

(2009) 10 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17716 of 2009

Omeshwar Baldwa, Proprietor, Star Function Palace

APPELLANT

Vs

Vasavi Co-operative Urban Bank Limited (Scheduled Bank)

RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 2, 31
Transfer of Property Act, 1882 — Section 69, 69A

Citation : AIR 2010 AP 25 : (2009) 6 ALD 817 : (2009) 6 ALT 733 : (2010) 2 BC 599

Hon'ble Judges : Nooty Ramamohana Rao, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : Minnikanti Laxmiprasad, for the Appellant; A. Anand Rao, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—This writ petition has been instituted questioning the legality and validity of the notice dated 30.4.2009 issued by the respondent bank in terms of Sub-section (2) of Section 13 of the SEREFASI Act, 2002. The writ petitioner has availed a term loan facility with the respondent bank in a sum of Rs. 1,75,00,000/- (Rupees One Crore and Seventy Five Lakhs only) on 20.11.2000. The loan is repayable in 60 monthly instalments at the rate of Rs. 4,58,780/- per month. As per the abstract of the term loan account No. 296 furnished to the writ petitioner as of 19.11.2002, the writ petitioner was shown as due and payable in a sum of Rs. 2,64,22,716/-. It is worthy to notice from this extract that a sum of Rs. 1,75,00,000/- has been shown as the principal amount due and outstanding, thus signifying that the writ petitioner has not paid any amount by way of repayment of loan to the respondent bank. On 21.6.2004, the respondent bank invoked the provision available under Sub-section (2) of Section 13 of the SEREFASI Act and called upon the writ petitioner to liquidate

the entire liability of Rs. 3,61,95,130/-, which has become due and payable as on 15.6.2004, within 60 days from the date of receipt of the said notice. The writ petitioner has not responded to the said notice. However, since the respondent bank is a cooperative society registered in accordance with the Andhra Pradesh Cooperative Societies Act, 1964, it has invoked the provision available u/s 62 of the said Act by seeking a reference for resolution of the dispute between the parties by way of arbitration. Thereafter, the Arbitrator had passed an award on 23.1.2003 holding the respondents as liable to be pay the bank a sum of Rs. 2,20,24,114/- as on 31.12.2001 together with interest at 19.5% per annum from 16.3.2002, the date of seeking the reference till the amount is realized. Calling in question the correctness and legality of the award passed by the arbitrator, the writ petitioner along with four others, has carried the matter by way of appeal before the Andhra Pradesh Cooperative Tribunal, Hyderabad, instituting CPA No. 212 of 2003. The said appeal was allowed on 3.10.2008 and the matter was remanded to the Arbitrator for fresh consideration duly providing him an opportunity for leading evidence in the matter. Subsequently, the respondent bank filed a Memo before the Deputy Registrar of Cooperative Societies, before whom the arbitration proceedings were pending, to withdraw the said proceedings with liberty to avail alternative remedies available to the bank for recovery of the amount due and payable by the defendants therein, the writ petitioner being one amongst them. Accordingly, preserving the liberty for pursuing the alternative remedies for recovering the amounts due from the respondents therein, the arbitration proceedings have been dismissed as withdrawn by an order passed on 29.4.2009. Thereafter, the respondent bank has issued notice dated 30.4.2009 once again invoking the provision available under Sub-section (2) of Section 13 of the SEREFASI Act calling upon the addressees, which included the writ petitioner herein, to liquidate the total liability of Rs. 9,68,04,343/- as is due as on 31.3.2009, within 60 days from the date of receipt of the said notice. It is the validity and legality of this notice which is sought to be assailed in this writ petition. To complete the narration of facts, the writ petitioner through his counsel raised objections to the notice dated 30.4.2009. The objections were lodged on 10.7.2009. The said objections have been considered and negatived by the bank on 27.7.2009, holding them untenable.

