governing exercise of writ jurisdiction under Article 226, even in the face of other or alternative remedies, have been considered by the Hon'ble Supreme Court, inter alia, in State of Uttar Pradesh v. Mohammad Nooh, 1958 SCR 595 and Maharashtra Chess Association v. Union of India, (2020) 13 SCC 285.*
>
> *13. This Court had the occasion to consider the said issue, and following the dicta in Mohammad Nooh (supra) and Maharashtra Chess Association (supra) in Order dated 22.12.2020 in Lalit Narain Mithila University v. National Council for Teacher Education, CWJC No. 9421 of 2020 (since reported as CWJC No. 9421 of 2020, order dated 22-12-2020 (Pat)) opined:*
>
> *'16.1. In this context, it is appropriate to refer to the Constitution Bench judgment in State of Uttar Pradesh v. Mohammad Nooh, 1958 SCR 595, the relevant paragraph reading:*
>
> *'10. In the next place it must be borne in mind that there is no rule with regard to certiorari as there is with mandamus, that it will lie only*

where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). ***The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ*** *of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and* ***ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies****, if any.* ***But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law*** *and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies…'*

(emphasis supplied)

16.2. The aforesaid paragraph from Mohammad Nooh (supra) has been approvingly referred to by the Hon'ble Supreme Court in Maharashtra Chess Association v. Union of India, 2019 SCC OnLine SC 932, in the following words:

'24. The principle that the writ jurisdiction of a High Court can be exercised where no adequate alternative remedies exist can be traced even further back to the decision of the Constitution Bench of this Court in State of Uttar Pradesh v. Mohammad Nooh…'

(emphasis supplied)

17. It is not required, in present, to cite further authorities of the Hon'ble Supreme Court on this subject. Suffice it will to state the following settled principles of law:

(i) Powers under Article 226, being discretionary, may not be exercised if there exists an alternative efficacious remedy. However, this is merely a self-imposed restraint.

(ii) In appropriate situations, the High Court in its writ jurisdiction can entertain writ petitions even if there exists an alternative efficacious remedy. There is no, nor can there be, an absolute bar to such exercise of power.

(iii) A fortiori, in the absence of an alternative efficacious remedy, or, where no remedy lies, recourse to writ jurisdiction of the High Court would always be available to an aggrieved party.'

(underlining in original; emphasis supplied)

14. The reasoning in Lalit Narain Mithila University (supra) has been followed by this Court in Judgment dated 04.03.2021 in Sonalika Rani v. The Central Board of Secondary Education, New Delhi, CWJC No. 8887 of 2020 [since reported as CWJC No. 8887 of 2020, decided on 4-3-2021 (Pat) and (2021) 2 BLJ 699]. That apart, while paragraph 21 of Maharashtra Chess Association (supra) has been noticed in Lalit Narain Mithila University (supra), the following paragraphs, additionally, from Maharashtra Chess Association (supra) are instructive:

'11. Article 226(1) of the Constitution confers on High Courts the power to issue writs, and consequently, the jurisdiction to entertain actions for the issuance of writs. ["226. Power of High Courts to issue certain writs.-(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo war-ranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."] The text of Article 226(1) provides that a High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or "for any other purpose". ***A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider array of situations.*** *Lord Coke, commenting on the use of writs by courts in England stated:*

*"**The Court of King's Bench hath not only the authority to correct errors in judicial proceedings, but other errors and misdemeanours** [...] tending to the breach of peace, or oppression of the subjects, or raising of faction, controversy, debate or any other manner of misgovernment;* ***so that no wrong or injury, public or private, can be done, but that this shall be reformed or punished by due course of law.*** *..." [James Bagg's case, (1572) 11 Co Rep 93b : 77 ER 1271]*

12. Echoing the sentiments of Lord Coke, this Court in U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Ton-don [U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tondon, (2008) 2 SCC 41 : (2008) 1 SCC (L&S) 352] observed that : (SCC p. 53, para 35)

"35. ... ***It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found".***"

*13.**The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction.** *In A.V. Venkateswaran v. Ramchand Sobhraj Wadh-wani [A.V. Venkateswaran v. Ramchand Sobhraj Wadh-wani, (1962) 1 SCR 753 : AIR 1961 SC 1506] a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it : (AIR p. 1510, para 10)*

"10. ... We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus preeminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.

14. While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. It is a well-settled principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution. *[Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625; L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577]*

15. These principles are set out in the decisions of this Court in numerous cases and we need only mention a few to demonstrate the consistent manner in which they have been reiterated. In State of U.P. v. Indian Hume Pipe Co. Ltd. [State of U.P. v. Indian Hume Pipe Co. Ltd., (1977) 2 SCC 724 : 1977 SCC (Tax) 335] this Court observed that the High Court's decision to exercise its writ jurisdiction is essentially discretionary : (SCC p. 728, para 4)

"4. … ***It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court."***

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19. This argument of the second respondent is misconceived. ***The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.***

