* **THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**
AND
THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

+ W.P.No.33239 of 2023

% 09.01.2024

Between:

M/s. Sai Hemaja Aerobricks Pvt. Limited & 2 others

Petitioners

VERSUS

State Bank of India & another

Respondents

! Counsel for Petitioners : Mr. R.N.Hemendranath Reddy, learned Senior Counsel representing Mr. Sannapaneni Lohit, learned counsel for the petitioners.

^ Counsel for the respondents : Mr. A.Krishnam Raju, learned counsel for respondent No.1.

Mr. G.Vidya Sagar, learned *Amicus Curiae.*

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> HEAD NOTE:

? Cases referred

[1] (2014) 6 SCC 1
[2] (2011) 2 SCC 782
[3] (2023) 3 SCC 210
[4] (2014) 16 SCC 623
[5] (2023) 0 AIR (AP) 107
[6] 2014 (15) CTC 209
[7] 2018 SCC OnLine All 5836
[8] (2019) 9 SCC 94
[9] (2021) 2 SCC 392
[10] (2023) 1 SCC 675
[11] (2010) 8 SCC 110
[12] 2021 SCC OnLine TS 574
[13] (2019) 2 SCC 198
[14] 2018 SCC OnLine All 176
[15] 2021 SCC OnLine SC 611
[16] (2015) 2 SCC 727
[17] (2023) 2 SCC 168

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION No.33239 of 2023

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. R.N.Hemendranath Reddy, learned Senior Counsel representing Mr. Sannapaneni Lohit, learned counsel for the petitioners.

Mr. A.Krishnam Raju, learned counsel for respondent No.1.

Mr. G.Vidya Sagar, learned *Amicus Curiae.*

2. In this writ petition, the petitioners who are borrowers have assailed the validity of the order dated 27.09.2023 passed by the XI Additional Chief Metropolitan Magistrate, Secunderabad (hereinafter referred to as 'Magistrate') in Crl.M.P.No.3743 of 2023 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (referred to hereinafter as 'the SARFAESI Act'). By the said

order, the Magistrate has directed taking over of the symbolic possession of the secured asset.

3. The issue which arises for consideration in this writ petition is whether against the aforesaid order passed under Section 14 of the SARFAESI Act by the Magistrate, the petitioners have the remedy to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

4. Learned Senior Counsel for the petitioners while referring to Section 14(3) of the SARFAESI Act submits that action of the Magistrate cannot be assailed under Section 17 of the SARFAESI Act. It is further submitted that the petitioners do not have the remedy to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

5. In support of aforesaid submission, reliance has been placed on a decision of the Supreme Court in **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited**[1]. It is further submitted that the decisions of Supreme Court in

[1] (2014) 6 SCC 1

Kanaiyalal Lalchand Sachdev v. State of Maharashtra[2] as well as in **Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited**[3] are not a binding precedent and the same are *per incurium*, as in the aforesaid decisions, the Supreme Court has not taken note of Section 14(3) of the SARFAESI Act. It is further submitted that this Court has the authority to hold that the decision of the Supreme Court is *per incurium.* Reference has been made to decision of **Sundeep Kumar Bafna v. State of Maharashtra**[4].

6. It is further submitted that decision of Supreme Court in **Harshad Govardhan Sondagar** (supra) has been followed by other High Courts namely Andhra Pradesh, Madras and Alahabad High Courts in **Navata Eco Bricks v. Punjab National Bank**[5], **Veena Textiles Limited v.**

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[2] (2011) 2 SCC 782
[3] (2023) 3 SCC 210
[4] (2014) 16 SCC 623
[5] (2023) 0 AIR (AP) 107

The Authorised Officer, IFCI Ltd.[6] and **Kumkum Tentiwal v. State of U.P.**[7] respectively.

7. On the other hand, learned *Amicus Curiae* has submitted that after the decision of Supreme Court in **Harshad Govardhan Sondagar** (supra), Section 17 of the SARFAESI Act has been amended and Sub-Section 4A has been incorporated. It is further submitted that the petitioners are the borrowers and therefore, have the remedy of filing an appeal under Section 17 of the SARFAESI Act.

