

(2015) 06 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 6350, 10278 and 10281 of 2015

Indiabulls Housing Finance Ltd.

APPELLANT

Vs

Surya Chakra Power Corporation Ltd.

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16
Companies Act, 1956 — Section 391, 392, 393, 394
Constitution of India, 1950 — Article 136, 226
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 19(1), 19(23), 3, 3(1)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13 (4), 13(2), 13(3-A), 13(4)

Citation : (2015) 06 AP CK 0040

Hon'ble Judges : Ramesh Ranganathan, J; M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : S. Niranjan Reddy and Mehfooz Nazki, for the Appellant; P.S. Rajasekhar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—The order, under challenge in W.P. No. 10278 of 2015, was passed by the Debt Recovery Tribunal, Hyderabad (DRT for short) in S.A. No. 759 of 2013 dated 16.12.2013. In the said order, the DRT noted the contentions urged on behalf of the petitioner herein that, since the schedule property was situated in the State of Chhattisgarh, the DRT lacked jurisdiction to entertain the securitization application. It also took note of the contentions urged on behalf of the respondent-company that it had jurisdiction over the subject matter since the cause of action took place within its jurisdiction. The DRT, thereafter, observed that the crucial issue, raised by both sides, was with regards its jurisdiction over the subject matter; however, arguments in the present matter, were heard at late hours; in view of paucity of time, a detailed order could not be passed in the present petition; considering the fact that auction of the schedule property was fixed on 17.12.2013, the petitioner could receive the bids from the intending

purchasers of the schedule property on 17.12.2013, but should not open the same till 26.12.2013, on which day detailed orders would be passed. The S.A. was directed to be called on 26.12.2013. S.A. No. 759 of 2013 underwent 23 adjournments thereafter till 29.03.2014, mostly with the endorsement no time-reposted or orders are not ready. Thereafter, on 09.10.2014, the matter was referred to the Lok Adalat, and status quo was directed to be continued. On its being returned by the Lok Adalat on 20.11.2014, S.A. No. 759 of 2013 again suffered several adjournments. We are now informed that the Presiding Officer of the DRT retired on 30.04.2015 without pronouncing orders on the question of its jurisdiction to entertain S.A. No. 759 of 2013. The order, under challenge in W.P. No. 10281 of 2015, was passed by the DRT, Hyderabad in S.A. No. 760 of 2013 dated 16.12.2013. Identical orders, as were passed in S.A. No. 759 of 2013, were passed in S.A. No. 760 of 2013 also. Like S.A. No. 759 of 2013, S.A. No. 760 of 2013 also suffered repeated adjournments.

2. The order, under challenge in W.P. No. 6350 of 2015, was passed by the DRT in SAIR No. 442 of 2014 dated 18.07.2014. In the said order, the DRT observed that when SAIR No. 442 of 2014 was taken up, since the maintainability on the question of territorial jurisdiction was under consideration, the matter was posted to 18.07.2014; the learned counsel for the respondent (petitioner in the Writ Petitions) had filed a petition to reopen the SAIR for hearing them even with regards maintainability; and hence orders could not be passed. The DRT further observed that however, considering the fact that the schedule property was being subjected to public auction on 21.07.2014 pursuant to the sale notice dated 08.06.2014, as the maintainability of the SAIR has not yet been decided and it was reposted to 23.07.2014 on the appearance of the respondent, it was felt not justified and reasonable to allow the respondent to proceed with the sale of schedule property in the meanwhile. The DRT directed that the auction be postponed till 23.07.2014. On 23.07.2014 the matter was adjourned to 28.07.2014 and status quo was extended till then. Thereafter, the matter suffered several adjournments till 08.09.2014 either on the ground that orders were not ready or that there was no time. On 09.10.2014 the matter was referred to the Lok Adalat. Thereafter, on the S.A. being returned by the Lok Adalat, the matter again underwent several adjournments. We are informed by Sri P.S. Rajasekhar, Learned Counsel for the respondent-applicant, that the matter was reopened on 16.04.2015, on the eve of the retirement of the Presiding Officer of the DRT on 30.04.2015, and SAIR is still pending before the DRT with regards maintainability on the question of its territorial jurisdiction.

3. Facts, to the extent necessary, are that the Delhi High Court, sanctioned a scheme of arrangement between Indiabulls Financial Services Limited (IFSL) and Indiabulls Housing Finance Ltd. (the petitioner herein and, hereinafter, referred to as IHFL) under the provisions of Sections 391 to 394 of the Companies Act. In terms of the said scheme, IFSL along with all its assets and debts, outstanding credits, liabilities etc., was transferred/assigned to and vested in IHFL on a going concern basis. The respondent in W.P. No. 6350 of 2015 i.e., Surya Chakra Power

Corporation Ltd. (for short SPCL) is a private limited company holding 78% of the share capital in Surya Chakra Global Enviro Private Ltd. (for short SGEPL) which in turn holds 100% of the share capital in South Asian Agro Industries Ltd. (for short SAAIL).

4. It is the petitioners case that SGEPL and SAAIL had availed a loan facility of Rs. 35 crores from Indiabulls Infrastructure Credit Ltd. (IICL for short) in the year 2010 for the purpose of taking over the existing loan limits availed from other banks, and for partly augmenting their working capital requirements. Both SGEPL and SAAIL had defaulted in repayment of the debt due to IICL. Thereafter IFSL, one of the group companies of IICL, sanctioned a loan facility of Rs. 50 crores for the purpose of repayment of the IICL facility and augmentation of working capital requirements of SGEPL and SAAIL. The sanction letter dated 28.03.2012 required both SGEPL and SAAIL to create a first charge by equitable mortgage of the fixed assets of the power plant located at Madwa village of Jaggir District in the State of Chhattisgarh; security interest, by way of assignment/hypothecation, on the power purchase agreements entered into between them and the Chhattisgarh State Power Distribution Company; and by pledge of 25% of the share capital of SAAIL and the personal guarantees of the promoter directors. The loan agreement required the loan facility of Rs. 50 crores each to be repaid with interest in 102 months. Both SGEPL and SAAIL are said to have furnished letters of undertaking on 30.03.2012 for creation of security interest to secure the loan amounts. Rs. 45.73 crores is said to have been disbursed to SGEPL, and Rs. 48.73 crores to SAAIL. SPCL pledged 1,56,77,000 equity shares of SGEPL held by them, and 3005125 of its own equity shares, in favour of IFSL to secure the loan of Rs. 100 crores.

