

(2007) 02 MAD CK 0195

In the Madras High Court

Case No : Writ Petition No. 10355 of 2005

Sree Lakshmi Products

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Companies Act, 1956 — Section 529A
Constitution of India, 1950 — Article 14, 226
Debts Recovery Tribunal Act, 1993 — Section 19(1)
Income Tax Act, 1961 — Section 269UD
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(10), 13(11), 13(13), 13(2), 13(3)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 8, 8(1), 8(3), 8(4), 9
State Financial Corporations Act, 1951 — Section 29
Transfer of Property Act, 1882 — Section 65A

Citation : AIR 2007 Mad 148 : (2007) 78 SCL 257

Hon'ble Judges : A.P. Shah, C.J.;K. Chandru, J

Bench : Division Bench

**Advocate : M.S. Krishnan, for Sarvabhauman Associates, for the Appellant;
Sethuraman, for the Respondent**

Final Decision : Dismissed

Judgement

A.P. Shah, C.J.—The petitioner has filed this petition for a mandamus for bearing the respondent from evicting the petitioner, from the leasehold premises in its possession except by due process of law. The principal contention raised by the petitioner is that the petitioner being a tenant and in physical possession of a portion of the building situated in S.F. No. 189/2, Uthupalayam Village, Palladam Taluk, Coimbatore District, by virtue of a lease deed dated 5-4-2003, duly executed by the principal borrower and the mortgager of the property M/s. Sree Lakshmi Foundry, is fully protected under the Tamil Nadu Buildings (Lease and Rent Control) Act and cannot be dispossessed without taking recourse to the provisions of the said Act. We need not narrate detailed facts, but it is suffice to

state that M/s. Sree Lakshmi Foundry, who is the principal borrower had availed of some loans from the respondent-State Bank of India after mortgaging the land and building comprised in S.F. No. 189/2 by executing a memorandum of mortgage in favour of the respondent-bank. On the failure of the borrower to pay back the loan, the respondent-bank had invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") and had taken symbolic possession of the entire property on 29-11-2003. It is the case of the petitioner that a portion of the aforesaid property was originally leased to the petitioner under a lease deed dated 10-9-1986 and the lease was renewed by a subsequent lease deed dated 5-4-2003. The petitioner claims that an advance of Rs. 2 lakhs was originally paid in cash and it was increased to Rs. 4 lakhs at the time of the renewal of the lease which was also paid in cash. It is the further case of the petitioner that the respondent recognised the petitioner's tenancy and addressed, a letter dated 29-11-2003 asking the petitioner to pay the rent. Accordingly the petitioner paid the rent in March 2005 by a demand draft and there are no arrears. The petitioner has alleged that on 14-3-2005 the officials of the respondent-bank attempted to take forcible possession of the premises and in fact, the rear door was sealed by them. On 15-3-2005 the petitioner therefore lodged a Complaint before the Soolur Police Station. In short, the contention of the petitioner is that a tenant cannot be dispossessed in pursuance of recovery proceedings against the borrower under the SARFAESI Act and therefore, even if the landlord of the petitioner is indebted to the respondent-bank, the respondent has to take possession only by due process of law and it cannot misuse its powers and try to take forcible possession.

2. Mr. M.S. Krishnan, learned Counsel appearing for the petitioner strenuously contended that where the owner of a leased asset mortgages such asset to a bank in order to procure a loan, the bank can stake claim u/s 13(4) of the SARFAESI Act only residuary right which continue to vest in the owner after the lease came into existence which alone was offered as security to the bank. Learned Counsel contended that there is nothing in the said Act to indicate that the legislature intended to take away the right of a tenant in the property. He contended that the right to property is a constitutional right and deprivation of such a right existing in favour of a person cannot be presumed in construing a statute. He contended that SARFAESI Act is enacted for the enforcement of security interests and not for its enlargement. He contended that such an interpretation to Section 13(4) would be unconstitutional. He contended that the State Legislature has enacted the Tamil Nadu Buildings (Lease and Rent Control) Act, which is a beneficial legislature meant to protect the tenants from arbitrary eviction. In effect Rent Control Act overrides certain provisions of the Transfer of Property Act which governs the rights, duties and obligations of landlords and tenants. He contended that this special right conferred under the Rent Control Act cannot be taken away except by a positive and express mandate in any later enactment. He relied upon a decision of the Supreme Court in Krishnan Singh

