
(2014) 08 AP CK 0111

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8304 of 2014 and WPMP No. 23810 of 2014

Deccan Chronicles Holdings Limited

APPELLANT

Vs

The Debt Recovery Tribunal

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Constitution of India, 1950 — Article 14, 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(3), 13(4), 15

Citation : (2015) 1 ALD 236 : (2015) 3 ALT 40 : (2015) 4 BC 345

Hon'ble Judges : K.C. Banu, J;Anis, J

Bench : Division Bench

Advocate : D.V. Sitarama Murthy, Senior Counsel for Sharad Sanghi, Advocate for the Appellant; B. Prakash Reddy, Senior Counsel for C.R. Sridharan, Advocate for the Respondent

Judgement

K.C. Bhanu, J.—This Writ Petition is filed under Article 226 of the Constitution of India, to quash the order, dated 14.03.2013, in Interlocutory Application No. 779 of 2013 in Securitisation Application No. 167 of 2013 passed by the Debts Recovery Tribunal, Hyderabad (for short, "the Tribunal"), and consequently direct respondent No. 2 to maintain status-quo in respect of secured assets of the petitioner till the final disposal of Securitisation Application.

2. The Writ Petitioner filed Securitisation Application before the Tribunal challenging the Possession Notices, dated 07.01.2013, 08.01.2013 and 09.01.2013, issued by the 2nd respondent bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act") and the Security Interest (Enforcement) Rules, 2002 (for short, "the Rules"), against the schedule property, to declare them as null and void.

3. The interim prayer sought for pending final decision of the Securitisation

Application is to stay all further proceedings including dispossession of the applicants therein or their tenants/agents from the schedule properties by the 2nd respondent bank in pursuant to the "Possession Notices", dated 07.01.2013, 08.01.2013 and 09.01.2013 issued under Section 13(4) of the SARFAESI Act and the Rules.

4. The Tribunal, after hearing both sides, passed a docket order on 14.03.2013, the relevant paragraph of which reads thus:

"The said contentions raised by both the parties are intriguing questions which are to be dealt with and decided after a thorough enquiry in the main SA. However, in the meanwhile, in view of the facts and circumstances of the case and also the quantum of claim involved in the matter, which is uncertain, the Applicants are hereby directed to deposit directly with the Respondent Bank a sum of Rs. 10.00 crores, out of which, Rs. 5.00 crores is directed to be deposited within 4 weeks from today and the balance amount of Rs. 5.00 crores is directed to be deposited within 4 weeks thereafter. Accordingly, the Respondent Bank is hereby directed to defer all further proceedings in respect of the schedule properties pursuant to the Possession Notice, Dt. 07.01.2013, 08.01.2013 and 09.01.2013 until further orders of this Tribunal. In the event the Applicants fail to deposit the amounts as stated supra, the Respondent Bank shall be at liberty to proceed further in accordance with law. Matter stands posted to 15.04.2013 for filing of Counter/Reply by the Respondent Bank".

Challenging the same, the present Writ Petition is filed.

5. Originally, the Writ Petition was disposed of on 19.03.2014 at the stage of admission without issuing notice to the respondents, wherein it was held thus:

"After hearing the learned counsel for the petitioner and keeping in view the observations made by the Debt Recovery Tribunal that the "contentions raised by both the parties are intriguing questions which are to be dealt with and decided after a thorough enquiry in the main SA", we direct the petitioner to deposit a demand draft for Rs. 1.00 Crore with the respondent - Bank by tomorrow i.e., 20-03-2014. The petitioner shall also deposit a sum of Rs. 4.5 Crores on or before 31-05-2014 and another sum of Rs. 4.5 Crores on or before 31-07-2014. In the meantime, the respondent - Bank is restrained from taking any coercive steps to recover the amount and to take any action against the petitioner in running the printing press. If the petitioner is already in possession of the secured assets, it shall not be dispossessed in the meantime. It is made clear that in case the petitioner fails to pay the amount in compliance with the aforementioned direction, the respondent - Bank is at liberty proceed in accordance with law.

The writ petition is accordingly disposed of. Miscellaneous petitions, if any, pending consideration shall stand closed. No order as to costs."

