

(2012) 06 MAD CK 0041

In the Madras High Court

Case No : Writ Petition (MD) No. 7691 of 2011

M/s. N.A.K.G. Cotfibres Private Ltd.

APPELLANT

Vs

The Zonal Manager and UCO Bank 328, Thambu Chetty
Street Chennai - 600001 and The Authorised Officer UCO
Bank 806-A, Thenkasi Road Rajapalayam

RESPONDENT

Date of Decision : 12-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(3)(A), 13(4), 14

Citation : (2012) 06 MAD CK 0041

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : Jayesh Dolia, for the Appellant; Periyasamy, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—This writ petition is filed by the borrower, seeking to quash the notice dated 09.05.2011 issued by the respondents/Bank

u/s 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as

SARFAESI Act. Though the petitioner accepts the amount borrowed from the respondents bank and also admit the liability to pay, the main

grievance of the petitioner is that the classification of their account as "Non-performing Asset" (NPA) is unreasonable as they have paid Rs. 90

lakhs on 31st March 2011 and therefore, the classification of their loan account as Non-performing Asset is not in accordance with the guidelines

issued by the Reserve Bank of India.

(i) The petitioner would further contend that on 02.05.2011, they have

submitted a representation to the respondents bank for re-structuring the loan account on the ground that the textile industry is undergoing a difficult time, but the said representation was not at all considered by the respondent bank and the non-consideration of the representation vitiates the entire proceedings initiated by the respondents bank.

(ii) The main grievance of the petitioner is that for the notice dated 09.05.2011 issued by the respondents bank u/s 13 (2) of the Act, they have given their objection on 25.06.2011 to the second respondent. Even though such objection was received by the respondents on 28.06.2011, the bank has not passed any orders within 7 days, as contemplated u/s 13 (3) (A) of the Act. Since no order was passed within 7 days from the date of receipt of the objection, as required under the Act, the bank cannot proceed further against the petitioner pursuant to the notice issued by them u/s 13 (2) of the Act.

(iii) The petitioner also contends that the respondents issued a show cause notice on 11.06.2011 seeking for explanation as to why the petitioner's loan account should not be classified as default account, for which also the petitioner has submitted a reply on 18.06.2011 and the same was also not considered by the respondents, therefore also, no further proceedings can be taken up by the respondents.

(iv) Lastly, the petitioner would contend that apart from the factory building and house property, all other properties, which are now sought to be brought for sale are agricultural properties and therefore the respondents are prohibited from bringing the agricultural properties for sale as contemplated u/s 31 (1) of the Act as they are exempted from bringing for sale.

2. (i) The respondents bank filed a detailed counter affidavit contending that the petitioner is liable to pay a sum of Rs. 12,13,35,768.21 as on 26.04.2011, which is excluding interest from 01.01.2011. Therefore, the payment of Rs. 90 lakhs made on 31.03.2011 cannot prevent the bank from classifying the loan account of the petitioner as Non-performing Asset inasmuch as the petitioner was a wilful defaulter in payment of the loan amount. Further, the loan account was classified as Non-performing asset on 31.03.2011 as per the guidelines issued by the Reserve Bank of India and therefore, the respondents are right in taking further step to declare the petitioner's loan account as a default account after issuing

appropriate notice on 11.06.2011. The reply given by the petitioner on 18.06.2011 was not convincing nor satisfactory to the respondents bank

and therefore the non-consideration of such reply will not be fatal to the proceedings initiated by the respondents bank.

(ii) The respondents would contend that the properties, which were given as security, are not agricultural properties, as alleged. Item Nos. 2 to 6

and 9 to 11 are mill property, house property, which are later converted as factory site. Item Nos. 7 and 8 were originally agricultural nanja lands

and they are now converted into house sites. In the valuation report given by the petitioner, it is clearly stated that it was treated as punja land and

valued as such. Therefore, the exemption claimed u/s 31 (i) of the Act by the petitioner is not correct.