5. The other disputes between IHFL and SAAIL and SGEPL are not relevant to these proceedings. It would suffice to note that a notice, under Section 13(2) of the SARFAESI Act, was issued to SGEPL on 10.07.2013 in reply to which they submitted their representation. A notice of possession under Section 8(1) of the SARFAESI Rules was issued, and a copy thereof was pasted on the conspicuous part of the schedule property on 22.10.2013. Thereafter a letter, intimating the taking of possession, was sent to SAAIL and SGEPL on 25.10.2013. These notices were also published in two newspapers. Aggrieved thereby, both SAAIL and SGEPL approached the DRT and filed S.A. Nos. 759 of 2014 and 760 of 2014. The petitioner entered appearance and filed a detailed reply raising objections, including to the very jurisdiction of the DRT to entertain the S.As in as much as the property, which was the subject matter of dispute, was situated in the State of Chhattisgarh. The DRT heard the matter on 16.12.2013, and directed the petitioner herein not to finalise the bids till 26.12.2013. In its order dated 05.03.2014 the DRT recorded that an order, on the issue of jurisdiction, would be passed before the matter was decided on merits. Thereafter, both SA Nos. 759 and 760 of 2014 suffered repeated adjournments from time to time.

6. The petitioner filed a complaint in FIR No. 278 of 2013 dated 02.10.2013

before the Station House Officer, Gurgaon, Haryana. The directors of SGEPL and SAAIL were arrested and, while seeking bail before the Punjab and Haryana High Court, they gave an undertaking to repay the amounts in accordance with the settlement arrived at between the parties. In its order in CRM M-13783 of 2014 dated 01.05.2014, the Punjab and Haryana High Court recorded that the Counsel for the parties were ad-idem that the matter stood amicably resolved; and the petitioner therein i.e., Dr. S.M. Manepalli was required to furnish an undertaking before the Debt Recovery Tribunal, Andhra Pradesh at Hyderabad in terms of the settlement. Thereafter, in its order in CRM M-22791 of 2014 dated 25.07.2011, the submission, made on behalf of the petitioners therein, that they would stick to the compromise was recorded by the Punjab and Haryana High Court. Both SAAIL and SGEPL filed applications in S.A. Nos. 759 of 2014 and 760 of 2014 before the DRT. On the ground that the undertaking given by them was not adhered to, the bail granted to the directors is said to have been cancelled questioning which SLP (Crime) Nos. 9042 of 2014 and 9420 of 2014 were filed before the Supreme Court. Granting liberty to withdraw the SLP, the Supreme Court, by its order dated 03.02.2015, dismissed the SLP as withdrawn.

7. While matters stood thus, SPCL filed SAIR No. 442 of 2014 before the DRT, Hyderabad requesting that all proceedings, initiated by IHFL under the SARFAESI Act, against SAAIL and SGEPL be stayed. It is the petitioners case that, when SAIR No. 442 of 2014 was filed, the DRT Registry took an objection to the maintainability of the said SA in as much as the property, which was the subject matter of the SA, was situated in the State of Chhattisgarh. The petitioners grievance is that, though the SA was not even numbered, the DRT, by its order dated 18.07.2014, had directed the petitioner to postpone auction of the properties belonging to SGEPL and SAAIL; thereafter the matter was once again heard on 23.07.2014, and was reserved for orders on the question of jurisdiction; and the Tribunal had simply adjourned the matter thereafter, from time to time, extending the status quo orders. The petitioner contends that, unless orders on its jurisdiction are pronounced, no orders can be passed by the DRT; the order of status quo was illegal and arbitrary; it is more than eight months since orders, on jurisdiction, were reserved; the impugned order was causing grave and irreparable loss to the petitioner; and it was preventing them from lawfully exercising their rights, under the SARFAESI Act, for recovery of their dues.

8. In the counter-affidavit, filed on behalf of the respondents, it is stated that SPCL holds 78% shares in its subsidiary SGEPL; SGEPL holds 100% shares in its subsidiary SAAIL; both SGEPL and SAAIL are engaged in the business of power generation; SPCL, being the holding company, has sufficient interest in the affairs of SGEPL and SAAIL; as on 07.04.2015, SPCL holds 100% shares in its subsidiary SGEPL; SGEPL and SAAIL obtained a loan of Rs. 25 crores and Rs. 28 crores respectively, from the Hyderabad branches of a consortium of Nationalised banks, to set up their plants; IICL approached SGEPL and SAAIL, and offered to take over the existing loans from the nationalised banks by replacing the existing

loan and augmenting working capital to the tune of Rs. 35 crores per power plant; loans were sanctioned vide letter dated 28.06.2010, and loan agreements were entered into on 29.06.2010; thereafter, officers of IICL insisted on their taking over the operation and maintenance of the power plants; a memorandum of understanding to that effect was entered into on 09.11.2011; IICL, which is a Non-banking financial institution (NBFC) and is not covered under the SARFAESI Act, approached SGEPL and SAAIL and offered to take over the loan from IICL and issued sanction letter dated 28.03.2012 sanctioning a loan of Rs. 50 crores per power plant; all the loan documents were signed at Hyderabad by the management of SGEPL and SAAIL on 30.03.2012; instead of IFSL disbursing the loan, IICL disbursed a sum of Rs. 41.48 crores from its bank account on 31.03.2012, and SGEPL repaid Rs. 40.42 crores from its bank account to IICL; IICL issued a no due certificate certifying that there was no amount due, and there was no charge on the assets of SGEPL or SAAIL; IFSL had disbursed Rs. 1.82 crores to SGEPL and Rs. 6.76 crores to SAAIL, and no further sum, amounting to Rs. 50 crores per plant, were disbursed; IHFL, claiming to be the transferee company of IFSL, issued the notice, under Section 13(2) of the SARFAESI Act, dated 10.07.2013 demanding payment of Rs. 51.96 crores from SGEPL, and another notice dated 23.07.2013 demanding payment of Rs. 55.58 crores from SAAIL; SGEPL and SAAIL submitted their objections under Section 13(3-A) of the SARFAESI Act on 06.09.2013 and 10.09.2013 respectively; IHFL rejected the objections by their letter dated 30.09.2013; they issued possession notice to SAAIL and SGEPL dated 22.10.2013 under Rule 8(1) of the SARFAESI Rules; they issued a sale notice, under Rule 8(6) of the SARFAESI Rules to SGEPL and SAAIL, informing that a public auction would be held on 17.12.2013; the possession notice as well as sale notices were challenged by SGEPL and SAAIL by filing S.A. Nos. 759 and 760 of 2013 before the DRT, Hyderabad which, by order dated 16.12.2013, directed that the sale may go on but the same shall not be confirmed; the applications in S.A. Nos. 759 and 760 of 2013 are still pending as on date; and the interim order is in force.