2. Learned Counsel for the writ petitioner submits that when once a notice is issued u/s 13(2) of the SEREFASI Act, the bank has no choice except to proceed further in the matter and carry the same to its logical end. Since the respondent bank has issued such a notice on 21.6.2004, but failed to carry the same any further, it cannot now issue another notice u/s 13(2), after a lapse of nearly five years time. Learned Counsel would further submit that the respondent bank has therefore forfeited its right to invoke any further the measures available under the SEREFASI Act and hence it must fall back upon the other options available for recovering the debt due by instituting the legal proceedings only before the appropriate civil court. Learned Counsel would further submit that the 2nd notice

issued now is intended to cause manifest injustice to the writ petitioner/borrower and it could never have been intendment of the Parliament to cause any such manifest injustice by enacting SEREFASI Act. Therefore, provisions of the SEREFASI Act are not intended to be invoked by such a defaulting banker.

3. It was further contended that a disproportionate mischief is now sought to be caused to the writ petitioner by seeking to recover a huge amount and hence by invoking the provisions available u/s 13 of the SEREFASI Act, no such disproportionate mischief should be allowed to be visited to a borrower. Elaborating this contention, the learned Counsel for the petitioner would submit that when the notice was first issued on 21.6.2004, the writ petitioner was called upon to liquidate a liability of Rs. 3,61,95,130/- as of 15.6.2004 and if only the bank had carried the matter to its logical conclusion by putting to sale the secured asset, the writ petitioner would have had the benefit of not only liquidating in its entirety the outstanding liability, but he would have also derived the benefit to the excess sale amount, which the secured asset is capable of fetching due to its location in a prime commercial area of Hyderabad city. Whereas by issuing the impugned notice, the respondent bank seeks to recover an amount of Rs. 9,68,04,343/- due as of 31.3.2009, which amount is more than Rs. 6 Crores than what was demanded through the 1st notice dated 21.6.2004. As an offshoot to this contention, the learned Counsel for the writ petitioner would submit that by unnecessarily delaying the subsequent proceedings including liquidation of the secured asset pursuant to the notice dated 21.6.2004, the respondent bank is seeking to unjustly enrich itself by more than Rs. 6 crores as of today. Learned Counsel would also further submit that the guidelines in the form of prudential norms to be followed by every banker issued by Reserve Bank of India for purposes of classification of assets as non performing assets, have been followed by the respondent bank in the breach. Hence, it is contended that the action of the respondent bank is grossly unjust and iniquitous and therefore the respondent bank should not be permitted or allowed to proceed any further in the matter.

4. Learned Counsel for the respondent bank has drawn our attention to the material enclosed to the counter affidavit filed by the bank in the above matter. It is pointed out that the writ petitioner on 26.8.2002 informed the Deputy Registrar of Co-operative Societies/Arbitrator, in writing, that he is settling the matter out of court with the bank and sought for a month's time. Hence time was accorded to the writ petitioner by the Arbitrator. But, however, no such steps and measures have been taken by the writ petitioner at all. That apart, the writ petitioner never showed up before the learned Arbitrator thereafter. In those circumstances, the award came to be passed on 23.1.2003. However, the writ petitioner has carried the matter in appeal before the Cooperative Tribunal and in that Cooperative Tribunal Appeal No. 212 of 2003, an application has been taken out by the writ petitioner seeking stay of the auction of the secured asset slated for 16.6.2003 and he has submitted "that respect as follows:

5. I submit that the loan issued by the 2nd respondent is fully secured and there is no risk as prime immovable property situated in no less than Abids Road, Hyderabad, fulcrum of Hyderabad City, is offered as security, the 2nd respondent has hastily taken the impugned proceedings. The auction is fixed on 16.6.2003.

In the above circumstances I request the Hon''ble Court to grant time of 60 days and I undertake to pay a sum of Rs. 25,00,000/- (Rupees Twenty five lakhs only).

Therefore I pray that the Hon''ble Tribunal to grant me stay for a period of 60 days for the payment of the above said amount.

But, however, the writ petitioner has not taken any measures or steps to liquidate even a part of his liability, once the threat of auction of the secured asset has receded. Thus, the learned Counsel for the respondent - Bank would submit that it is the conduct of the writ petitioner, which prevented the respondent bank from realizing the amount due and payable by him by liquidating the asset by way of public auction.