(iii) The respondents bank would further contend that the letter dated 25.06.2011 of the petitioner cannot be treated as an objection so as to pass

orders u/s 13 (3) (A) of the Act and passing an order on the petitioner's letter dated 25.06.2011 is not at all mandatory. The allegation that the

second respondent has no right to proceed under the Act is not correct and the action taken by the bank is in order.

3. By consent of the counsel for both sides, the writ petition itself is taken up for final disposal. We have heard Mr. Jayesh Dolia, learned counsel

for the petitioner and Mr. K. Periasamy, learned counsel for the respondents.

4. The writ petition is filed challenging the notice issued by the respondents u/s 13 (2) of the Act. Of course, the prayer in the writ petition is

couched in different style that the bank should not proceed any further pursuant to the notice issued u/s 13 (2) of the Act on the ground that the

petitioner's reply to the notice u/s 13 (2) of the Act has not been considered by the Bank.

5. The main gamut of argument advanced by the learned Counsel for the petitioner is that if no order is passed within 7 days from the date of

receipt of reply to the notice u/s 13 (2) of the Act, then the bank cannot proceed further pursuant to the notice u/s 13 (2) of the Act.

6. The next limb of argument of the learned counsel for the petitioner is that the petitioner's loan account ought not have been classified as Non-

performing Asset inasmuch as only on 31.03.2011, the petitioner had deposited a sum of Rs. 90 lakhs with the bank. Therefore, the classification

of the petitioner's loan account as non-performing asset or ranking the petitioner as wilful defaulter, which would empower the bank to bring the properties for auction, is illegal and unreasonable.

7. The last limb of argument of the learned counsel for the petitioner is that apart from the factory lands and residential premises, rest of the secured assets are agricultural lands and they are exempted from bringing for auction sale, as contemplated u/s 31 (1) of the Act.

8. It is seen from the records that the petitioner has not placed reliance on any documents to show that the respondents bank has not properly complied with the provisions of Section 13 (3) (A) of the Act. According to the petitioner, the notice u/s 13 (2) of the Act was issued for which

they have given a reply, while so, it is mandatory on the part of the respondents bank to give a reply within 7 days from the receipt of the same and

in the absence of the same, the bank cannot proceed further. In this case, admittedly, the notice u/s 13 (2) of the Act was issued by the

respondents bank on 09.05.2011, for which a reply was given by the petitioner on 25.06.2011 and the same was received by the respondents

bank on 28.06.2011. A perusal of the reply given by the petitioner to the notice u/s 13 (2) of the Act would indicate that the petitioner's grievance

or objection for the notice u/s 13 (2) mentioned therein was that (a) the notice does not mention when their account was classified as non-

performing asset (ii) the imposition of penal charges and rate of interest, imposed by the bank, is against the contract besides being exorbitant and

(c) excepting the mill property the other items of the properties mentioned in the notice are agricultural lands and they are exempted u/s 31 (i) of

the Act. The petitioner also would contend that the petitioner's textile unit is reeling under difficult situation and therefore the petitioner requested

the respondent bank to help the petitioner institution to survive.

9. At this stage, it is pertinent to point out that the reply notice was issued by the petitioner within 60 days from the date of receipt of the notice u/s

13 (2) of the Act. As per notice issued by the bank u/s 13 (2) of the Act, the amount due and payable by the petitioner as on 26.04.2011 with

interest charged upto 31.12.2011 is Rs. 12,13,35,768.21. The petitioner was also liable to pay future interest at the contractual rate. In fact, in the

notice u/s 13 (2) of the Act, it was clearly stated that "the operation of and

conduct of the above said financial assistance/credit facilities have become irregular and the debt has been classified as non- performing asset in accordance with the directives, guidelines relating to asset classification issued by the Reserve Bank of India consequent to the default committed by you in repayment of principal debt and interest thereon. Therefore, in the notice issued u/s 13 (2) of the Act, it is clearly stated that the assets were treated as non-performing asset as there was a huge default in payment of the loan account from the beginning.