8. Learned *Amicus Curiae* has placed reliance on the decisions of the Supreme Court in **Bajrang Shyamsunder Agarwal v. Central Bank of India**[8], **C.Bright v. District Collector**[9], **R.D.Jain and Company v. Capital First Limited**[10] and **Kotak Mahindra Bank Limited** (supra).

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[6] 2014 (15) CTC 209
[7] 2018 SCC OnLine All 5836
[8] (2019) 9 SCC 94
[9] (2021) 2 SCC 392
[10] (2023) 1 SCC 675

9. Learned counsel for respondent No.1-Bank while referring to decision of Supreme Court in **United Bank of India v. Satyawati Tondon**[11] has submitted that a Division Bench of this Court in **Sagi Narayana Raju v. Asset Reconstruction Company India Ltd.**[12] has held that an appeal lies against an order passed under Section 14 of the SARFAESI Act.

10. We have considered the rival submissions made on both sides and have perused the record.

11. Before proceeding further, it is apposite to take note of Section 14 of the SARFAESI Ac, which is extracted below for the facility of reference:

> "**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

[11] (2010) 8 SCC 110
[12] 2021 SCC OnLine TS 574

provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, 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 assets 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.

(1A) 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."

12. A Two-Judge Bench of Supreme Court in **Satyawati Tondon** (supra) of the decision has held as under:

"**42.** There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under a Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but

> also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

13. Thereafter, another Two-Judge Bench of Supreme Court in **Kanaiyalal Lalchand Sachdev** (supra) held as follows:

> "**22.** We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT."

14. Thus, the Supreme Court in **Satyawati Tondon** (supra) and **Kanaiyalal Lalchand Sachdev** (supra) held that any person which includes the borrower shall have the remedy to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act against an order passed under Section 14 of the SARFAESI Act.

15. Another Two-Judge Bench of Supreme Court in **Harshad Govardhan Sondagar** (supra) while taking note of Section 14(3) of the SARFAESI Act held as under:

> "**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."

16. Thus, the ratio laid down in **Harshad Govardhan Sondagar** (supra) is that a lessee/tenant does not have remedy to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, as the Tribunal is not competent to and has no power to restore the possession of the property to any other person including lessee except the borrower.

17. Thereafter, Section 17 of the SARFAESI Act was amended and Sub-Section 4A was incorporated with effect

from 01.09.2016 which is extracted for the facility of reference:

> "(4A) Where-
>
> (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,-
>
> (a) has expired or stood determined; or
>
> (b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or
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> (c) is contrary to terms of mortgage; or
>
> (d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and
>
> (ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a)

> or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

18. A Three-Judge Bench of Supreme Court in **Bajrang Shyamsunder Agarwal** (supra) took note of its previous decisions rendered by Two-Benches in **Harshad Govardhan Sondagar** (supra) and **Kanaiyalal Lalchand Sachdev** (supra) and it was held as under:

> "**15.** Section 17 provides for an invaluable right of appeal to any person including the borrower to approach the Debts Recovery Tribunal (hereinafter referred to as "DRT"). In *Harshad Govardhan case* (supra) this Court held that the right of appeal is available to the tenant claiming under a borrower, however, the right of re-possession does not exist with the tenant. However, in *Kanaiyalal Lalchand Sachdev v. State of Maharashtra* (supra), this Court held that DRT can, not only set aside the action of the secured creditor, but even restore the

> status quo ante. We do not intend to express any view on this issue since it is not relevant for the disposal of this appeal. We also note that Parliament has stepped in and amended Section 17 by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016). Under the amendment, possession can be restored to the "borrower or such other aggrieved person".

19. Thereafter, another Two-Judge Bench of Supreme Court in **Hindon Forge Private Limited v. State of Uttar Pradesh through District Magistrate, Ghaziabad**[13] dealt with an order of the Debts Recovery Tribunal directing handing over of the symbolic possession. The Supreme Court set aside the Full Bench judgment of the Alahabad High Court in **NCML Industries Ltd. v. Debts Recovery Tribunal**[14] and held as under:

> "**42.** We are therefore of the view that the Full Bench judgment is erroneous and is set aside. The appeals are accordingly allowed, and it is hereby

[13] (2019) 2 SCC 198
[14] 2018 SCC OnLine All 176

> declared that the borrower/debtor can approach the Debts Recovery Tribunal under Section 17 of the Act at the stage of the possession notice referred to Rules 8(1) and 8(2) of the 2002 Rules. The appeals are to be sent back to the court/tribunal dealing with the facts of each case to apply this judgment and thereafter decide each case in accordance with the law laid down by judgment."