6. Challenging the same, Civil Appeal No. 4402 of 2014 (arising out of Special

Leave Petition (Civil) No. 8471 of 2014) was filed before the Hon''ble Supreme Court and the Hon''ble Supreme Court allowed the same by an order, dated 04.04.2014, wherein it was held thus--

"3. It is not disputed before us that the impugned order, which amounts to allowing the writ petition, has been passed by the High Court without giving any notice to the appellant (respondent No. 2 before the High Court). On this short ground, the impugned order is set aside. Writ Petition (Civil) No. 8304 of 2014, titled M/s. Deccan Chronicles Holdings Limited v. the Debt Recovery Tribunal & Anr. is restored to the file of the High Court of Judicature of Andhra Pradesh. The respondent (petitioner therein) is given liberty to apply to the High Court for consideration of the matter on 07.04.2014. If the appellant (respondent No. 2 therein) desires to remain present before the High Court, it may do so".

7. After remand of the writ petition, this Court has taken up W.P.M.P. No. 10367 of 2014, which was filed seeking status-quo on the secured assets of the petitioner pending disposal of the Securitisation Application No. 167 of 2013. While dealing with the said Miscellaneous Petition, this Court held that at prima facie view the present writ petition is maintainable and consequently, with regard to conditional order of deposit of Rs. 10.00 crores, no interference was warranted. Against the said interim order, the 2nd respondent bank filed a Petition for Special Leave to Appeal (Civil) No. 12617 of 2014 before the Hon''ble Supreme Court and the said petition was dismissed 09.05.2014, but the High Court was requested to hear and decide the writ petition on the next day or, in any case, within three months from the date, of that order.

8. Sri D.V. Sita Ram Murthy, learned Senior Counsel appearing for the petitioner contended that there are discrepancies with regard to the actual amount payable to the bank, as, in the Possession Notice, it was mentioned that the amount due to the bank is Rs. 50,25,51,229.51 ps., whereas in the Demand Notice it was stated that about Rs. 95,17,75,263.25 ps. was due to the bank and because of this discrepancy, the issue has to be decided after explanation, if any, that may be given by the bank before the Tribunal; that there is a discrepancy with regard to the secured assets, which were brought to sale in terms of Section 13(2) and Section 13(4) of the SARFAESI Act; that the description of properties as mentioned in Section 13(4) notice is not completely in consonance with Section 13(3) of the SARFAESI Act; that the Tribunal has no jurisdiction to pass any conditional order and therefore, the writ petition is maintainable; that the validity of Section 17 of the SARFAESI Act came up for consideration in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , and on the same analogy, this Court held that as Section 18 of the SARFAESI Act is staring at the writ petitioner, it cannot file an appeal before the appellate authority and therefore, this Court is having jurisdiction to entertain the writ petition; that the order passed by this Court holding that the writ petition is maintainable has become final and therefore, when the order of this Court has become final, the respondent bank cannot re-agitate the same in the course of same proceedings

and the principle of res judicata would apply; that the relevant factors for grant of interim order as contemplated under Order 39, Rule 1 of the Code of Civil Procedure, 1908 (for short, "CPC), have not been taken into consideration" by the Tribunal; that no reasons were recorded by the Tribunal with regard to prima facie case, balance of convenience and irreparable injury, which would be caused to the petitioner in case the interim order is not granted; and therefore, he prays that it is the case where the impugned order is to be set aside and the matter be remanded to the Tribunal for disposal in accordance with law.

9. Sri D. Prakash Reddy, learned Senior Counsel appearing for the 2nd respondent bank, contended that there is no discrepancy in the two notices with regard to the amount claimed; that the writ petitioner availed two types of loans, one is working capital loan and the another is short term loan; that as the Possession Notice relates to one loan, the amount due to the bank in respect of that loan has been mentioned in it; that the amount mentioned in the Demand Notice relates to both the loans and therefore, the total amount has been mentioned in the Demand Notice and as such there is no discrepancy with regard to the amount mentioned in the notice; that as a matter of fact, the writ petitioner filed a Company Application, wherein it was admitted that an amount of Rs. 95,17,75,263.25 ps. was due to the 2nd respondent bank; that the Possession Notice and the Demand Notice are completely in accordance with the law; that two different loans were taken by the writ petitioner, for which, the petitioner as well as the guarantors gave security in respect of seven properties and the bank is at liberty to proceed against any one of them or all of them; that the 2nd respondent bank is proceeding against six properties out of the seven properties, which were mortgaged to the bank;