10. In the counter affidavit filed by the respondents bank, it is clearly stated that the petitioner was very irregular in payment of the loan amount and therefore their account was classified as non-performing asset on 31.03.2011. That is the reason why the petitioner paid Rs. 90 lakhs on 31.03.2011 but even after such payment as on that date the amount due by the petitioner was more than Rs. 12 crores. Therefore, the present contention of the petitioner that they were not informed in the notice u/s 13 (2) of the Act that their account was classified as non-performing asset on a specific date cannot be a reason to vitiate the notice issued u/s 13 (2) of the Act especially when the petitioner was aware of the dues and paid a portion of the amount on 31.03.2012 so as to avoid the loan account from being treated as a non-performing asset. In any view of the matter, the notice u/s 13 (2) of the Act specifically indicates that the petitioner's loan account was classified as non-performing asset due to non-payment of the loan amount and that the payments made so far were irregular. Under those circumstances, it cannot be said that the respondents are not right in classifying the loan account of the petitioner as non-performing asset.

11. The main contention urged by the petitioner is that for the notice issued u/s 13 (2) of the Act, they have given a reply, but the same was not considered by the bank as contemplated u/s 13 (3) (A) of the Act. As per Section 13 (3) (A) of the Act, the bank is bound to consider such reply and pass orders within 7 days and if no order is passed, as required, the bank cannot proceed further with the notice issued u/s 13 (2) of the Act.

In this connection, the learned counsel for the petitioner relied on an unreported decision of the Division Bench of this Court made in WP No.

6710 of 2011 dated 06.09.2011 in which this Court has categorically held in para

No. 33 as follows:-

33. For all the above reasons, we hold that the right conferred on the borrower to make representation is a valuable right and in the event the

borrower either chooses to make his representation or raises objection, in the event the secured creditor comes to the conclusion that such

representation/objection is not acceptable or tenable, the secured creditor shall communicate the reasons for such non-acceptance of the

representation/objection to the borrower within seven days of the receipt of such representation / objection. Hence, the requirement to reply is

mandatory.

12. It is relevant to note that in that case before the Division Bench of this Court, relied on by the learned counsel for the petitioner, the Division

Bench has categorically held that even though consideration of reply is mandatory one, it is not an empty formality but in the context of that

particular case, it was held that there was no violation of the conditions laid down in Section 13 (3) (A) of the Act. In that case, the petitioner has

not given any objections at all and what was given was an application to consider their claim for one time settlement. Therefore, the Division Bench

of this Court held that such a reply cannot be equated to a reply given to the proceedings initiated u/s 13 (3) (A) of the Act and even though it is

mandatory for the bank to consider the reply given by the borrower, the non-consideration of the application for OTS cannot be a bar for the

bank to proceed further with the notice u/s 13 (2) of the Act. Ultimately, the Division Bench of this Court set aside the order passed by the Debt

Recovery Appellate Tribunal and by restoring the order passed by the Debts Recovery Tribunal and allowed the bank to proceed with u/s 13(2)

notice. Further, the challenge in that case was notice u/s 13(4). The writ filed under after 13(4) notice was passed.

13. In the present case, admittedly, no notice u/s 13 (4) of the Act was issued by the respondents bank. The only grievance of the petitioner is

without giving a reply as required u/s 13 (3) (A) of the Act, the bank cannot proceed further by issuing notices either u/s 13 (4) of the Act or u/s

14 of the Act. Thus, it is clear that the petitioner, by preempting the action of the bank, had filed the present writ petition. Such a course is not

open to the petitioner especially under the writ jurisdiction. Even assuming that

there is a violation in respect of the procedures contemplated u/s 13

(2), 13 (3) (A) by the bank, the only remedy available to the petitioner is to approach the Debt Recovery Tribunal as contemplated u/s 17 of the

Act. Therefore, we hold that this writ petition is not maintainable and the petitioner ought to have approached the Debt Recovery Tribunal for relief

instead of filing the present writ petition. As mentioned above, the petitioner has filed the present writ petition premature and therefore also the writ

petition is not maintainable and it cannot be entertained by us.