20. This understanding has been laid down in several decisions of this Court. In U.P. State Spg. Co. Ltd. v. R.S. Pandey [U.P. State Spg. Co. Ltd. v. R.S. Pandey, (2005) 8 SCC 264 : 2006 SCC (L&S) 78] this Court held : (SCC p. 270, para 11)

"11. Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, ***the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience***

and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. *At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy."*

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22. ***The mere existence of alternate forums where the aggrieved party may secure relief does not create a legal bar on a High Court to exercise its writ jurisdiction. It is a factor to be taken into consideration by the High Court amongst several factors.*** *Thus, the mere fact that the High Court at Madras is capable of granting adequate relief to the appellant does not create a legal bar on the Bombay High Court exercising its writ jurisdiction in the present matter.'*

(emphasis supplied)

15. On a conspectus of the afore-referred authorities, it is clear that the principles culled out in Paragraph 17 of Lalit Narain Mithila University (supra) are in consonance with the law as expounded by the Hon'ble Supreme Court. As such, it would be in the discretion of the Writ Court to entertain a petition even when there exists an alternative remedy, regard being had to all relevant facts and circumstances peculiar to the concerned case. The position in law stands clarified."

(underlining and bolding in original)

18. In this backdrop, we are inclined to entertain this writ petition for more reasons than one. *First*, the facts compel us to do so. *Second*, it is no longer *res integra* that even in the face of an available alternative efficacious remedy, a writ petition is maintainable, subject to judicial discretion. *Third*, the Order dated 16.12.2021 passed by a Bench of three Hon'ble Judges in ***State Bar Council of Madhya Pradesh*** (*supra*) supports us. As such, we answer Question (a) in the affirmative.

19. Insofar as Question (b) is concerned, the same is settled. We need only refer to ***C Bright*** (*supra*), rightly relied upon by learned counsel for SBI, the relevant paragraphs being instructive, stand extracted below:

"8. A well-settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid

[State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912] and that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute [State of U.P. v. Babu Ram Upadhya, AIR 1961 SC 751] . The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute [RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424].

9. The question as to whether, a time-limit fixed for a public officer to perform a public duty is directory or mandatory has been examined earlier by the courts as well. A question arose before the Privy Council in respect of irregularities in the preliminary proceedings for constituting a jury panel. The Municipality was expected to revise the list of qualified persons but the jury was drawn from the old list as the Sheriff neglected to revise the same. It was in these circumstances, the decision of the jury drawn from the old list became the subject-matter of consideration by the Privy Council. It was thus held that it would cause greater public inconvenience if it were held that neglecting to observe the provisions of the statute made the verdicts of all juries taken from the list ipso facto null and void so that no jury trials could be held until a duly revised list had been prepared [Montreal Street Railway Co. v. Normandin, 1917 SCC OnLine PC 3 : AIR 1917 PC 142].

10. The Constitution Bench of this Court held that when the provisions of a statute relate to the performance of a public duty and the case is such that to hold acts done in neglect of this duty as null and void, would cause serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, the practice of the courts should be to hold such provisions as directory [Dattatraya Moreshwar `Pangarkar v. State of Bombay, AIR 1952 SC 181 : 1952 Cri LJ 955] . In a seven-Bench judgment, this Court was considering as to whether the power of the Returning Officer to reject ballot papers is mandatory or directory. The Court examined well-recognised rules of construction to observe that a statute should be construed as directory if it relates to the performance of public duties, or if the conditions prescribed therein have to be performed by persons other than those on whom the right is conferred [Hari Vishnu Kamath v. Syed Ahmad Ishaque, AIR 1955 SC 233].

11. In a judgment reported as Remington Rand of India Ltd. v. Workmen [Remington Rand of India Ltd. v. Workmen, AIR 1968 SC 224], Section 17 of the Industrial Disputes Act, 1947 came up for consideration. The argument raised was that the time-limit of 30 days of publication of award by the Labour Court is mandatory. This Court held that though Section 17 is mandatory, the time-limit to publish the award within 30 days is directory inter alia for the reason that the non-publication of the award within the period of thirty days does not entail any penalty.

12. In T.V. Usman v. Food Inspector, Tellicherry Municipality [T.V. Usman v. Food Inspector, Tellicherry Municipality, (1994) 1 SCC 754 : 1994 SCC (Cri) 187] , the time period during which report of the analysis of a sample under Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 was to be given, was held to be directory as there was no

time-limit prescribed within which the prosecution had to be instituted. When there was no such limit prescribed then there was no valid reason for holding the period of 45 days as mandatory. Of course, that does not mean that the Public Analyst can ignore the time-limit prescribed under the Rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and, on that basis, to hold that even prosecution cannot be launched.

13. This Court distinguished between failure of an individual to act in a given time-frame and the time-frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory, when this Court held that it is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified [Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577].

14. In P.T. Rajan v. T.P.M. Sahir [P.T. Rajan v. T.P.M. Sahir, (2003) 8 SCC 498] , this Court examined the effect of non-publication of final electoral rolls before the time of acceptance of nomination papers. The Court held as under : (SCC p. 516, para 48)
"48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. District Magistrate [Shiveshwar Prasad Sinha v. District Magistrate, 1965 SCC OnLine Pat 43 : AIR 1966 Pat 144 : ILR 45 Pat 436] , Nomita Chowdhury v. State of W.B. [Nomita Chowdhury v. State of W.B., 1999 SCC OnLine Cal 235 : (1999) 2 Cal LJ 21] and Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana [Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana, 1996 SCC OnLine Cal 209 : (1997) 1 CHN 189] .)"