5. Before the rival contentions are taken up for consideration, the important circumstances that led the Parliament to enact SEREFASI Act, 2002 need to be kept in view.

6. The statement of Objects and Reasons of the Enactment read as under:

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices, there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas.

7. In order to attain economic stability and to save the country from a possible economic crisis, certain reforms have been contemplated. Since banks and other financial institutions have come to play a major part in lending/providing financial assistance to various sectors, including trade, commerce and industry, some of the reforms are also needed in that sector. Thus, the Central Government after a thorough and proper consideration of various aspects relating to banking sector specific reforms, has enacted SEREFASI Act, 2002 duly taking into account the

internationally prevailing practice of securitisation of the debts. Further, the fact that the other measures taken by enacting the Recovery of Debts due to Banks and Financial Institutions Act, 1993, has not substantially improved the quantum of recovery of debts due to banks, has also played its significant part in the policy frame work of the SEREFASI Act, 2002. The facts stated in the preamble and statement of objects and reasons appended to any legislation are evidence of any legislative judgment and offer the platform for the justification of the enactment.

8. In the above backdrop, it would be appropriate to appreciate some of the important expressions found in the enactment. The expressions "borrower," "default", "financial assistance", "financial asset", "non-performing asset", "security agreement" and "security interest" have been defined in Clauses (f), (j), (k), (l), (o), (z), (za) and (zf) in Section 2 of SEREFASI Act, 2002 in the following manner:

(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

(j) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor;

(k) "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution;

(l) "financial asset" means debt or receivables and includes--

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(vi) any financial assistance;

(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,--

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank

(zb) "security agreement" means an agreement, instrument of any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;

(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31;

9. Chapter III of the Act dealt with the enforcement of the Security Interest. Section 13 listed out the detailed procedure for enforcement of the "security interest". Notwithstanding anything contained in Sections 69 and 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor was now rendered enforceable without the intervention of a court or a tribunal, by such creditor in accordance with the provisions of the SEREFASI Act. Thus, legitimacy has been accorded for enforcing the security interest by a creditor without the necessity of intervention of any court or tribunal. Sub-section (2) of Section 13 mandates the creditor to demand the defaulting borrower whose debt is classified as a "non-performing asset", to discharge his full liability within 60 days from the date of the notice. Notice must contain the details of the amount payable by the borrower and also the secured assets intended to be enforced by the secured creditor in the event of non payment of the debt. Sub-section (4) of Section 13 conferred wide range of powers on to the secured creditor and since it will have considerable bearing upon the controversy canvassed before us, we deem it appropriate to extract the said provision hereinbelow:

CHAPTER III - ENFORCEMENT OF SECURITY INTEREST - 13. Enforcement of security interest

(4) In case the borrower fails to discharge his liability in full within the period specified in Sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

10. A careful analysis of the above provision makes it clear that a secured creditor may take recourse to one or more of the following measures in the process of recovering the debt viz., (1) take possession of the secured assets including their right to transfer by way of lease, assignment or sale. (2) Take over the management of the secured assets with a similar right of transfer by way of lease, assignment or sale. (3) Appoint a Manager for managing the secured asset, upon taking over of its possession. (4) Call upon a third party who has acquired any of the secured assets from the borrower, to pay so much of money which would be sufficient to liquidate the debt. Therefore, a creditor is not invariably required to undertake transfer of the title over the secured assets, upon failure of the debtor to liquidate the liability even after expiry of 60 days period of time provided in the notice served in terms of Sub-section (2) of Section 13. The statute has left the choice to the creditor for taking an appropriate measure that suits the occasion. If the value based judgment of the creditor impels him to lease out or assign the secured asset to any third party, which measure, according to him, would be sufficient to liquidate the liability of the borrower, then the creditor need not have to contemplate upon the issue of transfer of title of the asset by way of sale at all. Similarly, the creditor can take over the management of the secured asset and appoint a Manager for the said purpose. If within a reasonable period of time, by deploying such prudent measures of management, if the entire debt/liability can be liquidated, the secured asset need not be contemplated for transferring the same by way of sale, or lease or assignment. Therefore, the contention canvassed by the learned Counsel for the petitioner that when once a notice is served by a creditor in

