REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 24th DAY OF AUGUST, 2022.

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE VIRENDER SINGH

CIVIL WRIT PETITION No. 5743 of 2022 &
CIVIL WRIT PETITION No.5744 of 2022.

1. CIVIL WRIT PETITION No. 5743 of 2022.

Between:-

SH. VINOD KUMAR, S/O SH. MOTI LAL AGGARWAL, AGE 57 YEARS, R/O PANDIT VARI, PO PREM NAGAR, DEHRADUN (UTTRANCHAL).

.....PETITIONER.

(BY SH. AJAY KOCHHAR AND SH. VARUN CHAUHAN, ADVOCATES)

AND

1. **HIMACHAL PRADESH FINANCIAL CORPORATION, NEW HIMRUS BUILDING, CIRCULAR, SHIMLA, 171001, THROUGH ITS GENERAL MANAGER.**

.....RESPONDENT.

2. **M/S RENUKA ENGINEERING WORKS, A-3 INDUSTRIAL AREA, PAONTA SAHIB, DISTRICT SIRMAUR, H.P. THROUGH ITS PROMOTER.**

……PROFORMA RESPONDENT.

2. CIVIL WRIT PETITION No. 5744 of 2022.

Between:-

1. SH. VINOD KUMAR, S/O SH. MOTI LAL AGGARWAL, AGE 57 YEARS, R/O PANDIT VARI, PO PREM NAGAR, DEHRADUN (UTTRAKHAND)

2. SH. NARINDER BANSAL, S/O SH. NARAIN BANSAL, R/O 12, DAV COLLEGE ROAD, KARAMPUR, DEHRADUN (UTTRAKHAND).

…..PETITIONERS.

(BY SH. AJAY KOCHHAR AND SH. VARUN CHAUHAN, ADVOCATES)

AND

1. HIMACHAL PRADESH FINANCIAL CORPORATION, NEW HIMRUS BUILDING, CIRCULAR, SHIMLA, 171001, THROUGH ITS GENERAL MANAGER.

…..RESPONDENT.

2. M/S SHREEN ELECTRICALS WIRE (P) LTD., KALA AMB, (ON SKATI ROAD), TEHSIL NAHAN, DISTRICT SIRMAUR, THROUGH ITS DIRECTORS.

……PROFORMA RESPONDENT.

These petitions coming on for admission before notice this day, ***Hon'ble Mr. Justice Tarlok Singh Chauhan,*** *passed the following:*

O R D E R

Since, both these petitions have been filed with identical prayers, therefore, they were taken up together for consideration and are being disposed of by a common judgment.

2. At the outset, the substantive prayers as made in these petitions need to be noticed and the same read as under:-

CWP No. 5743 of 2022.

"(i) That the impugned Order dated 01.06.2022 passed by Ld. Debt Recovery Tribunal-1, Chandigarh in OA 184/2006, Annexure P-6, may kindly be set aside and quashed.

(ii) That the IAs filed by the petitioner Annexure P-3 may kindly be directed to be decided within a time bound manner."

CWP No. 5744 of 2022.

"(i) That the impugned Order dated 01.06.2022 passed by Ld. Debt Recovery Tribunal-1, Chandigarh in OA 185/2006, Annexure P-10, may kindly be set aside and quashed.

(ii) That the IAs filed by the petitioners Annexure P-3 and Annexure P-4 may kindly be directed to be decided within a time bound manner."

3. As would be noticed from the prayers reproduced hereinabove, the petitioner(s) have questioned the order passed by the Debts Recovery Tribunal-I, Chandigarh, on various grounds. But the question is whether these petitions would be maintainable when an alternative remedy is available to the petitioner(s) under Section 20 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (for short 'Act') which provides for an appeal before the Appellate Tribunal.

4. The issue is no longer *res integra* in view of the various judgments of the Hon'ble Supreme Court on the subject, some of which are noticed and cited in this order.

5. We may conveniently refer to a judgment rendered by the Hon'ble Supreme Court in ***Punjab National Bank*** *vs.* ***O.C. Krishnan and others (2001) 6 SCC 569***, wherein it was observed as under:-

> "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 Jo not propose to go into the

> correctness of the decision of the High Court an I whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.
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> 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 hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this last track procedure cannot be allowed to be derailed either b> 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 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."

6. Similar reiteration of law can be found in the judgment of the Hon'ble Supreme Court in ***State Bank of India*** *vs.* ***Allied Chemical Laboratories and another (2006) 9 SCC 252***.