15. A recent Constitution Bench held that the provisions of the Consumer Protection Act granting 30 days' time to file response by the opposite party or such extended period not exceeding 15 days is mandatory as the object of the statute is for the benefit and protection of the consumer. It observed that such Act had been enacted to provide expeditious disposal of consumer disputes. In this case, an individual was called upon to file his written statement in contradiction for a pubic authority to decide the issue before it [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 : (2020) 3 SCC (Civ) 338].

16. The Full Bench of the Patna High Court in Shiveshwar Prasad Sinha [Shiveshwar Prasad Sinha v. District Magistrate, 1965 SCC OnLine Pat 43 : AIR 1966 Pat 144 : ILR 45 Pat 436] was examining the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 which permitted a government servant in occupation of a building as a tenant to serve a notice of 15 days on the landlord and the District Magistrate of his intention to vacate the premises. The High Court held that the government servant to whom the house was allotted had no

control over the District Magistrate, therefore, the time-limit required by the provision was not mandatory.

17. A Single Bench of the Madhya Pradesh High Court [Manish Makhija v. Central Bank of India, 2018 SCC OnLine MP 553] examined the provisions of Section 14 of the Act as amended. The Court held that the second proviso to sub-section (1) of Section 14 was inserted in order to ensure that Chief Metropolitan Magistrate or District Magistrate pass the order within a stipulated time. The bank/secured creditor has no control over the District Magistrate. After filing an application under sub-section (1) of Section 14, the bank had no authority to compel the Chief Metropolitan Magistrate or District Magistrate to pass orders within reasonable time. The legislature, in order to bind the said authorities, inserted the said proviso. Thus, the basic object and purpose was to fix a time-limit for the Magistrate concerned to pass an order and not to give a clean chit to an unscrupulous borrower/guarantor, who had not repaid the debts.

18. Now, coming to the judgments referred to by Mr Khan. In A.K. Pandey [Union of India v. A.K. Pandey, (2009) 10 SCC 552 : (2010) 1 SCC (L&S) 68] , the respondent was not provided 96 hours of interval time as contemplated by the relevant rules, before commencing a trial by the court martial. This Court held that such proceedings were vitiated as the purpose of the time-limit was that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even decide not to defend the charge(s) but before he decides his line of action, he must be given clear ninety-six hours.

19.Harshad Govardhan Sondagar [Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1 : (2014) 3 SCC (Civ) 1] was a case where the person in possession claimed tenancy rights in the premises as well as a protected tenancy, being a tenant prior to creation of a mortgage. It was held that the remedy of an aggrieved person against a decision of Chief Metropolitan Magistrate or a District Magistrate lay only before the High Court. However, after the aforesaid judgment was rendered on 3-4-2014, the Act had been amended and sub-section (4-A) was inserted in Section 17 with effect from 1-9-2016. This provided a right to move an application to the Debts Recovery Tribunal by a person who claimed tenancy or leasehold rights.

20.Dipak Babaria [Dipak Babaria v. State of Gujarat, (2014) 3 SCC 502] was a case wherein agricultural land was sold by an agriculturist to another person for industrial purposes. Permission was to be granted by the Collector for the same. In these circumstances, it was held that when a statute provides for a thing to be done in a particular manner then it should be done in that manner itself. Such proposition does not arise for consideration in the present case.

21. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings

under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in Mardia Chemicals [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311], Transcore [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] and Hindon Forge (P) Ltd. [Hindon Forge (P) Ltd. v. State of U.P., (2019) 2 SCC 198 : (2019) 1 SCC (Civ) 551] has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true intention of the legislature is a determining factor herein. Keeping the objective of the Act in mind, the time-limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time-limit does not render the District Magistrate functus officio. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time-limit is to instil a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest"

(emphasis supplied)

20. In terms of ***C Bright*** (*supra*), Question (b) is answered holding that the time limit stipulated in Section 14 of the Act is directory and not mandatory. The conclusion of the Hon'ble 3-Judge Bench in ***C Bright*** (*supra*) would cover Chief Metropolitan Magistrates as well.

21. As such, the petitioners' contention that the CMM ought not to have passed the order dated 28.12.2020 on SBI's application filed on 27.02.2019 under Section 14 of the Act is negatived. In this view, the CMM's order dated 28.12.2020 does not suffer from any illegality, and cannot be faulted with.

22. Turning to Question (c), we reproduce Section 14 of the Act *in toto*:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—
(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or

control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of Section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of Section 13 read with Section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.
(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

23. A succinct exposition on Section 14 of the Act can be found in ***Standard Chartered Bank v V Noble Kumar,* (2013) 9 SCC 620** and ***Authorised Officer, Indian Bank v D Vishalakshi,* (2019) 20 SCC 47**. However, as the recourse to Section 14 by SBI is not in controversy herein, the need to dwell thereupon is obviated.