terms of Sub-section (2) of Section 13 of the SEREFASI Act, he must invariably carry it to its logical conclusion resulting in transfer of the secured asset by way of sale, is not liable to be accepted. When a statute has provided for various options, to be explored by a creditor, it is not liable to be inferred that one of them or all of them in the same serial order as they are specified in the enactment should be explored inevitably. The statute has therefore, to my mind, left enough room for play in the joints and conferred the necessary discretion to be exercised by the secured creditor. It is certainly open to him to quickly liquidate the secured asset by transferring it by way of sale at the very first instance itself. It is equally open to the secured creditor not to adopt such a measure as the first of the choices available and it is open to him, to explore the other options as well.

11. This apart, when a statute like SEREFASI Act has not provided for any further time limit within which period, the steps or measures enumerated under Sub-section (4) of Section 13 have got to be accomplished, it is not open for us to construe a time limit for accomplishing the said objectives. Advisedly, the Parliament has not contemplated fixation of any time table for achieving any or all of the steps and measures provided for, under Sub-section (4) of Section 13 of SEREFASI Act. The reasons are not far to seek. In a given situation, if a commercial enterprise or an industrial concern, is considered as a viable one and if is properly managed by a competent manager, the prospects of liquidating the entire liability from out of the profits earned from such an enterprise, if be considered as a better option, then by appointing a qualified or competent manager, the creditor is bound to manage the secured asset for a while before the necessity to take any other decision afresh by him would arise. It is but reasonable for a viable commercial enterprise to be run for atleast two to three years and if the recovery process of the debt is really encouraging by such an enterprise, then perhaps the creditor may consider prolonging the same arrangement of managing the affairs of the secured asset by a further period, instead of liquidating it by way of transfer/sale. On the contrary, even at the end of a reasonable period of tenure and notwithstanding competent and skillful management of the affairs of the secured asset, the recovery prospects of the debt are not bright enough, then these additional inputs can impel the creditor to think on the lines of transfer of the asset by way of sale. Therefore, this very process, being a time consuming one, the statute might have advisedly not considered it appropriate to fix any time table for achieving any or of all the steps and measures provided for under Sub-section (4) of Section 13.

12. We have therefore no hesitation to reject the contention canvassed by the learned Counsel for the petitioner that when once a notice is issued under Sub-section (2) of Section 13, all or any of the steps provided for under Sub-section (4) of Section 13 must invariably follow, after the expiry of the 60 days period of time provided for under the said sub-section.

13. Learned Counsel for the petitioner has placed reliance upon the judgment

rendered by the Supreme Court in *State of Uttar Pradesh Vs. Singhara Singh and Others*, and in particular the following principle enunciated therein in paragraphs 7 and 8 in support of his contention that without following the measures and steps under Sub-section (4) of Section 13, no fresh notice is liable to be issued under Sub-section (2) of Section 13 of the Act again, by the respondent - bank.

14. The principle enunciated that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, is a principle which is hardly attracted to the fact situation prevailing on hand. Sub-sections (2) and (4) of Section 13, along with the rest of the provisions of the Act, are read together, what follows is that no measures contemplated under Sub-section (4) of Section 13, for enforcing the secured asset of the borrower should be taken without first putting the borrower on a notice demanding him to liquidate his liability within a minimum period of 60 days and in a given case this period can be even more than 60 days. In other words, no steps contemplated by Sub-section (4) are liable to be taken first without a notice under Sub-section (2) be issued. However, we fail to see how a notice now issued, a second time though, under Sub-section (2) before further steps are taken in terms of Sub-section (4), can be said to be completely forbidden.

15. Learned Counsel for the petitioner then placed reliance upon the judgment rendered by the Supreme Court in *Union of India (UOI) Vs. B.S. Agarwal and Others*, wherein it has been held:

27.... The Court should lean in favour of such interpretation of statute which conforms to justice and fair play and prevents potentiality to injustice by liberally construing the provision without intrinsically violating the language of the statute and the purpose intended to be achieved....