7. This judgment in turn has been followed and relied upon by the Hon'ble Supreme Court in a fairly recent judgment rendered in ***Phoenix ARC Private Limited*** *vs.* ***Vishwa Bharati Vidya Mandir and others (2022) 5***

SCC 345. It shall be profitable to extract the relevant observations made in paras 8 to 21 of the judgment which read as under:-

> "8. It is the case on behalf of the appellant that the writ petitions against the communication dated 13.08.2015 proposing to take further action under Section 13(4) of the SARFAESI Act and that too against a private Assets Reconstructing Company (ARC) shall not be maintainable. It is also the case on behalf of the appellant that assuming that the communication dated 13.08.2015 can be said to be a notice under Section 13(4) of the SARFAESI Act, in view of the alternative statutory remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions.
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> 9. While considering the issue regarding the maintainability of and/or entertainability of the writ petitions by the High Court in the instant case, a few decisions of this Court relied upon by the learned Senior Advocate appearing on behalf of the appellant – ARC are required to be referred to.
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> 10. In United Bank of India vs. Satyawati Tandon (2010) 8 SCC 110, it was observed and held by this Court that the remedies available to an aggrieved person against the action taken under section 13(4) or Section 14 of the SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective. On maintainability of or entertainability

of a writ petition under Article 226 of the Constitution of India, in a case where the effective remedy is available to the aggrieved person, it is observed and held in the said decision in paragraphs 43 to 46 as under:-(SCC pp.123-24)

> "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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> 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.
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> 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.
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> 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."

11. In City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwala, (2009) 1 SCC 168, it was observed by this Court in SCC p.175, paragraph 30 that the Court while exercising its jurisdiction under Article 226 is duty bound to consider whether the petitioner has any alternative or effective remedy for the resolution of the dispute."

12. In Kanaiyalal Lalchand Sachdev vs. State of Maharashtra (2011) 2 SCC 782, after referring to the earlier decisions of this Court in the cases of Sadhana Lodh Vs. National insurance Co. Ltd. and Anr., (2003)

3 SCC 524; Surya Dev Rai Vs. Ram Chander Rai and Ors., (2003) 6 SCC 675 and State Bank of India Vs. Allied Chemical Laboratories and Anr., (2006) 9 SCC 252, while upholding the order passed by the High Court dismissing the writ petition on the ground that an efficacious remedy is available under Section 17 of the SARFAESI Act, it was observed 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.

13. Similar view has been expressed by this Court in subsequent decisions in the case of General Manager, Sri Siddeshwara Cooperative Bank Limited v. Ikbal (2013) 10 SCC 83 as well as in the case of Agarwal Tracom Private Limited v. Punjab National Bank (2018) 1 SCC 626.

14. Applying the law laid down by this court in the aforesaid decisions, it is required to be considered whether, in the facts and circumstances of the case, the High Court is justified in entertaining the writ petitions against the communication dated 13.08.2015 and to pass the ex-parte ad interim order virtually stalling/restricting the proceedings under the SARFAESI Act by the creditor.

15. It is required to be noted that it is the case on behalf of the appellant that as such the communication dated 13.08.2015 cannot be said to be a notice under Section 13(4) of the SARFAESI Act at all. According to the appellant, after the notice under Section 13(2) of the SARFAESI Act was issued

in the year 2013 and thereafter despite the Letter of Acceptance dated 27.02.2015, no further amount was paid, the appellant called upon the borrowers to make the payment within two weeks failing which a further proceeding under Section 13(4) of the SARFAESI Act was proposed. Thus, according to the appellant, it was a proposed action. Therefore, the writ petitions filed against the proposed action under Section 13(4) of the SARFAESI Act was not maintainable and/or entertainable at all.

16. 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 ex- parte 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.

17. Now, in so far as the reliance placed upon the decision of this Court in the case of J. Rajiv Subramaniyan and Anr. v. Pandiyas (2014) 5 SCC 651 by the learned senior counsel appearing on behalf of the borrowers in support of his submission that writ petition would be maintainable, it is to be noted that in the aforesaid case, the learned counsel appearing on behalf of the Bank did not press the maintainability and/or entertainability of the writ petition under Article 226 and therefore, this Court had no occasion to consider the entertainability and/or maintainability of the writ petition. Therefore, the aforesaid decision is not of any assistance to the respondents – borrowers.

18. 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 Corpn. v. C.A. Imanual (1969) 1 SCC 585 and Ramesh Ahluwalia v. State of Punjab (2012) 12 SCC 331 relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.

19. Now, so far as the submission on behalf of the borrowers that in exercise of the powers under Article 226 of the Constitution, this Court may not interfere with the interim / interlocutory orders is concerned, the decision of this Court in the case of Mathew K.C. (supra) is required to be referred to.