24. Learned counsel for SBI has vehemently relied on the judgement by a learned Single Judge of the Delhi High Court in ***Housing Development Finance Corporation Ltd. v Rakesh Kumar,* 2021 SCC OnLine Del 5209**, to contend that there is no requirement for the CMM to fix a time limit for taking possession of the secured asset in exercise of power under Section 14 of the Act. He, therefore, urges us that no interference is called for in the present matter. He would canvass that as no time-limit was required to be fixed, taking over of possession after expiry of the time in the warrant would not render the taking over illegal.

25. The relevant paragraphs from ***Housing Development Finance Corporation*** (*supra*), as relied on by learned counsel for SBI, read:

"I. Whether there is any requirement or justification to fix a time limit by the CMM for taking possession of the secured asset while exercising jurisdiction under Section 14 of the SARFAESI Act?

14. Section 14 of the SARFAESI Act is an enabling provision through which the secured creditor may seek the assistance of the CMM in taking physical possession of the secured asset, which is within the jurisdiction of the CMM. There is no provision under Section 14 that requires imposition of any time limit for the aforesaid purpose. The only time limit provided in Section 14 is in the proviso to Section 14, that the CMM is required to pass an order within thirty days from the date the application has been filed before the CMM by the secured creditor. In

terms of the second proviso, the said period of thirty days is extendable by a further period of thirty days, and therefore, the maximum period provided is sixty days. There is justification for providing this time limit, so that the CMM expeditiously decides applications filed under Section 14 of the SARFAESI Act.

15. On many occasions, it is noticed that CMMs, in exercise of jurisdiction under Section 14 of the SARFAESI Act, while appointing court receivers, fix time limits for the said receivers to take possession of the mortgaged property. It has further been noticed that due to a variety of reasons, the physical possession of the property is not acquired in the time limit fixed by the CMM, which results in applications for extension being filed before the CMM. To illustrate, sometimes, the borrower files a petition under Section 17 of the SARFAESI Act before the DRT and the DRT grants an interim stay on taking over possession because of which possession of the secured asset is not taken within the time limit set by the CMM. This results in applications being filed before the CMM for extension of time for taking physical possession of the secured asset.

16. Reference may be made to the judgment dated 15th March, 2021 of this Court in CM(M) 210/2021 titled Jammu and Kashmir Bank Limited v. Trans Asian Industries Exposition Private Limited, wherein a petition was filed before this Court on account of the CMM declining extension of time for taking over physical possession of the properties of the debtor, as sought by the bank. While allowing the said petition, this Court observed as under:
"10. This Court has considered the matter. There is no doubt that the time period of 30 days, extendable to 60 days, fixed under section 14 of the SARFAESI Act, are for executing the order of the Chief Metropolitan Magistrate, concerning the taking over of physical possession of the properties by the Bank. However, if the court receivers did not cooperate with the Bank, in lieu of taking over the possession of the said properties, it cannot be held that the Court would be rendered powerless and the order directing the taking over of physical possession would be set at naught.

11. In order to secure the asset of the Bank, it is in the interest of justice that the physical possession of the concerned properties, ought to be taken so as to ensure that the asset is not frittered away by the debtor."

(emphasis supplied)

17. The aforesaid judgment in Jammu and Kashmir Bank (supra) was followed by me in Sansar Chand Sharma v. Kotak Mahindra Bank Ltd., through Chief Manager Sh. G.S. Pander, 2021 SCC OnLine Del 4911, wherein it was held that there are no provisions of law in terms of which the CMM could not extend the time period granted for taking physical possession of the secured asset and technicalities cannot come to the aid of the borrower to frustrate the object behind the SARFAESI Act.

18. Keeping in mind the objective of the SARFAESI Act i.e., to enable the secured borrowers to take physical possession of the assets of the defaulting borrowers in an expeditious manner, there is no requirement or justification for the CMM to impose time limits for the receiver to take physical possession of the secured asset. This would also curtail unnecessary litigation wherein applications for extension are filed before the CMM and upon the said applications being either allowed or

declined by the CMM, petitions are filed before this Court challenging the said decision of the CMM.

19. No submissions have been made by the respondents on this issue. This Court finds merit in the submissions made by the petitioner, that there is no requirement or rationale in providing a time limit in orders passed by the CMM under Section 14 of the SARFAESI Act, in respect of taking possession of the secured asset. In fact, setting of a time limit by the CMM for taking possession of a secured asset is contrary to the legislative intent.

20. Therefore, the impugned order dated 30th March, 2021 passed by the CMM, to the extent that it imposes a time limit of ninety days for the court receiver to take physical possession, is set aside.

xxx
36. To summarise, the issues formulated by the Court stand answered in the following manner:
(i) There is no requirement or justification for the CMM to fix a time limit for taking possession of the secured asset while exercising jurisdiction under Section 14 of the SARFAESI Act;
….."