Rana v. Haryana State Industrial Development Corporation 2000 (4) CTC 767 : 2000 (Supp) MLJ 63, where a Two Judge Bench of the Supreme Court held that a corporation while proceeding u/s 29 of the State Financial Corporations Act, 1951 could not evict a tenant. He also placed reliance on the decision of the Supreme Court in C.B. Gautam Vs. Union of India and Others, , where the Supreme Court quashed the expression "free from all encumbrances" in Section 269-UD of the Income Tax Act, 1961 as being violative of Article 14 of the Constitution.

3. In reply, Mr. S. Sethuraman, learned Counsel appearing for the respondent-bank submitted that unregistered lease deeds relied upon by the petitioner are sham documents which have been created only with a view to defeat the legitimate claim of the respondent-bank. He submitted that in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , the Supreme Court has held that in cases where a secured creditor has taken action u/s 13(4) it would be open for the borrower to file an Application u/s 17 of the SARFAESI Act. Therefore, the remedy available to the petitioner is to approach DRT and the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. He further submitted that in Transcore Vs. Union of India (UOI) and Another, a Two Judge Bench of the Supreme Court has held that u/s 13(4) the bank is entitled to take physical possession of the secured assets and in case a borrower or a person claiming through him is dispossessed, the remedy of such person is to approach DRT u/s 17 of the Act. He submitted that in Transcore Vs. Union of India (UOI) and Another, the Supreme Court has also ruled that the provisions of SARFAESI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and by virtue of Section 13(4) read with Section 13(6) the mortgaged assets shall vest with the bank free from all encumbrances. He also placed reliance on the decision of the Kerala High Court in S. Shameem v. The City Police Commissioner CDJ 2005 KHC638, where a Division Bench of the Kerala High Court has held that the provisions of the SARFAESI Act effectively nullify rights normally admissible even to a tenant. Lastly he referred to a decision of the Division Bench of the Delhi High Court in Sanjeev Bansal v. Oman International Bank SAOG 2006 (4) BC 299 (DB) Delhi High Court, where it was held that no lessee can claim any protection in proceedings under SARFAESI Act unless his tenancy is as per the requirements of Section 65-A of the Transfer of Property Act.

4. The SARFAESI Act is enacted to regulate securities and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. The Act enables the banks and FI to realise long term assets, manage problems of liquidity, asset liability mis-match and to improve recovery of debts by exercising powers to take possession of Securities, sell them and thereby reduce non-performing assets by adopting measures for recovery and reconstruction. The Act further provides for setting up of asset reconstruction companies which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease, assignment or sale. The

said Act also empowers the said asset reconstruction companies to take over the management of the business of the borrower. The constitutional validity of the said Act has been upheld in the case of *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, . In the judgment in *Mardia Chemicals* the Supreme Court held that, in cases where the secured creditor has taken action u/s 13(4), it would be open to the borrower to file an Appeal (Application) u/s 17 of the Act. In the said judgment, the Court further observed that if the borrower, after service of notice u/s 13(2) of the Act, raises any objection or places facts for consideration of the accused creditor, such reply to the notice must be considered by the, bank/FI with due application of mind and reasons for not accepting the objections briefly must be given to the borrower. In the said judgment, it is further held that the reasons so communicated shall only be for the purposes of information/knowledge of the borrower and such reasons will not give him any right to approach the tribunal u/s 17 of the Act.