He also vehemently argued that when effective alternative remedy is available to the writ petitioner in terms of Section 18 of the SARFAESI Act, the writ petitioner has to avail that remedy; that the interim order passed by the Tribunal as well as the interim order passed by this Court, when the writ petition was pending, has not been complied with; that though the interim order was passed by this Court in the month of March, 2013, the petitioner has not taken any steps to comply with the order of this Court and therefore, the pleas taken by the petitioner have to be struck down; that basing on the observation made by the Division Bench of this Court that Section 18 of the SARFAESI Act is in similarity with the Section 17 of the SARFAESI Act, both the Sections have to be read independently as Section 17 of the SARFAESI Act is a remedy available to the debtor at the first stage though the nomenclature is used as "appeal", but it is misnomer in view of the decision rendered by the Mardia Chemicals Ltd., (supra); that the Section 18 of the SARFAESI Act is not under challenge before the Hon"ble Supreme Court or before this Court and therefore, effective alternative remedy has to be followed; that interim order passed by the Tribunal is in favour of the writ petitioner, because while granting stay, to safe guard the interests of both the parties, the Tribunal directed the petitioner to deposit an amount of Rs. 10.00 crores by way of two instalments; that when the Tribunal has power to grant stay the

proceedings initiated under Section 13(2) and 13(4) of the SARFAESI Act, it would also have the power to impose some restrictions or conditions to be complied with and therefore, the order under challenge cannot be said to be without jurisdiction and therefore, he prays to dismiss the writ petition.

10. Both the learned counsel relied upon several decisions, which will be referred to at appropriate time.

11. After hearing both sides, the following points fall for consideration before this Court:

"1) Whether the Tribunal, while exercising the powers under Section 17 of the SARFAESI Act, is competent to impose conditions when the challenge was made against the notices issued under Sections 13(2) and 13(4) of the SARFAESI Act?

2) Whether the writ petition is maintainable when effective statutory remedy is available to litigant public?

3) Whether the pleading of the defaulting party can be struck down when the interim directions have not been complied with?

4) Whether the principle of res judicata is applicable in subsequent proceedings?

5) Whether it is a case of abuse of process of law?

POINT No. 1:

Whether the Tribunal, while exercising the powers under Section 17 of the SARFAESI Act, is competent to impose conditions when the challenge was made against the notices issued under Sections 13(2) and 13(4) of the SARFAESI Act?

12. Under Section 17 of the SARFAESI Act, a debtor can file an application aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the SARFAESI Act taken by the secured creditor or by his authorised officer under the Chapter to the Tribunal having jurisdiction. Then, the Tribunal has got a power to determine or adjudicate the issue whether the secured creditor is properly proceeding for enforcement of security interest in terms of Section 13(4) of the SARFAESI Act or not. For that purpose, the Tribunal is empowered to examine the facts and circumstances of the case and permit both the parties to let-in evidence. There cannot be any dispute that "evidence" means both oral and documentary. Though it is worded in Section 17 of the SARFAESI Act "right to appeal", but in *Mardia Chemicals Ltd.*, (supra), the Hon'ble Supreme Court held that it is a misnomer as it is an initial stage, where the Tribunal is empowered to act in accordance with the evidence that may be produced by both the parties. The relevant paragraphs of the said decision read as follows (Para Nos. 62 to 64):

"62. As indicated earlier, the position of the appeal under section 17 of the Act is like that of a suit in the court of the first instance under the Code of Civil Procedure. No doubt in suits also it is permissible, in given facts and

circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the relevant provisions under the law. There is no such provision under the Act.

63. Yet another justification which has been sought to be given for the requirement of deposit is that the secured assets which may be taken possession of or sold may fall short of the dues, therefore such a deposit may be necessary. We find no merit in this submission too. In such an eventuality recourse may have to be taken to sub-section (10) of section 13 where a petition may have to be filed before the Tribunal for the purpose of making up for the short-fall.