26. We point out that though Question (c) as framed by us, is on whether possession can be taken after elapse of the time fixed by the warrant, yet still, we are further called upon to answer, in light of the reliance placed by SBI on ***Housing Development Finance Corporation*** (*supra*), whether CMMs are or are not required to fix time-limits for taking possession of the secured asset exercising power vested by Section 14 of the Act.

27. With great respect to the learned Single Judge, we express our inability to concur with the proposition of law in ***Housing Development Finance Corporation*** (*supra*). We are of the opinion that ***Housing Development Finance Corporation*** (*supra*) could lead to anomalous scenarios. Illustratively, if the CMM passes an order under Section 14 with no stipulated time to carry out the taking over, it could result in possession being taken over, in the guise of such order, months after the passing of such order. The borrower/occupier/person(s) in possession of the secured asset concerned, cannot be left in the lurch. This, surely, could never have been the intent of the Legislature. Further, as the learned Single Judge has

himself indicated, and rightly so, the main objective of the Act is to enable the secured borrowers to take physical possession of the assets of the defaulting borrowers in an expeditious manner; if no time limit is fixed it would be self-defeating inasmuch as though the statute indicates a time frame for the CMM/District Magistrate to pass an order, if the person/authority who is required to carry out the order does not do so within the time fixed, it would lead to an anomalous position in law as there is no remedy prescribed under the statute. It would, thus, border on to extremity, as the authorised person/authority would be more powerful, in real terms, than the authority which passed the order conferring such power to take physical possession. Even otherwise, since an order passed by the CMM/District Magistrate under Section 14 of the Act has the force of law, a warrant issued giving authority for taking over physical possession is circumscribed and limited to what has been actually written in the order, which, obviously and rightly, should and would include the time limit of such authorisation for taking possession.

28. An incongruous position cannot be countenanced where the authority conferred power under Section 14 of the Act is required to exercise that within a maximum period of sixty days, or at the very least, as a result of ***C Bright*** (*supra*), endeavour so to do, but the actual taking over of physical possession, to be done through a person appointed by the Chief Metropolitan Magistrate/District Magistrate, would be at such person's will. This is not the intent of the Act.

29. The learned Single Judge of the Delhi High Court in ***Sansar Chand Sharma v Kotak Mahindra Bank Limited,*** **2021 SCC OnLine Del 4911**, referred to in ***Housing Development Finance Corporation***(*supra*), opined that '... *No provisions of law have been pointed out by the counsel for the petitioner in terms of which the CMM could not extend the time period*

granted for taking physical possession of the property. It has righty been contended on behalf of the respondent that the respondent had only sought extension of the time granted to the Receiver appointed by the CMM and had not sought any fresh appointment of a Receiver. Technicalities cannot come to the aid of the petitioner in frustrating the object behind the SARFAESI Act.'

30. Moreover, in ***Sansar Chand Sharma*** (*supra*), a decision of another learned Single Judge of the Delhi High Court, in ***Jammu and Kashmir Bank Limited v Trans Asian Industries Exposition Private Limited,*** **MANU/DE/0491/2021** has been referred to. In ***Jammu and Kashmir Bank Limited*** (*supra*), it was stated:

> *"10. This Court has considered the matter. There is no doubt that the time period of 30 days, extendable to 60 days, fixed under section 14 of the SARFAESI Act, are for executing the order of the Chief Metropolitan Magistrate, concerning the taking over of physical possession of the properties by the Bank. However, if the court receivers did not cooperate with the Bank, in lieu of taking over the possession of the said properties, it cannot be held that the Court would be rendered powerless and the order directing the taking over of physical possession would be set at naught.*
>
> *11. In order to secure the asset of the Bank, it is in the interest of justice that the physical possession of the concerned properties, ought to be taken so as to ensure that the asset is not frittered away by the debtor."*

31. An essential component of judicial orders is certainty. If a CMM imposes a time-limit for taking over possession, such stipulated time has to be mandatorily adhered to. If the same is not done, be it for whatever reason, the appropriate course of action is to re-approach the CMM concerned for extension of time. We are of the clear view that a reasonable time limit should be imposed by the CMMs, in their wisdom and discretion. Although in the context of recovery of excise duties, the Hon'ble Supreme Court, in ***Government of India v Citedal Fine Pharmaceuticals, Madras,*** **(1989) 3 SCC 483**, had held that '*In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What*

would be reasonable period, would depend upon the facts of each case... No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case.'

32. In judging what is to be a reasonable period for reopening an order of assessment under the Punjab General Sales Tax Act, 1948, in ***State of Punjab v Bhatinda District Cooperative Milk Producers Union Ltd.*, (2007) 11 SCC 363**, the Hon'ble Supreme Court observed that '*It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*'

33. The same principle would hold the field. We would, thus, hold and direct that the CMMs shall, when passing orders under Section 14 of the Act, mandate a reasonable time-limit for taking over possession of the secured asset in question. This, to our mind, appropriately secures the interests of all concerned parties. Needless to state, it will be open to the bank or financial institution to approach the CMM for extension of time, if need be.