5. In *Transcore Vs. Union of India (UOI) and Another*, , the Supreme Court upon critical examination of the provisions of the SARFAESI Act and the DRT Act, 1993 observed in paragraphs 23 and 25 as follows ;

Para 23 : Reading the scheme of Section 13(2) with Section 13(4), it is clear that the notice u/s 13(2) is not a mere show cause notice and it constitutes an action taken by the bank/FI for the purposes of the NPA Act. Section 13(6) inter alia provides that any transfer of secured asset after taking possession or after taking over of management of the business, u/s 13(4), by the bank/FI shall vest in the transferee all rights in relation to the secured assets as if the transfer has been made by the owner of such secured asset. Therefore, Section 13(6) inter alia provides that once the bank/FI takes possession of the secured asset, then the rights, title and interest in that asset can be dealt with by the bank/FI as if it is the owner of such an asset. In other words, the asset will vest in the bank/FI free of all encumbrances and the secured creditor would be entitled to give a clear title to the transferee in respect thereof. Section 13(7) refers to recovery of all costs, charges and expenses incurred by the bank/FI for taking action u/s 13(4). Section 13(7) provides for priority in the matter of recovery of dues from the borrower. It inter alia provides for payment of surplus to the person entitled thereto. Section 13(8) inter alia states that if the dues of the secured creditor together with all costs, charges and expenses incurred are tendered to the secured creditor before the date fixed for sale/ transfer the secured asset shall not be sold or transferred by the Bank/FI to the asset reconstruction company and no further steps shall be taken in that regard. Section 13(9) inter alia states that where a financial asset is funded by more than one bank/FI or in case of joint financing by a consortium, no single secured creditor from that consortium shall be entitled to exercise right u/s 13(4) unless exercise of such right is agreed upon by all the secured creditors. Section 13(9) provides for one more instance when permission of DRT may be required under the First Proviso to Section 19(1) of the DRT Act. The agreement between the secured creditors in such cases is required to be placed before the DRT not as a fetter on the rights of

the secured creditors but out of abundant caution. Generally, such agreements are complex, in measure, particularly because rights of each of the secured creditor in the consortium may be required to be looked into. However, if before the DRT, all the secured creditors in such consortium enter into an agreement u/s 13(9) then no such further inquiry is required to be made by the DRT. In such cases, the DRT has only to see that all the secured creditors in the consortium are represented under the agreement. The point to be noted is that the scheme of the NPA Act does not deal with disputes between the secured creditors and the borrower. On the contrary, the NPA Act deals with the rights of the secured creditors inter se. The reason is that the NPA Act proceeds on the basis that the liability of the borrower has crystalized and that his account is classified as non-performing asset in the hands of the bank/FI. Section 13(9) also deals with part passu charge of the workers u/s 529-A of the Companies Act, 1956, apart from banks and financial institutions, who are secured creditors. Section 13(10) inter alia states that where the dues of the secured creditor are not fully satisfied by the sale proceeds of the secured assets, the secured creditor may file an Application to DRT u/s 17 of the NPA Act for recovery of balance amount from the borrower. Section 13(10), therefore, shows that the bank/FI is not only free to move under NPA Act with or without leave of DRT but having invoked NPA Act, liberty is given statutory to the secured creditors (banks/ FIs) to move the DRT under the DRT Act once again for recovery of the balance in case where the action taken u/s 13(4) of the NPA Act does not result in full liquidation of recovery of the debts due to the secured creditors. Section 13(10) fortifies our view that the remedies for recovery of debts under the DRT Act and the NPA Act are complementary to each other. Further, Section 13(10) shows that the First Proviso to Section 19(1) of DRT Act is an enabling provision and that the said provision cannot be read as a condition precedent to taking recourse to NPA Act. Section 13(11) of the NPA Act inter alia states that, without prejudice to the rights conferred on the secured creditor u/s 13, the secured creditor shall be entitled to proceed against the guarantor/pledger; that the secured creditor shall be entitled to sell the pledged assets without taking recourse u/s 13(4) against the principal borrower in relation to their secured assets under the NPA Act. Section 13(3) states that, no borrower shall, after receipt of notice u/s 13(2), transfer by way of sale, lease or otherwise any of his secured assets referred to in the notice, without prior written consent of the secured creditor. Thus. Section 13(13) further fortifies our view that notice u/s 13(2) is not .merely a show cause notice. In fact. Section 13(13) indicates that the notice u/s 13(2) in effect operates as an attachment/injunction restraining the borrower from disposing of the secured assets and, therefore, such a notice, which in the present case is dated 6-1 -2003 is not a mere show cause notice but it is an action taken under the provision of the NPA Act.