64. The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet, (iii) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (iv) no special reason for double security in respect of an amount yet to be determined and settled (v) 75 per cent of the amount claimed by no means would be a meagre amount, and (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75 per cent of the undetermined demand. Such conditions are not alone onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of section 17 of the Act is unreasonable, arbitrary and violative of article 14 of the Constitution".

Therefore, it was held that the condition of imposing 75% of the un-determined demand is arbitrary and violates Article 14 of the Constitution of India.

13. The main relief sought for before the Tribunal is to quash the proceedings initiated by the creditor-bank under Section 13(4) of the SARFAESI Act. The interim prayer sought for is to stay all further proceedings, which were initiated in pursuance of Possession Notice issued under Section 13(4) of the SARFAESI Act. Under sub-Section 2 of Section 17 of the SARFAESI Act the Tribunal having jurisdiction is empowered to consider whether any of the measures referred to in sub-Section 4 of Section 13 of the SARFAESI ACT taken by the secured creditor for enforcement of security are in accordance with the provisions of the SARFAESI Act and the Rules made thereunder. Sub-Section 3 makes it clear that if the Tribunal after considering the evidence comes to the conclusion that any of the measures referred to in sub-section 4 of Section 13 of the SARFAESI Act taken by creditor are not in accordance with the provisions of the SARFAESI Act and the Rules made thereunder, it may declare the measures taken under sub-section 4 of Section 13 of the SARFAESI Act as invalid. This sub-section also specifically empowers the Tribunal to pass such order as it may consider appropriate and necessary in relation to any of the recourses taken by the secured creditor under sub-Section 4 of Section 13 of the SARFAESI Act. When

the Tribunal has got power to adjudicate measures initiated under Section 13(4) of the SARFAESI Act, in our opinion, to safe guard the interests of the parties it can pass a conditional order. When the Tribunal has got a power to adjudicate the measures taken under Section 13(4) of the SARFAESI Act, the incidental power is to impose conditions for the just decision of the case. If the arguments of the learned Senior Counsel appearing for the writ petitioner is to be accepted that Section 17 of the SARFAESI Act does not empower the Tribunal to pass a conditional order of payment of the amount, it can be said that the Tribunal has no jurisdiction to pass any interim order. We are unable to accept the said contention because the words "pass such order as it may consider appropriate" used in sub-section 3 of Section 17 of the SARFAESI Act, are in its sweep apply not only at final stage but also during interlocutory stage. Section 17 of the SARFAESI Act is silent with regard to power to pass an interim order. Therefore, when the Tribunal has got power to decide whether the proceedings initiated by the secured creditor in terms of Section 13(4) of the SARFAESI Act are correct or not, it has got power to decide basing on the documents and evidence whether the secured creditor is proceeding against the debtor in accordance with the law or not. If, prima facie, the Tribunal comes to the conclusion that the secured creditor has not followed the provisions under Section 13(4) of the SARFAESI Act, it has got the incidental power to stay all further proceedings. Therefore, granting blanket stay of all further proceedings, the Tribunal can as well has the power to impose some conditions. The conditions, if any, imposed can be the subject to the result of the final disposal.

14. A power of granting interim order, although not expressly stated in Section 17 of the SARFAESI Act, but it must exist because it is necessary to the accomplishment of an express purpose. This is incidental power in Debts Recovery Tribunals by virtue of its duty to do justice between parties before it. Interim Relief in the aid of and ancillary to the main relief can always be granted by the Tribunal in exercise of powers under Section 17 of the SARFAESI Act. One of the measures that may be taken under Section 13(4) of the SARFAESI Act, by the secured creditor, he may take recourse to sale for realizing the secured interest to recover his secured debt. For interdicting the sale, the Tribunal can pass such order as it may consider appropriate and necessary. In our considered opinion, imposing condition of depositing certain amount for interdicting the secured creditor in proceeding further cannot be found fault with.

15. However, while granting interim order or imposing certain conditions, the Tribunal has to follow the well established principles. Under Order XXXIX Rule 1 CPC, the Civil Court has got jurisdiction to grant an ex parte interim injunction order when it comes to the conclusion that the plaintiff made out prima facie case, balance of convenience and the irreparable injury, which cannot be compensated in terms of money, if the interim injunction is not granted. The first condition is sine qua non for granting interim order and the plaintiff must establish either one of the other two conditions, before granting ex parte order of injunction. These aspects have not been gone into, admittedly, by the Tribunal.