20. In State Bank of Travancore v. Mathew K.C. (2018) 3 SCC 85 after referring to and/or considering the decision of this Court in CIT v. Chhabil Dass Agarwal (2014) 1 SCC 603, it was observed and held in paragraph 5 as under: (Mathew K.C. Case, SCC p.89)

> "5. We have considered the submissions on behalf of the parties. Normally this Court in exercise of jurisdiction under Article 136 of the Constitution is loath to interfere with an interim order passed in a pending proceeding before the High Court, except in special circumstances, to prevent manifest injustice or abuse of the process of the court. In the present case, the facts are not in dispute. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal [CIT v. Chhabil Dass Agarwal, (2014) 1 SCC 603], as follows: (SCC p. 611, para 15)
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> > "15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

21. Applying the law laid down by this Court in the case of Mathew K.C. (supra) to the facts on hand, we are of the opinion that filing of the writ petitions by

the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the Court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13.08.2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs.1 crore only (in all Rs.3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs.117 crores. The ad-interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of Court. It appears that the High Court has initially granted an ex-parte ad-interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the

> High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

8. This Court is duty bound and has infact followed the law laid down by the Hon'ble Supreme Court in ***Phoenix ARC's case*** (supra) in its latest pronouncement rendered in ***CWP No. 2199 of 2019*** in case titled ***M/s Malhotra Clinics Private Limited others*** *vs.* ***The Deputy General Manager and others,*** decided on 03.08.2022.

9. Thus, what can be taken to be the settled law is that when a specific remedy is available to the aggrieved party, the High Court in exercise of its jurisdiction under Article 226 of the Constitution is not justified in interfering with the orders of the DRT to examine the correctness of the rejection of the applications, as in the instant case, the Act itself provides for a mechanism by way of an appeal against the orders of the DRT to the Appellate Tribunal.

10. This was so held by the Hon'ble Supreme Court in ***T.P. Vishnu Kumar*** *vs.* ***Canara Bank, P.N. Road, Tiruppur and others (2013) 10 SCC 652.*** It shall be apt to reproduce the relevant observations of the judgment as contained in paras 6 to 11 which read as under:-

> "6.The Debt Recovery Tribunals in the country are established for expeditious adjudication and recovery of debts due to banks and financial institutions. It was noticed that banks and financial institutions have been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them and therefore the actual need was felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realized without delay. It was noticed that on 30.09.1990 more than fifteen lacs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crores in dues of public sector banks and about 391 crores of dues of the financial institutions. The locking up of such huge amount of money in litigation, it was noticed, prevents proper utilization and recycling of the funds for the development of the country. It is in the above scenario, Parliament enacted The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) The Act itself provides the mechanism to an aggrieved

party, if he is dissatisfied with an order passed by the tribunal.

7.Section 20 of the Act says that:

> "**20. Appeal to the Appellate Tribunal.**(1)..... any person aggrieved by an order made, or deemed to have been made, by a Tribunal under the Act may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter."

8. Section 18 of the Act deals with Bar of Jurisdiction which says:

> "**18. Bar of jurisdiction.-** On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17."

9. Powers, which were conferred on the civil court, now stands conferred on a Tribunal under Section 17 of the Act thereby it can deal with applications from banks and financial institutions for recovery of debts due to such banks and financial institutions. We are of the view when a specific remedy is made available to the aggrieved party under Section 20 of the Act, learned Single Judge of the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, was not justified in interfering with the orders passed by the Debt Recovery Tribunal.

10. Powers of the High Court under Article 226 cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to the party or where such

> proceedings or action is wholly arbitrary, unreasonable and unfair. When the Act itself provides for a mechanism, by an appeal under Section 20 of the Act, in our view, the High Court is not justified in invoking jurisdiction under Article 226 of the Constitution of India to examine that the rejection of the applications by the tribunal was correct or not. The petitioner and the contesting respondents have no case that either the bank or the tribunal had violated any statutory provisions by rejecting their applications.
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> 11. A writ petition was preferred against the rejection of applications and the same were entertained by the learned Single Judge and decided on merits and which in our view is impermissible while exercising its jurisdiction under Article 226 of the Constitution. If the correctness of otherwise of each and every interim order passed by the Tribunal, is going to be tested in a writ court, it will only defeat the object and purpose of establishing such tribunal. We already noticed that due to the intervention of the writ court, the matter got delayed for four years defeating the very purpose and object of the Act. We therefore, find no merit in these petitions and the same are dismissed."

11. In view of the aforesaid discussion and for the reasons stated above, obviously, the instant petitions are not maintainable in view of the alternative remedy available to the petitioner(s) and consequently the same are

dismissed. However, the dismissal of the petitions will not come in the way of the petitioner(s) in case he/they approach DRAT for the redressal of his/their grievances within the time frame as provided under the Act. All pending applications stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Virender Singh)
Judge

24th August, 2022.
(krt)