34. In the present case, the learned CMM, in fact, adopted the correct approach in law by fixing a date by which the warrant was to be executed. Further, the time-limit is in the interest of the secured creditor, as the Advocate Commissioner would also be bound to act within the stipulated time-frame. As already observed, the CMM can be re-approached for extension of time, if required.

35. Therefore, Question (c) is answered thus - once the time specified in the warrant has elapsed, possession of the property in question cannot be taken over, under the same warrant.

36. It is well-settled that the Act is a complete code in itself. [See ***State Bank of Travancore*** (*supra*) and ***Pegasus Assets Reconstruction (P) Ltd. v Haryana Concast Ltd.*, (2016) 4 SCC 47**]. That the Act intends to facilitate recovery of loans given by banks and financial institutions is not doubted. The Act confers a special right and a faster mechanism of quick mode of recovery to banks and financial institutions. However, justice cannot be side-tracked, and the provisions of and actions done under the Act cannot be stretched outside the ken of permitted judicial review.

37. We are conscious of the economic impact of our decisions, subject to deference to our principal duty to apply and uphold the law, apropos the observations made in ***Shivashakti Sugars Limited v Shree Renuka Sugar Limited*, (2017) 7 SCC 729**:

> *"43. It has been recognised for quite some time now that law is an interdisciplinary subject where interface between law and other sciences (social sciences as well as natural/physical sciences) come into play and the impact of other disciplines on Law is to be necessarily kept in mind while taking a decision (of course, within the parameters of legal provisions). Interface between Law and Economics is much more relevant in today's time when the country has ushered into the era of economic liberalisation, which is also termed as "globalisation" of economy. India is on the road of economic growth. It has been a developing economy for number of decades and all efforts are made, at all levels, to ensure that it becomes a fully developed economy. Various measures are taken in this behalf by the policy-makers. The judicial wing, while undertaking the task of performing its judicial function, is also required to perform its role in this direction.*
>
> *It calls for an economic analysis of law approach, most commonly referred to as "Law and Economics" [Richard A. Posner in his book Frontiers of Legal Theory explains this concept as follows: "Economic analysis of law has heuristic, descriptive and normative aspects. As a heuristic, it seeks to display underlying unities in legal doctrines and institutions; in its descriptive mode, it seeks to identify the economic logic and effects of doctrines and institutions and the economic causes of legal change; in its normative aspect it advises Judges and other policy-makers on the most efficient methods of regulating conduct through law. The range of its subject-matter has become wide, indeed all-encompassing. Exploiting advances in the economics of nonmarket behaviour, economic analysis of law has expanded far beyond its original focus on antitrust, taxation, public utility regulation, corporate finance, and other areas of explicitly economic regulation. (And within that domain, it has expanded to include such fields as property and contract law.) The "new" economic analysis of law embraces such*

nonmarket, or quasi-nonmarket, fields of law as tort law, family law, criminal law, free speech, procedure, legislation, public international law, the law of intellectual property, the rules governing the trial and appellate process, environmental law, the administrative process, the regulation of health and safety, the laws forbidding discrimination in employment, and social norms viewed as a source of, an obstacle to, and a substitute for formal law." Posner also mentioned that this interface between Law and Economics might grandly be called "Economic Theory of Law", which is built on a pioneering article by Ronald Coase [R.H. Coase, "The Problem of Social Cost", 3 Journal of Law and Economics 1 (1960)]:"The "Coase Theorem" holds that where market transaction costs are zero, the law's initial assignment of rights is irrelevant to efficiency, since if the assignment is inefficient the parties will rectify it by a corrective transaction. There are two important corollaries. The first is that the law, to the extent interested in promoting economic efficiency, should try to minimize transaction costs, for example by defining property rights clearly, by making them readily transferable, and by creating cheap and effective remedies for breach of contract. ...The second corollary of the Coase Theorem is that where, despite the law's best efforts, market transaction costs remain high, the law should simulate the market's allocation of resources by assigning property rights to the highest-valued users. An example is the fair-use doctrine of copyright law, which allows writers to publish short quotations from a copyrighted work without negotiating with the copyright holder. The costs of such negotiations would usually be prohibitive; if they were not prohibitive, the usual result would be an agreement to permit the quotation, and so the doctrine of fair use brings about the result that the market would bring about if market transactions were feasible."]. In fact, in certain branches of Law there is a direct impact of Economics and economic considerations play predominant role, which are even recognised as legal principles. Monopoly laws (popularly known as "Antitrust Laws" in USA) have been transformed by Economics. The issues arising in competition laws (which has replaced monopoly laws) are decided primarily on economic analysis of various provisions of the Competition Commission Act. Similar approach is to be necessarily adopted while interpreting bankruptcy laws or even matters relating to corporate finance, etc. The impress of Economics is strong while examining various facets of the issues arising under the aforesaid laws. In fact, economic evidence plays a big role even while deciding environmental issues. There is a growing role of Economics in contract, labour, tax, corporate and other laws. Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions.

44. We may hasten to add that it is by no means suggested that while taking into account these considerations, specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation. Conversely, the Court needs to avoid that particular outcome which has a potential to

create an adverse effect on employment, growth of infrastructure or economy or the revenue of the State. It is in this context that economic analysis of the impact of the decision becomes imperative."