14. In this connection, it is worthwhile to refer to the Full Bench decision of this Court reported in (Lakshmi Shankar Mills (P) Ltd., and others vs.,

Authorised Officer/Chief Manager, Indian Bank and others) 2008 3 MLJ 1345 (FB) wherein the Full Bench of this Court considered whether the

borrower has a cause of action to file a writ petition before this Court under Article 226 of The Constitution of India as against the violations

committed by the bank in following the procedures contemplated u/s 13 (3) (A) of the Act. In para-10, it was held as follows:-

10....Sub-Section 3-A, which has been inserted by the amendment, provides that if on receipt of the notice under sub-section (2), the borrower

makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor

comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of

such representation or objection the reasons for non-acceptance of the representation or objection to the borrower. The proviso to Sub-Section

3-A provides that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not

confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal u/s 17 or the Court of District Judge u/s 17-A. In

Mardia Chemicals Ltd., vs. Union of India (Supra) the Supreme Court has clearly held that such right accrues only if measures are taken under

sub-section (4) of Section 13 of the Securitisation Act (para-48 SCC page 348). Therefore, only if one or other measures is taken by the secured

creditor, a cause of action arises for any person or borrower to prefer an application u/s 17 of the Securitisation Act.

15. It is evident that the Full Bench of this Court had categorically held, following

the decision of the Honourable Supreme Court reported in Mardia Chemical case, that cause of action for a person to challenge the various measures taken by the bank would arise only when the bank issues a notice u/s 13 (4) or possession notice u/s 14 of the Act and not before that. Further, the Full Bench also held that "all such grounds, which rendered the action of the bank/financial institution illegal, can be raised in the proceedings u/s 17 of the Securitisation Act before the Debt Recovery Tribunal. It is for the Debt Recovery Tribunal to decide in each case whether the action of the bank/financial institution was in accordance with the provisions of the said Act and legally sustainable." Therefore, the present writ petition, as such is not maintainable. In para No.

21, the Full Bench further held as follows:-

21. As can be seen from the Statement of Objects and Reasons of the Securitisation Act, the main purpose of the Securitisation Act, and in particular Section 13 thereof, is to enable and empower the secured creditors to take possession of their securities and to deal with them without the intervention of the Court. Therefore, in an application u/s 17, the Tribunal is concerned only with the validity of the acts of the secured creditor in taking possession of the securities and dealing with the same u/s 13. In our opinion, the Division Bench has rightly held that all such grounds, which rendered the action of the bank / financial institution illegal, can be raised in the proceedings u/s 17. It is for the Tribunal to decide in each case whether the action of the bank was in accordance with the provisions of the Act and legally sustainable. However, we hasten to add that while considering the question of validity of the action of the bank, it is not necessary for the Tribunal to adjudicate the exact amount due to the secured creditors. In other words, the purpose of an application u/s 17 is not the determination of the quantum of claim per se as the Tribunal is concerned with the issue of the validity of the measures taken by the banks/ financial institutions u/s 13 (4). In our opinion, the judgment of the Division Bench in Mission Leather Ltd., vs. Canara Bank, Chennai (supra) lays down the law correctly and does not require any reconsideration.

16. In this connection, the learned counsel for the respondents brought to the notice of this Court the recent decision of the Honourable Supreme Court reported in Kanaiyalal Lalchand Sachdev and Others Vs. State of

Maharashtra and Others, wherein it was held that the writ petition challenging the notice issued by the bank u/s 13 of the Act is not maintainable. In that case before the Honourable Supreme Court, it was contended by the borrower that the notice u/s 13 (2) of the Act, said to have been issued by the bank, was not at all received and therefore the consequential order of the Chief Judicial Magistrate passed u/s 14 of the Act was invalid. In that context, the Honourable Supreme Court had categorically held that when there is alternative and efficacious remedy available u/s 17 of the Act before the Debt Recovery Tribunal, the writ petition is not a proper remedy and it is not maintainable. In para Nos. 21, 22, 23, 24 and 25, it was held as follows:-

21. In *Indian Overseas Bank v. Ashok Saw Mill* 4 the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated u/s 13(4) of the Act? On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court held as under: (SCC pp. 375-76, paras 35-36 & 39)

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow 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, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

* * *

39. We are unable to agree with or accept the submissions made on behalf of the

appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated u/s 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT.