16. I consider it profitable to notice the jurisprudential principles set out in Chapter 4 of the Ninth Edition of N.S. Bindra's *Interpretation of Statutes* (Butterworths Publication) at pages 246-248, which are set out herein:

2. Absurdity - If the words of an Act are clear, the court must follow them even though they lead to a manifest absurdity. The court has nothing to do with the question whether the legislature has committed an absurdity. *Reg. v. Judge of the City of London Court* [1892] 1 QB 273, 290, per Lord Esher; followed in *Vacher & Sons Ltd. v. London Society of Compositors* [1913] AC 107, 122, per Lord Atkinson; *Corporation of City of Victoria v. Bishop of Vancouver Island* AIR 1921 PC 240, per Lord Atkinson; *Mahommad Hay at v. Commr. of Income Tax, Punjab* ILR 12 Lah 129 : AIR 1931 Lah 87 (FB); *Logan v. Burslow : The Guina* 4 Moo PCC 284, 13 ER 312; *State of Manipur v. AN Singh* AIR 1957 Mani 1. We are bound to construe a section according to the plain meaning of the language used, unless we can find either in the section itself or in any other part of the statute, anything that will either modify or qualify or alter the statutory language even if the result of such construction or alter the statutory language even if the result

of such construction leads to anomalies or produces absurdity *Rajib v. Lakhan* 27 Cal 11, 15; *Alfred Wilkinson Vs. Grace Emily Wilkinson*, ; *Patara Singh v. Mila Mai* ILR 4 Lah 323, 325. The purpose of the law is to prevent a brooding sense of injustice. It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful. The letter of the law is the body but the sense and reason of the law is the soul; xxxxxxxxx Words are the skin of the language. The language gives its own meaning and interpretation of the law. It does so employing appropriate phraseology to attain the object of legislative policy which it seeks to achieve *Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh* and another, . The cardinal rule of construction of statutes is to read the statute liberally, that is, by giving to the words used by the legislature, their ordinary, natural and grammatical meaning; if, however, such a reading leads to absurdity and the words are susceptible of another meaning, the court may adopt the same; but if no such alternative construction is possible, the court may adopt the ordinary rule of literal interpretation *Veerappa v. State of Mysore* AIR 1965 Mys 227, 229 (FB), per Hegde, J. It matters not in such a case what the consequence may be. When by the use of clear and unequivocal language capable of only one meaning anything is enacted by the legislature, it must be enforced, even though it be absurd or mischievous. xxxxxxxxx

Lord Greene MR, observed in *Grundt v. Great Bolder Gold Mines Ltd.* [1948] 1 All ER 21 , 29-30; *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, ; *Punjab National Bank Vs. Laxmi Chand Sunder Dass and Others*, . Absurdity, I cannot help thinking, like public policy, is a very unruly horse that although the absurdity or the non-absurdity of one conclusion as compared with another may be, very often, is of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with very great care, remembering that judges may be fallible in this question of an absurdity, and in any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to rewrite the language in a way different from that in which it was originally framed.

It's a salutary principle, that, while interpreting any provision of a statute, the main purpose and thrust sought to be achieved by the statute must be advanced. The interpretation that should be placed should be such that the mischief intended to be suppressed must be achieved. Similarly, no provision of a statute should be construed in such a manner that it will result in a manifest injustice to any party. SEREFASI Act is a special statute ushered in as part of banking sector reforms to make them fall in line with international practices and standards of securitisation of the debts. The main object which is sought to be achieved by this enactment is to reign in the defaulting borrowers from deliberately delaying the obligatory repayment of their debts to banks and financial institutions. Until and unless the banks and financial institutions adequately recover the debts, there will not be adequate liquidity for them to carry on their further business enterprise. Every bank and financial institution

needs financial liquidity so as to meet the dead lines and targets towards their customers and depositors. Banks and financial institutions are answerable therefore to their patrons and shareholders. Hence, we do not find any justification to accept the suggestion of the learned Counsel for the petitioner that the respondent - bank should be directed to fall back upon the option of enforcing the debt only through the intervention of a court, but not with reference to Sub-section (4) of Section 13. Any such interpretation would in fact result in manifest injustice to the banks and financial institutions and that should be avoided.