Para 25 : In our view. Section 17(4) shows that the secured creditor is free to take recourse to any of the measures u/s 13(4) notwithstanding anything contained in any other law for the time being in force, e.g. for the sake of

agreement, if in the given case the measures undertaken by the secured creditor u/s 13(4) comes in conflict with, let us say the provision under the State land revenue law, then notwithstanding such conflict, the provision of Section 13(4) shall override the local law. This position also stands clarified by Section 35 of the NPA Act which states that the provisions of NPA Act shall override all other laws which are inconsistent with the NPA Act. Section 35 is also important from another angle. As stated above, the NPA Act is not inherently or impliedly inconsistent with the DRT Act in terms of remedies for enforcement of securities. Section 35 gives an overriding effect to the NPA Act with all other laws if such other laws are inconsistent with the NPA Act. As far as the present case is concerned, the remedies are complimentary to each other and, therefore, the doctrine of election has no application to the present case.

(Emphasis supplied)

6. In *Transcore Vs. Union of India (UOI) and Another*, one of the questions which fell for the consideration of the Supreme Court was whether recourse to take possession of the secured assets of the borrower in terms of Section 13(4) of the SARFAESI Act comprehends the power to take actual possession of the immovable property. The argument on behalf of the borrower was that if physical possession is taken on expiry of 60 days, the remedy of Application u/s 17 of the Act by the borrower would become illusory and meaningless as the borrower or the person in possession would be disposed even before adjudication of the objections by the Tribunal. It was argued that actual physical possession of immovable assets can be taken under Rule 8(3) of the Security Interest (Enforcement) Rules, 2002, in cases where there is a vacant plot or property which is lying unattended, but where the immovable property is in actual possession of any person, person in possession cannot be dispossessed by virtue of notice under Rule 8(1); that actual possession is to be delivered only after the confirmation of the sale under Rule 9(6) read with Appendix V under which the authorised officer is empowered to deliver the property to the purchaser free from all encumbrances in terms of Rule 9(9) of the Rules. The Court categorically rejected this argument and held as follows:

Para 54 : The word possession is a relative concept. It is not an absolute concept. The dichotomy between symbolic and physical possession does not find place in the Act. As stated above, there is conceptual distinction between securities by which the creditor obtains ownership of or interest in the property concerned (mortgages) and securities where the creditor obtains neither an interest in nor possession of the property but the property is appropriated to the satisfaction of the debt (charges). Basically, the NPA Act deals with the former type of securities under which the secured creditor, namely, the bank/FI obtains interest in the property concerned. It is for this reason that the NPA Act ousts the intervention of the Courts/Tribunals.

Para 55. Keeping the above conceptual aspect in mind, we find that Section 13(4) of the NPA Act proceeds on the basis that the borrower, who is under a

liability, has failed to discharge his liability within the period prescribed u/s 13(2), which enables the secured creditor to take recourse to one of the measures, namely, taking possession of the secured assets including the right to transfer by way of lease, assignment or sale for realising the secured assets. Section 13(4-A) refers to the word "possession" simpliciter. There is no dichotomy in Sub-section (4-A) as pleaded on behalf of the borrowers. Under Rule 8 of the 2002 Rules, the authorised officer is empowered to take possession by delivering the possession notice prepared as nearly as possible in Appendix IV to the 2002 Rules. That notice is required to be affixed on the property. Rule 8 deals with sale of immovable secured assets. Appendix IV prescribes the form of possession notice. It inter alia states that notice is given to the borrower who has failed to repay the amount informing him and the public that the bank/FI has taken possession of the property u/s 13(4) with Rule 9 of the 2002 Rules. Rule 9 relates to time of sale, issue of sale certificate and delivery of possession. Rule 9(6) states that on confirmation of sale, if the terms of payment are complied with, the authorised officer shall issue a sale certificate in favour of the purchaser in the form given in Appendix V to the 2002 Rules. Rule 9(9) states that the authorised officer shall deliver the property to the buyer free from all encumbrances known to the secured creditor or not known to the secured creditor.