At the same time, the documents and the material filed before this Court would clearly go to show that the writ petitioner has availed an amount of Rs. 50.00 crores under working capital demand loan. Similarly the writ petitioner has also availed another Rs. 50.00 crores as short term loan. For both the loans, the writ petitioner gave seven properties including three individual guarantors as security. Out of them, three properties were given by the petitioner and four properties were given by the guarantors as security for due payment of the two loans. The 2nd respondent filed a copy of the petition filed by the petitioner before the Board for Industrial and Financial Reconstruction (BIFR) along with the counter, wherein it is stated that the amount due to the Kotak Mahendra bank i.e., respondent No. 2 herein, is about Rs. 95.00 crores. There is no dispute about taking of Rs. 50.00 crores loan under working capital demand loan and another sum of Rs. 50.00 crores under short term loan by the petitioner from the 2nd respondent bank, "it is not in dispute that 2nd respondent bank issued notice, dated 17.08.2012 to writ petitioner calling to pay the entire amount due under short term loan facility and working capital demand loan facility for a sum of Rs. 95,17,75,263.25 ps. as on 15.08.2012. Except stating that the petitioner is not liable to pay the said amount as demanded by the bank, no reasons are given as to why petitioner is not liable to pay the said amount. It is not the case of petitioner that he discharged the loan amount either partly or fully. It is also not in dispute that bank filed O.A. No. 590 of 2012 before the Tribunal for passing of decree and issuance of a certificate of recovery for an amount of Rs. 95,17,75,263.25 ps. Prima facie, it is clear that the said amount was due to the bank.

16. What the learned Senior Counsel for the petitioner pointing out is that there was inconsistency with regard to amount due to the bank in the Possession Notice and in the Demand Notice. Since the Possession Notice relates to one type of loan, the amount due to that account has been mentioned, whereas in the Demand Notice, the amount due to the bank in respect of both the loans was mentioned. So, prima facie, there is no discrepancy in the above two notices with regard to the amount due to the bank.

17. Considering this fact, the Tribunal came to factual error in coming to the conclusion that there was a dispute with regard to the payment of loan to the 2nd respondent bank. But, at the same time, the material available before this Court would clearly go to show that as on the date of filing of the Securitisation Application before the Tribunal, an amount of Rs. 95,17,75,263.25 ps. was due to the bank. Considering that fact, the condition of payment of Rs. 10.00 crores cannot be said to be unreasonable or unjustifiable. It is only a direction to deposit the amount. Therefore, the balance of convenience is in favour of the petitioner because by depositing that amount, further proceedings with regard to taking possession of the secured assets can be avoided and conducting of auction can also be interdicted and further if that amount is to be deposited in the bank or in the Court, it would not cause any hardship to the writ petitioner because even if he ultimately succeeds in the Securitisation Application, that

amount deposited can be adjusted towards the loan because the liability of the petitioner to pay that amount would not be wiped out even if the Securitisation Application is allowed. It will not cause any injury or hardship to the petitioner because at any point of time he has to discharge the loan amount or if he is unable to discharge the loan amount, the secured assets have to be auctioned for discharging of the loan in accordance with law. Though the Tribunal has not given any finding with regard to prima facie case, balance of convenience or irreparable injury, still it is not a fit case to remand the matter in view of the fact that all the relevant material were placed before this Court. In the facts and circumstances of the case, the interim order cannot be said to be illegal or the Tribunal has no jurisdiction to impose the conditions while granting stay. Therefore, we hold that considering the facts and circumstances of the case, when the Tribunal has got power to stay the proceedings, it has also got power to impose conditions, as it may consider appropriate and necessary. Accordingly, the point is answered against the petitioner.

POINT Nos. 2 and 4:

2) Whether the writ petition is maintainable when effective statutory remedy is available to litigant public?

4) Whether the principle of res judicata is applicable in subsequent proceedings?