9. Reference is also made, in the counter-affidavit, to the fact that the directors of SGEPL and SAAIL were arrested on 26.03.2014, and were sent on police remand on 28.03.2014. According to the respondent, the officers of IHFL pressurised their director, Dr. S.M. Manepalli, to withdraw S.A. Nos. 759 and 760 of 2013 stating that they would co-operate in his securing bail only then, and if he did not co-operate then his other family members would also be arrested on false charges; Dr. S.M. Manepalli was forced to sign on the compromise petition under duress; the said officers also forced the Director to ensure that the other respondents in S.A. Nos. 759 and 760 of 2013 withdrew the same on the ground that the matter had been settled between the parties, when in fact there was no such settlement; IHFL did not keep its part of the promise to co-operate in getting the criminal cases filed against the Director and others closed; the sale did not take place on 17.12.2013; another sale notice was issued on 22.03.2014 fixing the date of auction as 26.04.2014; even on that day no sale took place;

another sale notice was issued on 29.04.2014 fixing the date of auction as 31.05.2014; questioning the validity of the said notice dated 29.04.2014 issued to SAAIL, and another sale notice of the same date issued to SGEPL, SPCL filed SAIR No. 442 of 2014, under Section 17 of the SARFAESI Act, on 17.05.2014; the application filed by them on 17.06.2014 was returned with objections on 18.06.2014; after complying with the objections, they re-submitted the S.A. on 20.06.2014; their application was once again rejected on 20.06.2014 with certain objections; after the application was returned on 20.06.2014, the petitioner once again issued sale notice dated 18.06.2014 proposing to conduct the sale on 21.07.2014; the respondent amended their application to include a challenge to the sale notice dated 18.06.2014, and re-submitted the application complying with the objections stating that the SA was maintainable, no such objection with regards territorial jurisdiction was taken by the Tribunal, and the Registry had orally stated that they had instructions not to entertain the application; inspite of demanding that the law be stated, for not entertaining the application, the Registry did not state the law and, by endorsement dated 15.07.2014, posted the matter before the bench; on 17.07.2014 their Counsel argued on the office objections; after hearing them, the Tribunal posted the matter for orders to 18.07.2014; IHFL engaged the services of a Counsel, and filed an application on 18.07.2014 to re-open the matter and to conduct hearing afresh; the DRT re-opened the matter on 18.07.2014, and heard the parties, although IHFL had no right to be heard at that stage; on 09.10.2014, IHFL changed Counsel and represented before the DRT that the matter was settled, and the matter may be listed before the Lok Adalat though there was no such settlement; the matter was posted before the Lok Adalat on 18.10.2014; as there was no consensus for settlement, the matter was posted before the DRT again; on 21.01.2015 IHFL sought adjournment; and the matter is being adjourned from time to time.

10. According to the respondents, the Writ Petition as filed is an abuse of process of Court; IHFL has no locus to file the same as the DRT has not even issued notice to them; the Writ Petition, for grant of relief of mandamus, is not maintainable; the Writ Petition is liable to be dismissed as the DRT has not been made a party; at the stage of accepting the application, IHFL has no right to be heard; IHFL, by its action of preventing the DRT from passing the order, is estopped from complaining that the DRT is not passing any order; the question of territorial jurisdiction has to be decided by the DRT, and the same is pending; the DRT at Hyderabad has jurisdiction under the SARFAESI Act read with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short the RDDB Act); IHFL has suppressed the fact that they had engaged Counsel, and had sought reopening of the matter on 18.07.2014 before the DRT; but for the intervention of IHFL on 18.06.2014, the DRT would have passed orders on the question of jurisdiction; and the Writ Petition is liable to be dismissed.

11. Elaborate submissions were made by Sri S. Niranjan Reddy and Sri Mehfooz

Nazki, Learned Counsel for the petitioner in all the three Writ Petitions, and Sri P.S. Rajasekhar, Learned Counsel for the respondent-companies. It is convenient to examine the rival submissions under different heads.

I. DOES THE DEBT RECOVERY TRIBUNAL, HYDERABAD LACK TERRITORIAL JURISDICTION TO ENTERTAIN AN APPLICATION, UNDER SECTION 17(1) OF THE SARFAESI ACT, AS ALL THE SECURED ASSETS ARE LOCATED IN THE STATE OF CHHATTISGARH BEYOND THE TERRITORIAL LIMITS OF THE DRT?

12. It is no doubt true that the DRT can examine the question of its territorial jurisdiction to entertain an application under Section 17(1) of the SARFAESI Act. That does not mean that this Court, in Writ proceedings under Article 226 of the Constitution of India, is precluded from examining this question. It is only if the condition prescribed by the statute (i.e., the SARFAESI Act) is satisfied that the DRT derives jurisdiction to deal with the matter. Proof of such a condition is regarded as the proof of a collateral fact, and an erroneous decision of the Tribunal as to the existence of this collateral fact is not regarded as binding on the parties and can be challenged by a writ proceeding under Article 226. But in cases where the Tribunal is given jurisdiction to deal with certain matters, then its decision, on those matters, cannot be regarded as a decision on collateral facts. Where a quasi-judicial authority makes an order in the undoubted exercise of its jurisdiction, in pursuance of a provision of law which is *intra vires*, an error of law or fact committed by that authority cannot be impeached otherwise than on appeal, unless the erroneous determination relates to a matter on which the jurisdiction of the body depends, and the relevant law does not confer on that body jurisdiction to determine that matter. (*Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, AIR 1967 SC 1 : (1966) 3 SCR 744 ; *Smt. Ujjam Bai Vs. State of Uttar Pradesh*, AIR 1962 SC 1621 : (1963) 2 SCR 778 Supp : (1963) 1 SCR 778 ; *Kamala Mills Ltd. Vs. State of Bombay*, AIR 1965 SC 1942 : (1965) 57 ITR 643 : (1966) 1 SCR 64 : (1965) 16 STC 613 . Even if the DRT had decided the question of its territorial jurisdiction, the order passed by it in this regard could have been questioned in writ proceedings before this Court. In the present case, the petitioners complaint is that, despite hearing them on the maintainability of SAIR No. 442 of 2014 on the ground that the DRT lacked territorial jurisdiction, no orders were passed by the DRT, and the Presiding Officer of the DRT had reopened the matter on the eve of his retirement on 30.04.2015 without passing any order on the maintainability of the three S.As pending before the DRT. The petitioner, which has suffered an order of status quo from the DRT, requests this Court therefore to decide the question of the territorial jurisdiction of the DRT to entertain the three S.As.