17. Learned Counsel for the writ petitioner has placed strong reliance upon the judgment rendered by a Division Bench of the Calcutta High Court in *Anil Kumar Panda Vs. State of West Bengal and others*, and in particular on the following passages:

(31) IT is one of the principles of legal policy that law should be just and the Court's decision should further the ends of justice.

(32) LORD Reid, in *Courts and Co. v. I.R.C.* 1953 AC 267, had held:

in general if it is alleged that a statutory provision brings about a result which is so startling, one looks for some other possible meaning of the statute which will avoid such a result, because there is some presumption that Parliament does or intend its legislation to produce highly inequitable results.

(33) THE Court, while considering a provision of a statute must have regard to the consequences of such construction.

(34) IT is well-settled principle that the Court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament, (See Paragraph 321, Francis Bennion's *Statutory Interpretation*, 1984 Edition).

(35) IT is also the well-settled principle that the Court seeks to avoid a construction that causes unjustifiable inconvenience to persons who are subject to enactment, since this is unlikely to have been intended by Parliament. (See Paragraph 322 of the book mentioned above).

(36) ACCORDINGLY, the Court should avoid a construction to allow any inconvenience which is not essential to the operation of the Act and which may in addition have adverse economic consequences.

(37) IT is also the principle that the Court seeks to avoid a construction that creates an anomaly or otherwise produces an irrational or illogical result. (See Paragraph 323 of the said book).

(38) IT is also the principle that the Court seeks to avoid a construction that cures the mischief the enactment was designed to remedy only at the cost of setting up of a disproportionate counter-mischief since this is unlikely to have

been intended by the Parliament. (See paragraph 326 of the said book)

in support of his contention that the disproportionate mischief which is sought to be caused to the writ petitioner all due to the delay caused by the respondent bank is never intended by the SEREFASI Act.

18. There is no quarrel with the propositions of law enunciated in the aforesaid judgment. No enactment should ever be construed so as to cause manifest or disproportionate injustice to any party. After all, it would never have been the intention of the statute maker to cause deliberate or disproportionate mischief to any of the parties. However, in the context of regulating the relationship between a debtor and a creditor, pursuant to a contract between them, a piece of legislation which is intended to advance the cause of the creditor by conferring certain powers for securing its interests, without the intervention of the court or tribunal, is a fairly well considered and well conceived measure. Such a measure was a reasonable one intended to achieve a greater public objective, which is intended to sub-serve the larger public interest. In determining reasonableness of economic legislations, more latitude had to be given to the State than that given in respect of a legislation relating to fundamental rights. (See *M/s. Siel Ltd. and Others Vs. Union of India and Others*,). The debtor or the class of debtors as a whole are not subjected by the SEREFASI Act to any hostile treatment, so long as their debt or their account does not become a non-performing asset. In other words, if the terms of the contract are adhered to by them, there will be no occasion for any action in terms of Section 13 of SEREFASI Act to spring up. Therefore, the SEREFASI Act which conferred certain special protective measures upon the creditors by way of the provisions contained u/s 13 of the said Act are clearly intended to deal with such class of debtors or debts, classified as non performing assets. There again, no debt or no account of a debtor is liable to be classified as a non performing asset without duly following the guidelines framed by the Reserve Bank of India in that respect. Therefore, great exercise of care is liable to be carried out before an asset is declared as a non-performing asset. Until and unless the debt or account is declared as a non-performing asset, the drastic measures contemplated by Section 13 are not liable to be initiated. In other words, Section 13 gets attracted only to such cases where the debtor becomes a defaulting debtor. Such a defaulting debtor cannot be allowed to say that his interests far outweigh than that of his creditor. The balance that has got to be struck in between them, to my mind, has been carefully assessed by the Parliament and hence there is nothing wrong in invoking the provision contained under Sub-section (4) of Section 13 even after a lapse of time after the asset has been declared as a non-performing asset. The passage of time could be attributable to several factors. It shall not be forgotten that a defaulting borrower may seek to convince the creditor about his genuine desire to liquidate his liability within a reasonable period of time, provided an opportunity is held out to him without steps being initiated under Sub-section (4) of Section 13 and the creditor conceding such a request for the time being. We cannot also simultaneously rule out the possibility of a defaulting debtor realizing the perils