Section 14 of the NPA Act states that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred, the secured creditor may, for the purpose of taking possession, request in writing to the District Magistrate to take possession thereof. Section 17(1) of NPA Act refers to right of Appeal. Section 17(3) states that if the DRT as an Appellate Authority after examining the facts and circumstances of the case comes to the conclusion that any of the measure u/s 13(4) taken by the secured creditor are not in accordance with the provisions of the Act, it may by order declare that the recourse taken to any one or more measures is invalid, and consequently, restore possession to the borrower and can also restore management of the business of the borrower. Therefore, the scheme of Section 13(4) read with Section 17(3) shows that if the borrower is dispossessed, not in accordance with the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante. Therefore, it cannot be said that if possession is taken before the confirmation of sale, the rights of the borrower to set the dispute adjudicated upon is defeated by the authorised officer taking possession. As stated above, the NPA Act provides for recovery of possession by post-judicatory process, therefore, to say that, the rights of the borrower would be defeated without adjudication would be erroneous. Rule 8, undoubtedly, refers to sale of immovable secured asset. However, Rule 8(4) indicates that where possession is taken by the authorised officer before issuance of sale certificate under Rule 9, the authorised officer shall take steps for preservation and protection of secured assets till they are sold or otherwise disposed of u/s 13(8), if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the creditor.

before the date fixed for sale or transfer, the asset shall not be sold or transferred. The costs, charges and expenses referred to in Section 13(8) will include costs, charges and expenses which the authorised officer incurs for preserving and protecting the secured assets till they are sold or disposed of in terms of Rule 8(4). Thus, Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Till the time of issuance of sale certificate, the authorised officer is like a Court receiver under Order XL. Rule 1, Code of Civil Procedure. 1908. The Court receiver can take symbolic possession and in appropriate cases where the Court receiver finds that a third party interest is likely to be created overnight, he can take actual possession even prior to the decree. The authorised officer under Rule 8 has greater powers than even a Court receiver as security interest in the property is already created in favour of the banks/FIs. That interest needs to be protected. Therefore, Rule 8 provides that till issuance of the sale certificate, under Rule 9, the authorised officer shall take such steps as he deems fit to preserve the secured asset. It is well settled that third party interests are created overnight and in very many cases those third parties take up the defence of being a bona fide purchaser for value without notice. It is these types of disputes which are sought to be avoided by Rule 8 read with Rule 9 of the 2002 Rules. In the circumstances, the drawing of dichotomy between symbolic and actual possession does not find place in the scheme of the NPA Act read with the 2002 Rules.

(Emphasis supplied)

7. In *S. Shameem v. The City Police Commissioner* CDJ 2005 Kerala High Court 638, a Division Bench of Kerala High Court has held that in respect of the transactions governed by SARFAESI Act, the overriding provisions effectively nullify the rights normally admissible even to a tenant as available under the Rent Control laws. In paragraphs 13 and 14 the Bench observed as follows:

Under Section 13(4) of Securitisation Act, in case the borrower fails to discharge his liability, the secured creditor is authorised to take recourse to the measures stipulated by the Section. This is in recognition of the provisions of the Act that any security interest created in favour of the secured creditor may be enforced without the intervention of the Court or Tribunal. Thus, a creditor is entitled to 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. The right also includes taking over management of the secured assets by right to transfer by way of lease, assignment or sale. The appointment of a person to manage the secured assets, the possession of which has been taken over by the secured creditor is also contemplated. Sub-section (6) also lays down that any transfer of secured asset after taking possession thereof shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

The only circumstance that the guarantor (third respondent herein) was the owner of the secured asset need not saddle him with any disability. In any case,

the Act does not provide for any such restriction. By the operation of the Section, the transfer brings with it all the proprietary rights that are usually available in respect of the holding. Although it is contended by Sri Jayakumar that so far as a tenanted premises, to which provisions of the Kerala Buildings (Lease and Rent Control) Act applies, the tenancy could have been terminable only in the manner authorised by the said law, we do not think the above argument can have any relevance in view of Section 35 of Securitisation Act. The provisions of the Securitisation Act shall have effect notwithstanding anything in consistent therewith contained in any other law for the time being in force. In respect of transactions governed by the said Act, the overriding provisions effectively nullify the rights normally admissible even to a tenant, as available under the Rent Control Act, as it can be only subservient to a later Central enactment.