13. Sri S. Niranjan Reddy, Learned Counsel for the petitioner, would refer to certain provisions of the SARFAESI Act, the RDDB Act and the Rules made thereunder, to submit that, as all the secured assets, which are the subject matter of all the three S.As, are located within the State of Chhattisgarh and not in either of the States of Telangana and Andhra Pradesh, the DRT lacks territorial

jurisdiction to entertain applications under Section 17(1) of the SARFAESI Act. Learned Counsel would rely on *Amish Jain v. ICICI Bank Ltd.* ILR (2012) 6 Delhi 377 and *MD, Excel Stationers Ltd. v. International Asset Reconstruction Co. Ltd.* (Judgment in W.P. No. 24279 of 2013 and WP. No. 11098 of 2014 dated 24.11.2014), New Delhi in this regard. On the other hand Sri P.S. Rajasekhara, Learned Counsel for the respondent-companies, would place reliance on Section 17(1) and 17(7) of the SARFAESI Act, Section 19(1) and 19(23) of the R.D.D.B. Act and Rule 6 of the Debts Recovery Tribunal (Procedure) Rules, 1993 in support of his submissions that the D.R.T. has territorial jurisdiction to entertain the S.A. as a part of the cause of action arose within its territorial limits. He would also place reliance on a Division bench judgment of the Madras High Court, in *M/s. Asian Health And Nutri Foods v. The Debts Recovery Tribunal* (Judgment in Civil Revision Petition (MD). No. 694 of 2014 (PD) dated 24 June, 2014), in this regard.

14. Section 17 of the SARFAESI Act, on which reliance is placed on behalf of the respondents, relates to the right to appeal and, under sub-section (1) thereof, any person (including the borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken. In *Amish Jain* ILR (2012) 6 Delhi 377, a Full bench of the Delhi High Court held that the question of territorial jurisdiction, for the remedy of appeal provided in Section 17(1) of the SARFAESI Act, has to be construed in the light of the SARFAESI Act, and not in the light of the RDDB Act; Section 17(1) of the SARFAESI Act provides for filing of the appeal/application thereunder not to any DRT but only to the "DRT having jurisdiction in the matter"; the scope of a proceeding, under Section 17(1) of the SARFAESI Act, is described in Section 17(2) of the SARFAESI Act as "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"; the measures, which the Bank/Financial Institution is empowered to take under Section 13(4) of the SARFAESI Act, are of taking over possession or management of the secured asset; the cause of action for the appeal under Section 17(1) of the SARFAESI Act is the taking over of the possession/management of the secured asset; the cause of action can be said to have accrued only within the jurisdiction of the DRT where the secured asset is situated, and possession thereof is taken; it is the said DRT only which can be said to be having "jurisdiction in the matter" within the meaning of Section 17(1) of the Act; the relief to be granted by the DRT in an appeal under Section 17(1) of the SARFAESI Act, if successful, is (under Section 17(3)) of restoration of possession/management of the secured asset to the borrower and to pass such order as it may consider appropriate and necessary in relation to the recourse taken by the Banks/Financial Institution under Section 13(4) of the SARFAESI Act; the DRT, within whose jurisdiction the

secured asset, to be so restored to the borrower, is situated, is the most competent to grant the relief and implement its order; the orders, which the DRT may be required to pass under Section 17(3) of the SARFAESI Act, may also entail exercising jurisdiction over the Chief Metropolitan Magistrate/District Magistrate which is approached by the Bank/Financial Institution for assistance for taking over possession/management; exercise of jurisdiction under Section 17(1) of the SARFAESI Act by DRTs, of a place other than where the secured asset is situated, is likely to lead to complexities and difficulties and which are best avoided; the remedy under Section 17(1) is available not only to the borrower or mortgagor, but also to any other person aggrieved by the measures taken under Section 13(4); if it were to be held that more than one DRT will have jurisdiction, it may also lead to the remedy under Section 17(1), against the same action under Section 13(4), being invoked by different persons before different DRTs; all these disputes bear closest proximity to the place where the secured asset is situated; and the DRT having jurisdiction over that place would be the most suitable DRT to entertain such disputes.

15. Section 17(7) of the SARFAESI Act stipulates that, save as otherwise provided in the Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the RDDB Act, and the rules made there under. Section 19 of the RDDB Act relates to the Application to the Tribunal. Under sub-section (1) thereof, where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction (a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or (c) the cause of action, wholly or in part, arises. In *Amish Jain and Another Vs. ICICI Bank Ltd.*, (2012) 8 AD 497 : AIR 2013 Delhi 172 : (2013) 112 CLA 351 : (2012) 6 CTC 369 : (2012) 192 DLT 701 : (2012) 132 DRJ 69 : (2012) 6 ILR Delhi 377 : (2013) 2 RCR(Civil) 252 , the Full bench of the Delhi High Court held that Section 17(7) of the SARFAESI Act requires disposal of appeals under Section 17(1) of the SARFAESI Act, "as far as may be" in accordance with the provisions of the RDDB Act and the Rules framed thereunder; Section 17(7) of the SARFAESI Act is to be read as providing for disposal of the appeal, under Section 17(1) of the SARFAESI Act, in accordance with the provisions of the RDDB Act and the Rules made thereunder save as otherwise provided in the SARFAESI Act; the jurisdictional provision under Section 19(1) of the RDDB Act is only for applications by the Bank/Financial Institution for recovery of the debt from any person; an application by a Bank/Financial Institution for recovery of the debt cannot be equated with an appeal/application under Section 17(1) of the SARFAESI Act; there is no provision in the RDDB Act providing for territorial jurisdiction of an appeal under Section 17(1) of the SARFAESI Act, and the question of application thereof under