of his action and rectifying the same, by way of payment, at least to a substantial extent, which might convince his creditor to delay the measures contemplated under Sub-section (4) of Section 13 for a while. Therefore, the creditor is as much entitled to hold on from initiating the further steps and measures contained and contemplated by Sub-section (4) of Section 13. The delay in ultimately invoking the various measures and steps contemplated by Sub-section (4) of Section 13 therefore cannot be construed as resulting in or causing a disproportionate mischief to the borrower and on that basis either strike down Sub-section (4) of Section 13 or declare that no such measures or steps can ever be taken after passage of considerable period of time after service of notice under Sub-section (2) of Section 13 of the Act.

19. Let us also look at it from a different angle. Supposing a particular commercial enterprise or an industrial concern, may not be facing favourable climate at a particular phase or point of time, for variety of reasons, including the prevailing market conditions. If a certain time limit is allowed, even after a notice under Sub-section (2) of Section 13 is issued, the prospects for a rally round of the circumstances may be ruled out. In such a case, allowing a further period of time to lapse before measures under Sub-section (4) are intended, may even result in a favourable climate to be brought about and consequently the prospects of the entire debt getting liquidated at one go can brighten up. Similarly, if the secured asset happened to be an urbanized property, the prospects of its value jumping manifold if a reasonable period of time is allowed to lapse before measures under Sub-section (4) of Section 13 are initiated, cannot be completely lost sight of either. All these aspects are in the realm of speculation. Sometimes, it may work to the advantage of a borrower if certain time is allowed to pass by or sometimes it may even work against his interests. Therefore, only on the ground that the debt keeps mounting in the meantime, we will not be able to arrive at a definite conclusion that a disproportionate mischief is bound to be caused to the borrower all due to passage of time, after service of notice under Sub-section (2) of Section 13.

20. However, in the instant case, the conduct of the writ petitioner which lulled the respondent - bank into a some kind of hybernation is a factor which has its own role in contributing to the delay in taking measures by the respondent bank under Sub-section (4) of Section 13. Therefore, any intervention by us at this stage would only be putting a premium to such a conduct of the writ petitioner. Hence, for this reason also, we refrain from interfering with the impugned notice.

21. Finally, the respondent - bank has advanced a loan of Rs. 1.75 Crores to the writ petitioner way back in the year 2000. Thereafter, he took no steps nor did he evince any interest to liquidate his liability. He has availed the financial assistance -whether productively or otherwise is not a concern of the respondent - bank. His failure to recycle the debt is what matters. The debt keeps mounting with passage of time, in accordance with the terms and conditions contained in the contract of debt. Pursuant to Section 17 read with Section 18 of The

Recovery of Debts due to Banks and Financial Institutions Act, 1993, the jurisdiction of the civil courts is ousted and the Tribunal constituted under the said Act alone has jurisdiction to recover the magnitude of debt, like in the present case. Therefore, the contention of the learned Counsel for the writ petitioner that the respondent bank cannot fall back upon the provisions contained under Sub-section (4) of Section 13, but must fall back upon the option of going to the civil court is a contention which disregards the provision of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 which ousted the jurisdiction of the Civil Court. At any rate, any such option to fall back upon the otherwise normal mode of recovery, will be a far more time consuming affair and that would, even according to the writ petitioner, be further compounding the mischief to him. Therefore, it would be wholly in the interests of the writ petitioner to prevent the debt from escalating any further. Hence, for this reason also, we do not see any reason to interfere with the impugned notice. For all the aforesaid reasons, we do not find any merit in this writ petition and it is accordingly dismissed. No costs.