(Emphasis supplied)

8. In *Sanjeev Bansal v. Oman International Bank SAOG* 2006 (4) BC 299 (DB) Delhi High Court, a similar contention was raised by the petitioner therein that he being a tenant and in physical possession of the mortgaged property is protected under the provisions of the Delhi Rent Control Act and cannot be dispossessed without taking recourse to the provisions of the Delhi Rent Control Act. Repelling this contention the Court held that the protection afforded by the Rent Control Act to a tenant is from the landlord of the premises and the landlord of the premises cannot recover possession from the tenant unless he takes recourse to any of the grounds as available to him under Rent Control Act and the right of the tenant is fully protected notwithstanding anything contrary contained in any other law or contract. This protection is however not available against the mortgagee who seeks to enforce his right under the SARFAESI Act against the principal borrower who had mortgaged the property in question by duly and validly executing the memorandum of mortgage in favour of the mortgagee. The Court further held that Section 65-A of the Transfer of Property Act clearly mandates that the duration of lease to be executed by the mortgager cannot exceed 3 years. The Court therefore, concluded in paragraph 6 as follows:

Manifestly the said unregistered lease was created for the alleged unlimited period through unregistered lease deed in complete contravention of Section 65-A of the Transfer of Property Act as per the said provision of Section 65-A, the lessee can enjoy the protection if the lease is created by the mortgagor in conformity with the mandate of requirements laid down in Section 65-A of Transfer of Property Act and not otherwise. Neither the mortgagor nor the lessee can defeat the right of mortgagee and no lessee can claim any protection unless his tenancy is as per the requirements of Section 65-A of Transfer of Property Act.

9. On a plain reading of the observations made in *Transcore* case it is clear that the bank/FI is entitled to take actual possession of the secured assets from the borrower or from any other person in terms and Section 13(4) of the SARFAESI Act. Any transfer of secured assets after taking possession of the same by the bank/FI shall vest in the transferee all rights in relation to the secured assets as

if the transfer has been made by the owner of such secured assets. Any party aggrieved by such dispossession will have to take recourse to approaching the DRT u/s 17(4) of the SARFAESI Act. If the party is dispossessed, not in accordance with the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante. By virtue of Section 17(4) read with Section 35 of the SARFAESI Act, if in a given case the measures undertaken by the secured creditor u/s 13(4) come in conflict with the provisions of any State law, then notwithstanding to such conflict, the provisions of Section 13(4) shall override the local law. Section 13(13) of the SARFAESI Act operates as an attachment/injunction restraining the borrower from disposing of the secured assets and therefore, any tenancy created after such notice would be null and void. Any tenancy created by the mortgager after the mortgage in contravention of Section 65-A would not be binding on the bank/ FI, and in any event such tenancy rights shall stand determined once action u/s 13(4) has been taken by the bank/ FI. When the petitioner is claiming a tenancy prior to the creation of mortgage and such tenancy is disputed by the bank the remedy of the petitioner is to approach DRT by way of an application u/s 17 of the SARFAESI Act to establish its rights.

10. In our opinion, the decision in *Krishnan Singh Rana v. Haryana State Industrial Development Corporation* 2000 (4) CTC 767 : 2000 (Supp) MLJ63, is not of much help to Mr. Krishan as the scheme of the SARFAESI Act is entirely different from that of the State Financial Corporations Act. The other decision cited by Mr. Krishan in *C.B. Gautam Vs. Union of India and Others*, , is also equally inapplicable to the case in hand.

11. In the result, the writ petition is dismissed with liberty to the petitioner to approach the DRT for appropriate reliefs. If the petitioner files an application before the DRT within two weeks from the date of receipt of a copy of this order, then the DRT shall consider the petitioner's application on its own merits without raising any objection on the ground of limitation. Consequently, the connected W.P.M.P. is closed.