Section 17(7) does not arise; under Section 17(7) of the SARFAESI Act only that much of the RDDB Act can be said to be incorporated therein as is contained in the RDDB Act and not more; whether a particular provision of the RDDB Act would apply or not, would depend upon the nature and scope of the proceeding under the SARFAESI Act; once it is held that an appeal under Section 17(1) of the SARFAESI Act cannot be equated with an application by the Bank/Financial Institution for recovery of the debt under Section 19 of the RDDB Act, the limits of territorial jurisdiction described under Section 19(1) of the RDDB Act cannot be made applicable to Section 17(1) of the SARFAESI Act; the provision for territorial jurisdiction under Section 19(1) of the RDDB Act is only qua the applications to be made by the Bank or Financial Institution for recovery of its debt; a proceeding, under Section 17(1) of the SARFAESI Act is initiated not by the Bank or the Financial Institution but by a person, including the borrower, aggrieved by the measures taken by the Bank or the Financial Institution under Section 13 (4) of the SARFAESI Act; notwithstanding Section 17(7) of the SARFAESI Act providing for the disposal of the proceedings under Section 17(1) of the SARFAESI Act in accordance with the provisions of the RDDB Act and the Rules made thereunder, the same cannot make the provisions of Section 19(1) of the RDDB Act applicable to proceedings under Section 17(1) of the SARFAESI Act; use, in Section 17(7) of the SARFAESI Act, of the words "as far as may be" and "save as otherwise provided in this Act" also exclude the applicability of the principles contained in Section 19(1) of the RDDB Act to determine the territorial jurisdiction of an appeal under Section 17(1) of the SARFAESI Act; the provisions of Sections 14 and 17A of the SARFAESI Act clearly establish the nexus of the appeal under Section 17(1) to the place where the secured asset is situated; the multiple choice, available under Section 19(1) of the RDDB Act, is not applicable to an appeal under Section 17(1) of the SARFAESI Act; the principles of Section 16 CPC are reflected in Sections 14 and 17A of the SARFAESI Act; assistance to the Secured Creditor has not been provided of any Court but only of the Court within whose jurisdiction the secured asset is situated; this is not without reason; it is only the CMM/DM within whose jurisdiction such secured asset is situated who can render such assistance; Section 16 CPC recognizes the well established principle that actions against res or property should be brought in the forum where such res is situated; a Court, within whose territorial jurisdiction the property is not situated, has no power to deal with and decide the rights or interests in such property, or to give an effective judgment with respect thereto; when a Court has no jurisdiction, owing to the property not being situated within its jurisdiction, the objection goes to the extent of making the order of that Court a nullity on the ground of want of jurisdiction; jurisdiction could not have been conferred by non traverse or consent; merely because the defendant, if it were to sue, can sue at the place of the residence of the plaintiff, does not entitle the plaintiff to sue at the place of his residence if that place would, otherwise, not have territorial jurisdiction; and an appeal/application under Section 17(1) of the SARFAESI Act can be filed only before the DRT within whose jurisdiction the property/secured asset, against which action is taken, is situated and in no other

DRT.

16. In *Excel Stationers Ltd.* (Judgment in W.P. No. 24279 of 2013 and WP. No. 11098 of 2014 dated 24.11.2014), the common question of law which arose for consideration was whether or not the DRT, constituted under Section 3(1) of the RDDB Act, had the jurisdiction to enforce the security interest in respect of property situated outside its jurisdiction. The Division bench of this Court held that the DRT, constituted under Section 3 of the RDDB Act, does not have any power of adjudication, except in those areas notified in Section 3(2) of the RDDB Act; making an application to the DRT, or taking cognizance by it, is one aspect; exercising powers, with regard to enforcement of the security, is a different aspect; both these aspects cannot be read together as it may lead to anomaly or passing of orders by the Tribunal without jurisdiction; even assuming that the DRT at Hyderabad has jurisdiction, as a part of cause of action arose within its limits, does not mean that it has the power to pass any order under the SARFAESI Act; the Tribunal has the power to take such measures, within the specified areas, as is conferred on them by Parliament or in pursuance of the Statute; under Section 17 of the SARFAESI Act, the DRT has original jurisdiction to adjudicate on the objections raised by the aggrieved borrower, or any other person, when measures are taken under Section 13(4) of the SARFAESI Act against the secured assets; such an application has to be made to the DRT having jurisdiction in the matter; if it is mere recovery of amounts by the bank, the DRT, Hyderabad would have jurisdiction to decide whether the bank is entitled to recover the amount or not; but, in case, the bank takes measures for enforcement of the security interest created by the borrower for the purpose of taking the loan, the DRT would not have jurisdiction outside its territorial limits.

17. Rule 6 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as the 1993 Rules), on which also reliance is placed on behalf of the respondents, relates to the place of filing application and, thereunder, the application shall be filed by the applicant with the Registrar within whose jurisdiction (a) the applicant is functioning as a bank or financial institution, as the case may be, for the time being, or (b) the defendant, or each of the defendants where there are more than one, at the time of making application, actually or voluntarily resides, or carries on business, or personally works for gain, or (c) any of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain, or (d) the cause of action, wholly or in part, arises.

18. In *Excel Stationers Ltd.* (Judgment in W.P. No. 24279 of 2013 and WP. No. 11098 of 2014 dated 24.11.2014), the Division Bench of this Court held that Section 19(1) of the RDDB Act, read with Rule 6 of the 1993 Rules, can be applied with regards jurisdiction when the Bank or the financial institution makes an application for recovery of the debt due to them; if the application is made only for recovery of the debt due, the jurisdictional aspect, as contained in Section 19 of the RDDB Act and Rule 6 of the 1993 Rules, would apply; but when

the Bank is enforcing the security interest, it has to be read along with the provisions of the SARFAESI Act coupled with the Appendix mentioned in the SARFAESI Rules; though the SARFAESI Act is silent with regards exercise of jurisdiction by the DRT, it should be read along with Appendix-VII of the SARFAESI Rules; the object and purpose of both the enactments are different; the object of the RDDB Act is to recover money from the borrowers, whereas the object of SARFAESI Act is to recover the amount by proceeding against the security interest created by the borrower, i.e., enforceability of the security interest; when the Bank or financial institution makes an application before the DRT for recovery of the debt due, it has been given the choice of making an application, before the Tribunal, on any one of the three contingencies therein; those aspects cannot be made applicable when the Bank is taking measures for enforcement of the security interest; for enforcement of the security interest the concerned DRT, where the subject matter of the issue falls for consideration, can alone exercise jurisdiction; if the subject matter, i.e., the security interest created, does not fall within the jurisdiction of the Tribunal, it cannot exercise its jurisdiction on the enforceability of the security interest; where the secured asset is situated outside the jurisdiction of the Tribunal, it has no jurisdiction to grant relief in respect of such property; when the borrower, or any person interested in the secured asset, makes an application before the DRT, the secured asset must be located within the territorial jurisdiction of that Tribunal; and, if the secured asset is not located within the jurisdiction of the Tribunal which is constituted under Section 3(2) of the RDDB Act, it does not have jurisdiction to decide the issue.

19. The application referred to in Rule 6 is the application which a bank or a financial institution can file under Section 19(1) of the RDDB Act. It is not in dispute that all the secured assets, which are the subject matter of all the three S.As filed before the DRT, Hyderabad and in all the three Writ Petitions filed before this Court, are located within the State of Chhattisgarh and none of the secured assets are located either in the State of Telangana or in the State of Andhra Pradesh. Since Section 19(1) of the RDDB Act itself does not enable an application to be filed under Section 17(1) of the SARFAESI Act before the D.R.T, beyond whose territorial jurisdiction all the secured assets are located, reliance placed on Rule 6 of the 1993 Rules is also of no avail.