18. Coming to the second and fourth points with regard to maintainability of the writ petition, learned Senior Counsel appearing for the petitioner vehemently contended that a categorical finding has been recorded by this Court to the effect that an effective alternative remedy is not a bar for entertaining a writ petition and that finding though given at interlocutory stage, still it attains finality and the same cannot be re-agitated during the course of same proceedings by applying the principles of res judicata. It is not in dispute that order in W.P.M.P. No. 10367 of 2014 in W.P. No. 8304 of 2014, dated 29.04.2014, this Court held thus-

"..... and the decision rendered by the Supreme Court in Whirlpool Corporation Case and Harbanslal Sahani's case referred to above in the extracted para, we are of the prima facie view that the present writ is maintainable".

19. The doctrine of res judicata is based on the need and necessity of giving finality to judicial decisions. There is, therefore, no reason why the doctrine should not be made applicable to orders at different stages of the same trial. If the principle is not made applicable to interim or interlocutory orders, the very purpose of doctrine would be defeated. But, finding of this Court in interlocutory stage is not determined the rights of the parties finally. The finding given by this Court in interlocutory stage is only prima facie opinion. Such prima facie opinion of this Court is capable of being altered or varied at a subsequent stage of same proceedings. The law is well settled that alternative remedy is not a bar for entertaining the writ petition before this Court under Article 226 of the

Constitution of India. The self-imposed restrictions as well as the authoritative pronouncements of the Supreme Court would show that under three circumstances, the alternative remedy is not a bar for exercising the jurisdiction under Article 226 of the Constitution of India, viz., 1) violation of the fundamental rights, 2) the order passed without jurisdiction and 3) violation of principles of natural justice. So, if the case of the petitioner falls under any one of the conditions as mentioned above, certainly the parties can invoke the writ jurisdiction under Article 226 of the Constitution of India.

20. It is not in dispute before this Court that against an order passed under Section 17 of the SARFAESI Act, there is an effective remedy provided under Section 18 of the SARFAESI Act before the Appellate Tribunal. The language used in Section 18 of the SARFAESI Act would clearly go to show that any order passed under Section 17 of the SARFAESI Act is an appealable order. Therefore, Section 18 of the SARFAESI Act does not make any differentiation between interim order or final order. Therefore, an appeal lies to the Appellate Authority under Section 18 of the SARFAESI Act. But, the learned Senior Counsel appearing for the writ petitioner placed reliance on the decision of this Court rendered in W.P.M.P. No. 10367 of 2014 in W.P. No. 8304 of 2014, wherein it was held thus (unnumbered para in page No. 17):

"Therefore keeping in view the finding of the Tribunal that "there are intriguing questions of fact which are to be dealt with and decided in the S.A., after a thorough enquiry...." and the decision rendered by the Supreme Court in Whirlpool Corporation case and Harbanslal Sahani"s case referred to above in the extracted para, we are of the prima facie view that the present writ is maintainable."

21. This order was passed in interlocutory stage, which is prima facie opinion that writ petition is maintainable. The issue with regard to maintainability of writ petition when alternative remedy is available to party has not been finally adjudicated. If the point is not decided actually, it will not operate as res judicata. To put it differently, what operates as res judicata is the ratio of what is fundamental to the decision. In our considered opinion, the point with regard to maintainability of writ petition has not actually decided by this Court in the interlocutory stage. Prima facie opinion has been expressed. Only basing upon the decisions of Hon"ble Supreme Court reported in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , the said prima facie finding has been given without assigning any reasons. Therefore, it cannot be said to be the ratio laid down so as to bind this Court to follow the same.

22. Learned Senior Counsel for the 2nd respondent placed reliance on this aspect on the Division Bench decision of this Court reported in K. Bala Krishna Vs. Debts Recovery Tribunal and Others, , wherein it was held thus (Para No. 11)-

"Since the Act is a special legislation enacted for the purpose of expeditious

recovery of the dues of Banks, other financial institutions and secured creditors and Sections 17 and 18 provide for filing of application and appeal by the aggrieved person, the remedy available to the petitioner under Section 18 of the Act must be treated as an effective alternative remedy and we do not see any reason for making a departure from the settled rule that the High Court will not entertain a petition under Article 226 of the Constitution, if an effective alternative remedy is available to the petitioner."