38. The order to take possession was issued by the learned CMM on 28.12.2020 fixing the returnable date as 15.02.2021. However, without any prayer/application being made before the learned CMM by the SBI and the CMM also not having extended time or the life of the warrant, the same was still acted upon and executed by the Advocate Commissioner on 17.12.2021, by which physical possession of the asset in question has been taken over.

39. At the cost of repetition, the Court would note that the order passed by the CMM was a judicial order and conferred upon the Advocate Commissioner authority to take over physical possession. Thus, the Advocate Commissioner could not have exceeded jurisdiction beyond the time specifically stipulated by the Court. It is true that the CMM's order of 05.01.2021records that the matter be placed before the Officer as and when report is filed. But the same has to be read harmoniously and contextually juxtaposed with the earlier orders dated 28.12.2020 and 04.01.2021 passed by the CMM.

40. On 28.12.2020, the CMM appointed four Advocate Commissioners and a warrant was issued for taking over possession of the premises and it was specifically mentioned that the warrant was returnable with report by 15.01.2021 with the stipulation that the warrant shall be issued on payment of Commissioner fee and process on or before 04.01.2021.Hence, on 04.01.2021 also there is an endorsement that the matter was adjourned for the next day for payment of Commissioner fee and process and on 05.01.2021, the process memo and fee receipt of Commissioner having been filed, a warrant was issued along with police aid to the Advocate Commissioner. In this regard, it was further written that as and when the report is filed, the same shall be placed before the Officer. The words "*place*

before the Officer as and when report is filed" cannot be read bereft of context to be interpreted as a blanket perpetual warrant issued to the Advocate Commissioner for taking over possession of the premises in question. The true import was simply that the case would be listed upon the report being filed by the Advocate Commissioner upon due execution of the warrant by taking over physical possession. However, this exercise had necessarily, to be completed by 15.02.2021, as per the substantive order dated 28.12.2020. We note at this juncture, that the parties are *ad idem* that the same has not been done and the warrant has been 'executed' after almost one year from the passing of the order and over ten months (ten months and two days, to be precise) from the date on which the warrant was made returnable along with the report.

41. Thus, we have no hesitation to hold that the action of the Advocate Commissioner in taking over physical possession of the asset on 17.12.2021, purportedly in terms of the order dated 28.12.2020 passed in Crl.M.P. No.201 of 2020 by the learned CMM cannot be sustained as it was clearly devoid of the authority of law and, accordingly, is declared illegal.

42. Here, it is necessary to indicate that the writ petition was filed on 17.12.2021 itself seeking the following relief:

> *"….. issue a Writ, Order or direction more particularly one in the nature of 'Writ of Mandamus' declaring the action initiated by the respondent bank under Section 13(4)(a) and 14 of the Securitization an s Reconstruction of Financial Assets and Enforcement of Security Act 2002 r/w Rule 8 of the Security Interest (Enforcement) Rules 2002, without following the statutory procedure thereunder, for taking possession of the 1st petitioner industry, taking un due advantage of the absence of the Presiding Officer of the Debts Recovery Tribunal at Vishakhapatnam, before whom the S.A.No.334 of 2021 filed by the 1st petitioner, is pending consideration from 17.09.2021 onwards with a next date of hearing on dt.28.11.2021, as illegal, arbitrary and violative of Article 14, 19 (1)(g), 21 and 300-A of the Constitution of India, apart from being violative of principles of natural justice, consequently direct the respondents not to take any coercive steps against the 1st petitioner industry, and to pass such other or orders as this Hon'ble court may deem fit and proper in the circumstances of the case".*

43. IA 1 of 2021 in this petition prayed for:

> *".....to direct the respondent bank not to dispossess the 1st petitioner industry situated in an extent of Ac.12-12 cents of lands with a spinning Mill constructed therein with bearing D.No.6/224/8, situated at Chinakakani Village, Mangalagiri Mandal, Guntur District, except in accordance with law, pending final disposal of the main Writ Petition, and to pass such other order or orders as this Hon'ble court may deem fit an d proper in the circumstances of the case."*

44. However, on the first hearing itself on 21.12.2021, the contours of the *lis* were indicated, which is evident from paragraph no. 3 of the order recorded on that day, which reads thus:

> *"3. Learned counsel for the petitioners submitted that in terms of such order, a warrant was issued to the Advocate Commissioner to take physical possession of the premises. However, learned counsel submitted that the life of the warrant was till 15.02.2021, which was never extended or renewed, but still the respondents using the said order have forcibly taken possession of the secured assets on 17.12.2021, which is totally illegal, arbitrary, and a clear-cut case of highhandedness by the respondents."*

45. The power to mould relief is an inherent and intrinsic component of Article 226. At Paragraph 5 of ***B R Ramabhadraiah v Secretary, Food and Agriculture Dept., AP*, (1981) 3 SCC 528** and Paragraph 4 of ***State of Rajasthan v Hindustan Sugar Mills Ltd.*, (1988) 3 SCC 449**, it has been held that under Article 226, the High Court's power includes the capacity to mould relief to remedy injustice and as per the demand of the situation. In ***Air India Statutory Corporation v United Labour Union*, (1997) 9 SCC 377**, it was observed:

> *"59. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, a constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by a*

> *catena of decisions of this Court starting from Indira Nehru Gandhi v. Raj Narain [1975 Supp SCC 1 : AIR 1975 SC 2299] to Bommai case [(1994) 3 SCC 1] . It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law."*
>
> (emphasis supplied)

46. Moreover, in ***Rajesh Kumar v State of Bihar*, (2013) 4 SCC 690**, particularly at Paragraphs 14-16, it has been held that the power to mould relief is well-recognised and is available to a Writ Court to render complete justice.