20. Another Two-Judge Bench of Supreme Court in **Hemraj Ratnakar Salian v. HDFC Bank Ltd.**[15] again took note of its previous decisions rendered by Two-Benches in **Harshad Govardhan Sondagar** (supra) and **Kanaiyalal Lalchand Sachdev** (supra) and held as under:

> "**10.** Procedural mechanism for taking possession of the Secured Asset is provided under Section 14 of the SARFAESI Act. Section 17 of the SARFAESI Act provides for the right of appeal to any person including the borrower to approach Debt Recovery Tribunal (DRT). Section 17 has been amended by Act No. 44 of 2016 providing for challenging the measures to recover secured debts (for short, "the

[15] 2021 SCC OnLine SC 611

> Amendment"). Under the Amendment, possession can be restored to the borrower or such other aggrieved person. This Amendment has come into force w.e.f. 1st September, 2016. This Court in *Harshad Govardhan Sondagar v. International Asset Reconstruction Co. Ltd.* (supra) has held that right of appeal is available to the tenant claiming under the borrower. In *Kanaiyalal Lalchand Sachdev v. State of Maharashtra* (supra) this Court has held that DRT can not only set aside the action of the secured creditor but even restore the *status quo ante*. Therefore, an alternative remedy was available to the appellant to challenge the impugned order under Section 17 of the SARFAESI Act even before the amendment to Section 17 of the SARFAESI Act. However, given that the instant appeal has been pending consideration before this Court from the year 2016, we propose to examine the case on merits without directing the appellant to avail the alternative remedy."

21. Another Two-Judge Bench of Supreme Court in **Kotak Mahindra Bank Limited** (supra) held as under:

> "**34.** Under Section 14 of the SARFAESI Act, the District Magistrate or

> the Chief Metropolitan Magistrate as the case may be is required to assist the secured creditor in getting the possession of the secured assets. Under Section 14 of the SARFAESI Act, neither the District Magistrate nor the Metropolitan Magistrate would have any jurisdiction to adjudicate and/or decide the dispute even between the secured creditor and the debtor. If any person is aggrieved by the steps under Section 13(4)/order passed under Section 14, then the aggrieved person has to approach the Debts Recovery Tribunal by way of appeal/application under Section 17 of the SARFAESI Act."

22. Thus, from aforesaid enunciation of law, it is evident that the borrower has the remedy to approach the Debts Recovery Tribunal.

23. It is pertinent to mention here that the Supreme Court in **Kanaiyalal Lalchand Sachdev** (supra) held that against an order passed under Section 14 of the SARFAESI Act, an aggrieved person has the remedy under Section 17 of the SARFAESI Act. The decision rendered by Supreme Court subsequently in **Harshad Govardhan Sondagar** (supra) has been explained by it subsequently in **Bajrang**

Shyamsunder Agarwal (supra). The aforesaid interpretation put by the Supreme Court itself on the decision in **Harshad Govardhan Sondagar** (supra) binds this Court. In this connection, reference may be made to decision of Supreme Court in **South Central Railway Employees Coop. Credit Society Employees Union v. B. Yashodabai**[16], wherein in paragraph 11, it has been held as under:

> "**11.** We have heard the learned counsel at length and have also considered the submissions made, the judgments relied upon by the counsel, the earlier judgment delivered by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies* [*South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies*, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] and the impugned judgment [*South Central Railway Employees Coop. Credit Society Employees Union* v. *B. Yashodabai*, 2002 SCC

[16] (2015) 2 SCC 727

OnLine AP 748 : (2002) 5 ALD 687] . In our opinion, the High Court has committed a grave error by taking a different view than the one which had been taken by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies* [*South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies*, (1998) 2 SCC 580 : 1998 SCC (L&S) 703], especially when the rules governing the promotion policy had not been amended after the aforestated judgment was delivered by this Court. It is pertinent to note that a review application had been filed in the aforestated *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies* [*South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies*, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] and the same had been rejected [*P. Chander Rao* v. *South Central Railway Employees Coop. Society Employees Union*, Review Petition (C) No. 1292 of 1998, order

> dated 6-8-1999 (SC)] and therefore, the judgment delivered by this Court in *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies* [*South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies*, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] had become final."