(Emphasis supplied by us)

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

23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants u/s 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.* 5, *Surya Dev Rai v. Ram Chander Rai* 6 and *SBI v. Allied Chemical Laboratories* 7.)

24. In *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla* 8 this Court had observed that: (SCC p. 175, para 30)

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) the person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice u/s 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate, etc. are involved, an efficacious statutory remedy of appeal u/s 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.

17. In this connection, we are also fortified by the decision of the Honourable Supreme Court reported in (United Bank of India vs. Satyawati Tondon and others) 3 (2010) BC 495 (SC) wherein in para Nos. 17 and 18, it was held thus:-

17....Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government directions, orders or writs including the five prerogative writs for

the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari Vs. Antaram Zila Parishad now Zila Parishad, Muzaffarnagar, Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

(Underlining added).

18. In the present case, the petitioner owes more than Rs. 12 crores to the respondent bank and therefore the petitioner was ranked as a continued defaulter by the bank. Even for the notice issued by the bank to treat the petitioner as a defaulter, the petitioner had submitted their reply stating that the industry is undergoing a difficult time and therefore they are

unable to pay the amount. The fact remains that the petitioner is liable to repay huge amount to the respondents bank. Merely because the petitioner remitted a sum of Rs. 90 lakhs on 31.03.2011 when he was treated as NPA it will not enure to the benefit of the petitioner to claim that they are regular in payment of the loan amount and that the respondents bank ought not to have ranked them as a defaulter or classified their loan account as non-performing asset. In any event, at this stage, the writ petition is premature inasmuch as the petitioner had approached this Court even before the initiation of the proceedings u/s 13(4) or 14 of the Act.

19. It is to be mentioned that even though the notice u/s 13 (2) of the Act was issued on 09.05.2011 for which a reply was given by the petitioner

on 25.06.2011 received by the bank on 28.06.2011, this writ petition was filed immediately on the completion of 7 days from the date of receipt

of reply by contending that the respondents bank had failed to consider their reply within 7 days as contemplated under the Act. He has stated that

he has not received the reply from the bank within seven days. On that ground, the petitioner also obtained interim injunction before this Court and

restrained the bank from proceeding further. The petitioner had preempted the move of the bank and filed the present writ petition even before the

ink could dry from the reply given to the bank and rushed to this Court when they still have a right to question the proceedings if any to be initiated

by the bank before the Debt Recovery Tribunal. Therefore, the action of the petitioner is very clear that they want to thwart all the legitimate

attempts of the bank to realise the loan amount by following the procedures contemplated under the Law. If the bank has not followed the

procedures contemplated u/s 13 (2) or 13 (3) (A) or Section 14 of the Act, the proper course open to the petitioner is to approach the Debt

Recovery Tribunal u/s 17 of the Act and not to file a writ petition before this Court. In this connection, it should be taken note of is that the bank

has not passed any order on the objection. If he has not filed the writ, immediately even there is a delay they could have passed orders either

accepting or rejecting his claim. He has rushed to Court before even the bank could consider his objections. The bank might have also accepted

his objections. The bank had the option to send a communication stating the reasons for such rejection if any and only then they could have

proceeded further. But, this action of the petitioner has preempted all the actions of the bank. Definitely, the petitioner cannot challenge a 13(2) notice.

20. One more defence taken by the petitioner is that some of the secured assets given by them are agricultural lands. At the time of availing of the loan, documents were submitted to the bank which would indicate that some of the secured assets are housing plot/vacant land. The bank also produced form "D" letter relating to the title of the property given on 03.01.2011 wherein it is clearly stated that the properties given as security are housing plot/vacant land and no where it is stated as agricultural lands. Further, the entire property is now treated as factory site and therefore it cannot be said that the bank had resorted to auction the agricultural lands. Therefore, the claim of the petitioner that agricultural lands are exempted and the bank is estopped from bringing those properties for auction sale does not arise at this stage. In the light of the above discussion, the writ petition lacks merits, liable to be dismissed and accordingly it is dismissed. No costs. It is open to the petitioner to agitate his right, if any, against the bank before the Debts Recovery Tribunal and the present writ petition is not maintainable.