20. Section 19(23) of the RDDB Act provides that where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send copies of the certificate of recovery for execution to such other Tribunals where the property is situated. It is only if Section 19(1) of the RDDB Act were held applicable, to applications filed under Section 17(1) of the SARFAESI Act, would Section 19(23) apply. As Section 19(1) of the RDDB Act does not automatically apply to proceedings instituted under Section 17(1) of the SARFAESI Act, Section 19(23) of the RDDB Act cannot be relied upon to contend that, if any one of the ingredients of Section 19(1) of the RDDB Act are attracted, any of such DRTs can

entertain an application under Section 17(1) of the SARFAESI Act. As none of the secured assets are located within its territorial limits, it is evident that the D.R.T, Hyderabad lacks territorial jurisdiction to entertain the S.As filed under Section 17 of the SARFAESI Act.

21. Reliance placed by Sri P.S. Rajasekhar, Learned Counsel for the respondent, on the Division bench judgment of the Madras High Court, in M/s. Asian Health and Nutri Foods (Judgment in Civil Revision Petition (MD). No. 694 of 2014 (PD) dated 24 June, 2014), is misplaced. In M/s. Asian Health and Nutri Foods (Judgment in Civil Revision Petition (MD). No. 694 of 2014 (PD) dated 24 June, 2014), some of the properties were situated in Madurai, within the territorial jurisdiction of the Debts Recovery Tribunal, Madurai. The petitioner before the Madras High Court had filed an Appeal in S.A.S.R. No. 2051 of 2014 on the file of the Debts Recovery Tribunal, Madurai, under Section 17 of the SARFAESI Act, challenging all the possession notices. The Registrar of the Debt Recovery Tribunal had returned the papers on the ground that the petitioners should approach the respective Tribunals within whose jurisdiction each one of the properties were situated. Aggrieved by the return of the papers, the petitioners had approached the Madras High Court. It is in this context that the Division bench of the Madras High Court observed:--

"...In Amish Jain v. ICICI Bank Limited (IV (2012) BC 552 (FB), a Full Bench of the Delhi High Court was concerned with a reference made by a Division Bench, on the question as to whether an appeal under Section 17 of the SARFAESI Act would lie only in the Court within whose jurisdiction the mortgaged property is situate or as to whether it can be filed in the Tribunal having jurisdiction where the Branch of the Bank which disbursed the loan is situate. The Full Bench of the Delhi High Court held that an appeal under Section 17 of the SARFAESI Act can be filed only before the Debts Recovery Tribunal within whose jurisdiction the secured asset is situate. It is based upon this judgment that the Tribunal has held that the petitioners herein should go before every one of the Tribunals within whose jurisdiction every one of the properties is situate.

But we do not think that the said decision can be relied upon for the purpose of resolving the issue that has arisen in this case. The Full Bench of the Delhi High Court was not concerned with the question as to which of the Tribunals would have jurisdiction, when several secured assets are involved and when all of them are located within the jurisdiction of different Tribunals. In the case on hand we are confronted with the situation where there are several secured assets located within the jurisdiction of various Tribunals. Hence the decision of the Full Bench of the Delhi High Court cannot be invoked to resolve the problem on hand..."

(emphasis supplied)

22. Unlike in M/s. Asian Health and Nutri Foods (Judgment in Civil Revision Petition (MD). No. 694 of 2014 (PD) dated 24 June, 2014), where some of the secured assets were located within the territorial limits of the DRT whose

jurisdiction under Section 17(1) of the SARFAESI Act was invoked, in the case on hand none of the secured assets are located within the territorial limits of the DRT, Hyderabad or, even for that matter, within the States of Telangana and Andhra Pradesh.

23. The law declared by the Full Bench of the Delhi High Court in *Amish Jain and Another Vs. ICICI Bank Ltd.*, (2012) 8 AD 497 : AIR 2013 Delhi 172 : (2013) 112 CLA 351 : (2012) 6 CTC 369 : (2012) 192 DLT 701 : (2012) 132 DRJ 69 : (2012) 6 ILR Delhi 377 : (2013) 2 RCR(Civil) 252 was followed and reiterated by a Division Bench of this Court in *Excel Stationers Ltd.* (Judgment in W.P. No. 24279 of 2013 and WP. No. 11098 of 2014 dated 24.11.2014). The judgment of a coordinate Division Bench is binding on us. We see no reason to take a view different from the law declared in *Excel Stationers Ltd.* (Judgment in W.P. No. 24279 of 2013 and WP. No. 11098 of 2014 dated 24.11.2014) that it is only the D.R.T, within whose territorial jurisdiction the subject secured assets are located, which can entertain the S.A. filed under Section 17(1) of the SARFAESI Act; and the D.R.T, within whose territorial limits none of the subject secured assets are located, would lack territorial jurisdiction to entertain the S.A.

II. OBJECTIONS REGARDING MAINTAINABILITY OF THESE WRIT PETITIONS:

A. MISREPRESENTATION MUST BE OF MATERIAL AND RELEVANT FACTS:

24. Sri P.S. Rajasekhar, Learned Counsel for the respondent-companies, would contend that, as the petitioner has suppressed the fact that they had filed an application in SAIR No. 442 of 2014 to reopen the matter for hearing them on the maintainability of the S.A. on the ground of lack of territorial jurisdiction, the Writ Petitions must be dismissed in limini. The jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would bear in mind the conduct of the party who invokes its jurisdiction. If the applicant makes a false statement or suppresses material facts or attempts to mislead it, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the claim. This rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. It is, therefore, of utmost necessity that the person approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. (*K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, (2008) 4 BC 557 : (2008) 8 JT 57 : (2008) 10 SCALE 227 : (2008) 12 SCC 481 . As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. (*S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, AIR 2004 SC 2421 : (2004) 121 CompCas 99 : (2005) 4 CompLJ 503 : (2004) 3 SCALE 374 : (2004) 7 SCC 166 : (2004) 3 SCR 56 . The very basis of the writ jurisdiction rests in the disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or

are distorted, the very functioning of the writ courts would become impossible. (Prestige Lights Ltd. Vs. State Bank of India, (2007) 4 BC 240 : (2007) 139 CompCas 169 : (2007) 3 CompLJ 547 : (2007) 4 CTC 727 : (2007) 10 JT 218 : (2007) 10 SCALE 131 : (2007) 8 SCC 449 : (2007) 78 SCL 467 : (2007) 9 SCR 112 .

25. When an applicant comes to the Court to obtain relief on an ex-parte statement he should make a full and fair disclosure of all the material facts i.e., facts, not law. He must not mis-state the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that, if it finds out that the facts have not been fully and fairly stated to it, it would then set aside any action which it has taken on the faith of the imperfect statement. (R. v. Kensington Income Tax Commissioners (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 (CA) ; K.D. Sharma Vs. Steel Authority of India Ltd. and Others, (2008) 4 BC 557 : (2008) 8 JT 57 : (2008) 10 SCALE 227 : (2008) 12 SCC 481 .