That judgment was rendered following the decision in Whirlpool Corporation (supra) because a finding has been recorded by this Court with regard to the maintainability of the writ petition when an alternative effective remedy is available to the parties. He also placed reliance on the decision of the Hon'ble Supreme Court reported in Ishwar Dutt Vs. Land Acquisition Collector and Another, , wherein it is held thus (Para No. 14) -

"It is not in dispute that the High Court issued a writ of mandamus. It is also not in dispute that the direction of the High Court was acted upon. The principle of res judicata, as is well-known, would apply in different proceedings arising out of the same course of action but would also apply in different stages of the same proceedings. As the judgment and order passed in C.W.P. No. 510 of 1985 attained finality, we of the opinion that the Respondents herein could not have raised any contention contrary thereto or inconsistent therewith in any subsequent proceedings".

Similarly he placed reliance on the decision reported in C.V. Rajendran and Another Vs. N.M. Muhammed Kunhi, , wherein it was held thus (Para No. 7) -

"In the light of the above discussion we hold that as the question whether Section 15 of the Act bars the present eviction petition, was decided against the appellants by the Appellate Authority at the earlier stage of suit and it was allowed to become final, it is not open to the appellants to re-agitate the same at the subsequent stage of the suit. In this view of the matter, we do not find any illegality in the order under appeal to warrant any interference".

In Erach Boman Khavar Vs. Tukaram Shridhar Bhat and Another, , wherein it was held thus (Para No. 38)-

"The principles stated in Arjun Singh Vs. Mohindra Kumar and Others, , Satyadhan Ghosal and Others Vs. Sm. Deorajin Debi and Another, and the other authorities clearly spell out that principle of res judicata operates at the successive stages in the same litigation but, the basic foundation of res judicata rests on delineation of merits and it has at least an expression of an opinion for rejection of an application".

There is no dispute about the law laid down in the aforesaid mentioned three judgments.

23. The principle of res judicata applies, if finding given in an interlocutory order can be applied to the same subsequent proceedings. So, thereby, the parties

cannot re-agitate the same once an interlocutory order or final order has become final. But, in this case, the finding of this Court in the interlocutory stage cannot be said to be a final order because it is clearly mentioned in the order that considering the prima facie view the writ petition is maintainable. Therefore, that finding cannot be said to be a final order.

24. The contention of the learned Senior Counsel appearing for the petitioner is that prima facie finding operates as res judicata. But, we are of the view that certain observations or findings made while disposing of the interlocutory application, cannot be said to be a finding or ratio laid down. If the ratio is laid down in the interlocutory order, then such a ratio can be said to operate as res judicata in subsequent proceedings. If it is a final decision, the parties are refrained from re-agitating the same point at the subsequent stage of proceedings. Therefore, under no stretch of imagination it can be said that the finding or observation given by this Court at the interlocutory stage has finally determined the rights of the parties.. It is a prima facie view taken by this Court for the purpose of disposal of the Miscellaneous Petition in the Writ petition. Therefore, the said contention cannot be accepted.

25. With regard to the remedy available under Section 18 of the SARFAESI Act, the order of this Court would go to show that when the Hon"ble Supreme Court has declared pre-deposit at the time of filing an appeal under Section 17 of the SARFAESI Act as ultra vires and opposed to Article 14 of the Constitution of India, the said circumstance also stares at the remedy of Section 18 of the SARFAESI Act to be resorted to at the interlocutory stage.

26. Sections 17 and 18 of the SARFAESI Act cannot go together. They are independent provisions. Section 17 of the SARFAESI Act comes into operation only at the initial stage, where the parties can be permitted to let-in oral or documentary evidence, in case the debtor feels that the proceedings initiated under Section 13(4) of the SARFAESI Act are not in accordance with law. In those circumstances, Section 17 of the SARFAESI Act can be invoked by the debtor. Section 18 of the SARFAESI Act deals with a different situation, where any order passed by the Debts Recovery Tribunal is appealable before the appellate authority. So, both the provisions are two independent provisions and they cannot be read together. Simply because the condition to pre-deposit certain amount under Section 17 of the SARFAESI Act is found to be arbitrary in terms of Article 14 of the Constitution of India, it does not mean it equally applies to Section 18 of the SARFAESI Act, since Section 18 of the SARFAESI Act comes into operation in the final determination of the dispute in terms of Section 17 of the SARFAESI Act. Therefore, when a dispute has been finally resolved, notwithstanding the fact that appellate authority has got a power, debtor has got power to file an appeal before the appellate authority.