47. We have noticed an injustice and a violation of law. We, thus, proceed to fashion out the appropriate relief, despite no formal application for the same being made *via* pleadings. However, in the course of arguments, learned counsel for the petitioner did urge us to pass an order that would subserve justice.

48. In ***Ramesh Chandra Sankla v Vikram Cement*, (2008) 14 SCC 58**, the Hon'ble Supreme Court was pleased to state:

> *"98. From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the court must take into account the balancing of interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in Shiv Shankar Dal Mills v. State of Haryana [(1980) 2 SCC 437 : (1980) 1 SCR 1170] courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience.*
>
> *99. In our considered opinion, taking into account facts and circumstances in their entirety, the order passed and direction issued by the Division Bench of the High Court was in furtherance of justice. Not only has it not resulted in miscarriage of justice, in fact it has attempted to put status quo ante by balancing interests and leaving the matter to be decided by a competent authority in accordance with law."*
>
> (emphasis supplied)

49. We are cognizant that our directions may, perhaps, result in adding to the case docket, but that cannot be a consideration while

rendering substantive justice, which we are duty-bound by virtue of our office to do so. The Courts of law cannot sacrifice the cause of justice itself. We concur with the following observation of the learned Division Bench of the Delhi High Court in ***Bright Enterprises Private Limited v MJ Bizcraft LLP*, 2017 SCC OnLine Del 6394**:

> *".....we would like to make a brief comment on the court's concern with "docket explosion". No doubt, it is a problem for the judicial system to contend with. But, that does not concern the individual litigant who comes to court seeking justice. Our endeavour must never be to deny justice to anyone in our over zealousness to dispose cases. As Benjamin Franklin said—great haste makes great waste, courts while endeavouring to deliver speedy justice, must not hand out hasty decisions without any concern for justice."*

50. Therefore, we direct that *status quo ante* as on 16.12.2021 be restored forthwith. Necessary consequences in law shall entail. The SBI is at liberty to approach the CMM concerned seeking an appropriate order to extend time for taking possession of the secured asset within four weeks from today. The learned CMM shall proceed further in accordance with law, after giving both parties an opportunity of hearing. All questions of fact and law in this regard, and the rights and contentions thereto of both sides, remain open for consideration by the learned CMM, and we have not expressed any opinion, either way, thereon. This order, however, shall not result in any recoveries being made from the Advocate Commissioners of any fees paid in terms of the CMM's order.

51. The Registry shall circulate a copy of this Judgement to all Chief Metropolitan Magistrates/Chief Judicial Magistrates and District Magistrates in the State of Andhra Pradesh, for ensuring that while passing order under Section 14 of the Act, a reasonable time is fixed for the person authorised to execute/carry out/implement/give effect to such order by actual taking over and delivery of physical possession of the properties covered under such order and further, to obviate any ambiguity or chance of transgression, such

time shall also be incorporated in the consequential warrant/authorisation issued to such authorised person.

52. We note that an objection was raised on behalf of the SBI that the Advocate Commissioner concerned ought to have been made a party in the instant proceeding. Such stand was adopted in the counter-affidavit. This, in the considered opinion of the Court is not required since, in the present case, this Court is not considering the reasons and/or the justification for the Advocate Commissioner having executed/given effect to the order authorising him to take over physical possession of the property in question, much beyond the time fixed/granted by the CMM to do so. As has been held by us, the order under Section 14 of the Act loses its force/effect, in law, upon expiry of the returnable date, as fixed by the CMM, unless extended. Thus, for the instant adjudication, the Advocate Commissioner is not a party required to be heard. Moreover, the Advocate Commissioner, being conferred only the power, limited, of taking over physical possession by the CMM under Section 14 of the Act, has no vested right of being heard with regard to the validity/life thereof.

53. *Ergo*, this writ petition is disposed of in the afore-stated terms. Pending application(s), if any, do not survive for consideration and, accordingly, stand consigned to records. In these facts and circumstances, there shall be no order as to costs.

(AHSANUDDIN AMANULLAH, J)

(B. S. BHANUMATHI, J)

*Mjl/**
L.R. Copy to be marked

THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH
AND
THE HON'BLE Ms. JUSTICE B. S. BHANUMATHI

WRIT PETITION No. 30161 of 2021

(disposed of)

18.02.2022

*Mjl/ **
LR copy to be marked.