26. A person invoking the discretionary jurisdiction of the Court cannot be allowed to approach it with a pair of dirty hands. (Arunima Baruah Vs. Union of India (UOI) and Others, (2007) 6 SCALE 293 : (2007) 6 SCC 120 : (2007) 5 SCR 904 : (2008) 1 SLJ 77 . In the event of a party making a misrepresentation on a point having a bearing on the question of the exercise of judicial discretion, and thereby trying to overreach the Court, the party forfeits the claim to the discretionary relief. The same is the case when the misrepresentation is discovered by the Court. But the misrepresentation must be deliberate and on a point having relevance to the question before the Court. (Rosy Jacob Vs. Jacob A. Chakramakkal, AIR 1973 SC 2090 : (1973) 1 SCC 840 : (1973) 3 SCR 918 . A court of equity refuses relief to the petitioner whose conduct, in regard to the subject-matter of the litigation, has been improper. This was formerly expressed by the maxim he who has committed iniquity shall not have equity, and relief was refused where a transaction was based on the petitioners fraud or misrepresentation. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. (Halsbury's Laws of England, 4th Edn., Vol. 16, pp. 874-76; Arunima Baruah Vs. Union of India (UOI) and Others, (2007) 6 SCALE 293 : (2007) 6 SCC 120 : (2007) 5 SCR 904 : (2008) 1 SLJ 77 . Equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for. (Moody v. Cox (1917) 2 Ch 71 : (1916-17) All ER Rep. 548 (CA) ; Arunima Baruah Vs. Union of India (UOI) and Others, (2007) 6 SCALE 293 : (2007) 6 SCC 120 : (2007) 5 SCR 904 : (2008) 1 SLJ 77 .

27. As noted hereinabove, the DRT heard the objection regarding maintainability of SAIR No. 442 of 2014, in view of territorial jurisdiction, on 17.07.2014 and posted the matter for orders on 18.07.2014 on which date the Learned Counsel for the respondent in SAIR No. 442 of 2014 (the petitioner in the present Writ Petition) filed a petition to reopen SAIR for hearing them with regards maintainability. While the order passed by the DRT in SAIR No. 442 of 2014 dated 18.07.2014, which records that a reopen petition was filed, is under challenge in W.P. No. 6350 of 2015, the petitioner has not specifically referred in the Writ affidavit to the fact that they had filed a petition on 18.07.2014 to reopen the SAIR for hearing them with regards maintainability. As the fact, that a petition was filed to reopen SAIR, is referred to in the order of DRT dated 18.07.2014 itself, it cannot be said that the petitioner has deliberately suppressed the fact of their filing a petition to reopen SAIR No. 442 of 2014.

28. In order to enable the Court to refuse to exercise its discretionary jurisdiction, suppression must be of material facts. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. (Arunima Baruah Vs. Union of India (UOI) and Others, (2007) 6 SCALE 293 : (2007) 6 SCC 120 : (2007) 5 SCR 904 : (2008) 1 SLJ 77 . The suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken. (S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, AIR 2004 SC 2421 : (2004) 121 CompCas 99 : (2005) 4 CompLJ 503 : (2004) 3 SCALE 374 : (2004) 7 SCC 166 : (2004) 3 SCR 56 .

29. It is only non-disclosure of material and relevant facts which may justify this Court exercising restraint, and in refraining from exercising its discretionary jurisdiction, under Article 226 of the Constitution of India, to examine the matter on its merits. Except to state that the petitioner had suppressed the fact of their having filed a petition to reopen the matter, Sri P.S. Rajasekhar, Learned Counsel for the respondent, has not shown how the non-disclosure is material and how it would have an effect on the merits of the petitioners case before this Court. It is not in dispute that, even though the petitioner filed the petition to reopen the matter and to hear them on maintainability, the DRT, Hyderabad nonetheless passed the order dated 18.07.2014 directing the petitioner to postpone the auction without deciding the question whether or not it has territorial jurisdiction to entertain SAIR No. 442 of 2014 as all the secured assets, which were the subject matter of SAIR No. 442 of 2014, were all located in the State of Chhattisgarh beyond the territorial limits of the DRT, Hyderabad. Even thereafter, the DRT kept adjourning the matter repeatedly on the ground that orders were

not ready. We find no merit in the submission, urged on behalf of the respondents, that the Writ Petition should not be entertained on the ground of suppression of material facts. The respondents-applicants, who are all beneficiaries of the order of status quo passed by the DRT, Hyderabad, even without deciding its territorial jurisdiction to entertain the S.As, cannot now be heard to contend that, failure on the part of the petitioner herein to specifically refer to the fact that they had filed an application before the DRT to reopen the matter and hear them on the maintainability of the SA, would necessitate the Writ Petition being dismissed as an abuse of process of Court.

B. IS FAILURE TO IMPLEAD THE DRT, AS A RESPONDENT IN THESE WRIT PETITIONS, FATAL?

30. Sri P.S. Rajasekhar, Learned Counsel for the respondent, would submit that failure to array the DRT as a respondent in all the Writ Petitions, would necessitate its dismissal on the ground of non-joinder of necessary parties. He would rely on *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, AIR 1963 SC 786 : (1963) 1 SCR 676 Supp , Board of Revenue in this regard. On the other hand Sri S. Niranjana Reddy, Learned Counsel for the petitioner, would submit that Courts/Tribunals should not be arrayed as parties to Writ proceedings; and, in any event, this Court could suo-motu implead the DRT as a respondent.

31. A necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (*Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, AIR 1963 SC 786 : (1963) 1 SCR 676 Supp ; *U.P. Awasthi Vs. Vikas Parishad* Vs. *Gyan Devi (Dead)* by L.Rs. and another, etc. etc., AIR 1995 SC 724 : (1994) 4 SCALE 755(1) : (1995) 2 SCC 326 : (1994) 4 SCR 646 Supp . In *Savitri Devi Vs. District Judge, Gorakhpur and Others*, AIR 1999 SC 976 : (1999) 1 JT 643 : (1999) 1 SCALE 516 : (1999) 2 SCC 577 : (1999) 1 SCR 725 : (1999) AIRSCW 597 : (1999) 2 Supreme 172 , the Supreme Court deprecated the practice of impleading Judicial Officers as respondents in Writ proceedings. To quote:--

"Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the Special Leave Petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the Special Leave Petition they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the Special Leave Petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial

officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or Special Leave Petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice..."