27. Further more there are no reasons mentioned by the petitioner in the petition for striking down the conditions imposed under Section 18 of the SARFAESI Act. Therefore, we are unable to accept the contention that by virtue of necessary

implication it has to be read that condition to deposit the amount as a condition precedent under Section 18 of the SARFAESI Act on par with the conditions mentioned under Section 17 of the SARFAESI Act. Therefore, there is an effective alternative remedy available to the petitioner as contemplated under Section 18 of the SARFAESI Act. Accordingly, these points are answered.

28. POINT No. 3:

Whether the pleading of the defaulting party can be struck down when the interim directions have not been complied with?

Though it is vehemently contended that when the interim orders passed by the Tribunal or by this Court have not been complied with, the pleadings of the party, who violates the order, have to be struck down, learned Senior Counsel for the 2nd respondent bank placed reliance on the decision of the Hon'ble Supreme Court reported in *Prestige Lights Ltd. Vs. State Bank of India*, wherein it was held thus (Para Nos. 24, 26 to 28) -

"24. An order passed by a competent court t interim or final- has to be obeyed without any reservation. If such order is disobeyed or not complied with, the Court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear a party to the proceeding on merits is a "drastic step" and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but some times such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding the terms and conditions on which a relief is granted by the Court in his favour.

26. That, however, does not mean that in each and every case in which a party has violated an interim order has no right to be heard at all. Nor will the court refuse to hear him in all circumstances. The normal rule is that an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule. One of such exceptions is that the party may appeal with a view to setting aside the order on which his alleged contempt is founded. A person against whom contempt is alleged must be heard in support of the submission that having regard to the meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it.

27. In *Gorden v. Gorden* ((1904) 73 LJP 41), Cozens-Hardy, L.J. put the principle succinctly in the following words: (All EP p. 706 E-F)

"....I desire to limit my judgment to a case in which the [party in contempt is saying] that the order complained of is outside the jurisdiction of the court, as distinguished from the case of an order which, although it is within the jurisdiction of the court, ought not, it is said, to have been made."

28. Lord Denning made the following pertinent observations in *Hadkinson* (1952 P 285): (All ER pp. 574 H-575 A)

"It is a strong thing for a court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is a step which a court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance."

29. A perusal of the above decision would go to show that when the interim orders have not been complied with, pleading can be struck down in exceptional cases," because it is a drastic step. Unless the facts and circumstances warrant, the pleadings of the defaulted party cannot be struck down because it completely violates the principles of natural justice when the defaulting party has good case to be made out in the main writ petition. If the pleadings of the parties are interdicted, he would suffer for not complying with the interim order. Therefore, in rarest of rare cases and in extremely grave and extraordinary situation, that recourse can be adopted by this Court. But, we are of the opinion that it is not such an extraordinary case where the pleading of the petitioner can be struck down because the direction of the Tribunal or the direction of this Court has not been complied with, and it cannot be a ground to arrive at a conclusion that it is a case to strike down the pleadings of the writ petitioner. Accordingly, point is answered.

POINT No. 5:

Whether it is a case of abuse of process of law?

30. On this point, it is vehemently contended by the learned Senior Counsel appearing for the 2nd respondent that the order granted by the Tribunal in favour of the writ petitioner has not been complied with, similarly the order of this Court has also not been complied with even after lapse of one year. Can it said to be an abuse of process of Court, when the writ petitioner for a variety of reasons may not be in a position to pay the amount. It is not the case of the 2nd respondent that in spite of having liquidated cash available with the petitioner, it is not paying the amount wilfully or wantonly to avoid its liability. Under those circumstances, it cannot be said that it is an abuse of process of Court. The petitioner can as well avail all the remedies available to it.

31. Accordingly, the Writ Petition is dismissed, leaving open the remedies available to the petitioner under law. Any observation or finding made in this petition cannot be construed as a finding of this Court and it is only made for the purpose of disposal of the present writ petition. Uninfluenced by any observation made in this order, the Tribunal shall dispose of the Securitisation Application in accordance with law. No order as to costs.

As a sequel, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.