24. Therefore, the contention that the decisions of Supreme Court in **Kanaiyalal Lalchand Sachdev** (supra), **Kotak Mahindra Bank Limited** (supra), **Bajrang Shyamsunder Agarwal** (supra), **Satyawati Tondon** (supra), **Hindon Forge Private Limited** (supra) and **Hemraj Ratnakar Salian** (supra) are *per incurium* cannot be accepted, as it is not open for this Court to hold that a decision of Supreme Court is *per incurium* as the same would be violative of Article 141 of the Constitution of India.

25. At this stage, we deal with the contention urged on behalf of the petitioners with regard to scope and

impact of Section 14(3) of the SARFAESI Act. Section 14(3) of the SARFAESI Act is extracted below for the facility of reference:

> "**14(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."

26. Thus, Section 14(3) of the SARFAESI Act provides that no act of Chief Metropolitan Magistrate or District Magistrate or any officer authorised by Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

27. The expression "Court" or "Authority" has not been defined either under the SARFAESI Act or the Rules made thereunder. Therefore, it is common parlance meaning has to be taken into account. Reference may be

made to Black's Law Dictionary Eighth Edition which defines the aforesaid expression as follows:

> "**authority. 1.** The right or permission to act legally on another's behalf, esp., the power of one person to affect another's legal relations by acts done in accordance with the other's manifestations of assent; the power delegated by a principal to an agent <authority to sign the contract>. – Also termed *power over other persons*."

> "**court**, n. **1.** A governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice <a question of law for the court to decide>.
>
> > "A court... is a permanently organized body, with independent judicial powers defined by law, meeting at a time and place fixed by law for the judicial public administration of justice" 1 William J. Hughes, *Federal Practice, Jurisdiction & Procedure* § 7, at 8 (1931).
>
> **2.** The judge or judges who sit on such a governmental body <the court asked the parties to approach the bench>. **3.** A legislative aassembly <in Massachusetts, the General Court is the legislature>. **4.** The locale for a legal proceeding <an out-of-

> court statement>. **5.** The building where the judge or judges convene to adjudicate disputes and administer justice <the lawyers agreed to meet at the court at 8:00 a.m./. – Also termed (in sense 5) *courthouse*."

28. The expression "Debts Recovery Tribunal" has been defined under Section 2(i) of the SARFAESI Act. Section 2(i) of the SARFAESI Act reads as under:

> "2(i) "Debts Recovery Tribunal" means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

29. Thus, it is evident that the Debts Recovery Tribunal under the SARFAESI Act is neither a Court nor an Authority. Therefore, the bar contained in Section 14(3) of the SARFAESI Act does not apply to a remedy provided before the Tribunal under Section 17 of the SARFAESI Act.

30. In view of preceding analysis, it is held that against an order under Section 14 of the SARFAESI Act, an

aggrieved person has a remedy under Section 17 of the SARFAESI Act.

31. The Supreme Court in **Satyawati Tondon** (supra) has deprecated the practice of the High Courts in entertaining the writ petitions despite availability of an alternative remedy. The aforesaid view has also been reiterated by Hon'ble Supreme Court in **Varimadugu Obi Reddy v. B.Sreenivasulu**[17]. The relevant extract of para 36 reads as under:

> "36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under

[17] (2023) 2 SCC 168

> Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the 2002 Act"

32. In view of aforesaid enunciation of law, we are not inclined to entertain the writ petition. However, liberty is reserved to the petitioner to take recourse to the remedy under Section 17 of the SARFAESI Act.

33. With the aforesaid liberty, the Writ Petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

ALOK ARADHE, CJ

N.V.SHRAVAN KUMAR, J

Date: 09.01.2024
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