(emphasis supplied)

32. The question, which arose for consideration in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, AIR 1963 SC 786 : (1963) 1 SCR 676 Supp , was whether, in a writ in the nature of certiorari filed under Article 226 of the Constitution, the party or parties in whose favour a tribunal or authority had made an order, which was sought to be quashed, was or were necessary party or parties. While the Additional Solicitor-General contended before the Supreme Court that, in such a writ, the tribunal or the authority was the only necessary party and the parties, in whose favour the said tribunal or authority made an order or created rights, were not necessary parties but may, at best, be only proper parties and it is open to the Supreme Court, even at this very late stage, to direct the impleading of the said parties for a final adjudication of the controversy, the learned Counsel for the respondent contended that, whether or not the authority concerned was a necessary party, the parties in whose favour the Tribunal had passed the order would certainly be necessary parties for, otherwise, the High Court would be deciding a case behind the back of the parties that would be affected by its decision. It is in this context that the Supreme Court observed:--

"...To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex-hypothesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for, without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed the decree need not be made a party and on the same parity of reasoning it is

contended that a tribunal need not also be made a party in a writ proceeding. But there is an essential distinction between an appeal against a decree of a subordinate court and a writ of certiorari to quash the order of a tribunal or authority: in the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, but in the case of the latter, a writ of certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceeding. In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition.

The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it. Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party..

..To summarise: in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party."

(emphasis supplied)

33. The aforesaid judgment of the Supreme Court, in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, AIR 1963 SC 786 : (1963) 1 SCR 676 Supp , was on the question whether a party, in whose favour an order was passed by the Tribunal, is a necessary party to a Writ Petition

wherein a writ of certiorari was sought to quash the order of the Tribunal. In the present case the respondents-companies, in whose favour an interim order was passed by the DRT, have been arrayed as respondents in all the three Writ Petitions; they were all put on notice; they filed a counter-affidavit in reply to the affidavit filed in support of the Writ Petition; and the Learned Counsel, appearing on behalf of the respondent-companies, put forth elaborate submissions including with regards the jurisdiction of the DRT to entertain the S.As.

34. In *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, AIR 1963 SC 786 : (1963) 1 SCR 676 Supp , the Supreme Court held that, as a writ of certiorari is granted to remove the record of proceedings of an inferior tribunal exercising judicial or quasi-judicial acts, ex-hypothesi it followed that the High Court, exercising its jurisdiction, shall also act judicially in disposing of the proceedings before it; it is implicit, in such a proceeding, that a tribunal which is directed to transmit the records must be a party in the writ proceedings for, without giving notice to it, the record of proceedings cannot be brought to the High Court; if the tribunal is not made party to the writ, it can easily ignore the order of the High Court quashing its order for, not being a party, it will not be liable to contempt; and, in these circumstances, the tribunal is a necessary party to such a proceeding.

35. If a writ of certiorari had been sought, it may have been necessary to array the DRT as a respondent in the Writ Petition to call for the records. On the amendment petitions being allowed, the very jurisdiction of the DRT to entertain the S.As is put in issue in these Writ Petitions. The DRT is merely a formal party. It is not as if the DRT would enter appearance through Counsel, and defend their action before this Court. Historically, certiorari was a Writ issued to bring the record of an inferior court into the Kings Bench for review or to remove indictments for trial in that Court. Mandamus, on the other hand, was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. Both certiorari and mandamus were called prerogative writs. (Halsbury's Laws of England, Fourth Edn., Vol. I, in para 80; *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, AIR 1985 SC 167 : (1985) LabIC 1196 : (1984) 2 SCALE 87 : (1984) 4 SCC 251 : (1985) 1 SCR 216 . Unlike in *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*, AIR 1963 SC 786 : (1963) 1 SCR 676 Supp where a Writ of certiorari was sought, in all these three Writ Petitions, the petitioner has sought a writ of mandamus.

36. Even if the DRT is required to be arrayed as a respondent, to make any order passed by this Court binding on them, we see no reason to non-suit the petitioner on this ground. Article 226 is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of

prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression nature, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce unnecessary procedural restrictions. Such a construction defeats the purpose of the Article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit therein. (Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, AIR 1966 SC 81 : (1965) 57 ITR 349 : (1965) 3 SCR 536 ; Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, AIR 1985 SC 167 : (1985) LabIC 1196 : (1984) 2 SCALE 87 : (1984) 4 SCC 251 : (1985) 1 SCR 216 . The High Court has the power to mould the relief to meet the requirements of each case. (Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, AIR 1985 SC 167 : (1985) LabIC 1196 : (1984) 2 SCALE 87 : (1984) 4 SCC 251 : (1985) 1 SCR 216 . Ends of justice would be met if the DRT, Hyderabad is, suo motu, implead as a respondent in all the three Writ Petitions. The Debt Recovery Tribunal, Hyderabad is arrayed as respondent No. 2 in all the three Writ Petitions, and the High Court Registry shall forthwith take steps to amend the cause-title in all the three Writ Petitions accordingly.

C. WAS THE REGISTRY OF THE DRT JUSTIFIED IN NOT NUMBERING SAIR NO.442 OF 2014 AND IN PLACING THE MATTER BEFORE THE BENCH?

37. It does appear that S.A.I.R. No. 442 of 2014, filed by the respondent-company, was returned with certain objections which did not include the objection regarding maintainability of the S.A. on the ground of lack of territorial jurisdiction. The fact, however, remains that the D.R.T, in its order dated 18.07.2014, has specifically recorded that the matter was placed before it for its decision on the maintainability of the S.A. on the ground of lack of territorial jurisdiction. We see no reason, therefore, to undertake a roving enquiry to ascertain whether the Registry of the D.R.T. had acted amiss in not numbering the S.A. more so as, consequent on the prayer in all the three Writ Petitions being amended, the territorial jurisdiction of the D.R.T. to entertain the S.As, when all the subject secured assets are located outside its territorial limits and within the State of Chhattisgarh, has been put in issue. None of the objections, urged on behalf of the respondent-companies justify dismissal of the Writ Petitions in limini.

III. CONCLUSION:

38. The DRT, Hyderabad lacks territorial jurisdiction to entertain all the three S.As i.e., S.A. Nos. 759 and 760 of 2013 and SAIR No. 442 of 2014. As the D.R.T, Hyderabad lacks jurisdiction to entertain the S.As, it also lack jurisdiction

to pass any interim orders therein. Consequently, the interim orders passed by the D.R.T, Hyderabad, in all the three S.As, are vacated and cease to remain in force. The D.R.T., Hyderabad shall forthwith return the papers, in all the three S.As, to enable the respondent-companies to invoke the jurisdiction of the appropriate D.R.T within whose territorial limits the subject secured assets are located. The Writ Petitions are, accordingly, allowed. However, in the circumstances, without costs. Miscellaneous Petitions, if any pending, shall also stand disposed of.