

(2016) 04 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : CWP No. 627 of 2016

Tube Expansion and Equipments Pvt. Ltd.	APPELLANT
Vs	
District Magistrate, District Solan and Others	RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 200

Citation : (2016) 04 SHI CK 0029

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : N.K. Sood, Senior Advocate and Sumit Raj Sharma, Advocate, for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan, Romesh Verma, Additional Advocate Generals and J.K. Verma, Deputy Advocate General, for the Respondent

Final Decision : Disposed off

Judgement

Tarlok Singh Chauhan, J.—1. This writ petition has been filed with the following prayer:--

"a. That the order of possession passed by the Respondent No. 1 on application of Respondent No. 2 dated 15.10.2015 Annexure P-9 be set aside and quashed."

2. The petitioner Company was allotted lease hold rights for a period of 95 years in regard to Industrial Plot No. 32, Sector-1, Industrial Area, Parwanoo, by virtue of lease deed dated 29.3.1973 by H.P. Housing and Urban Development Authority (for short "HIMUDA"). Respondent No. 3, who also happens to be one of the vendors for the petitioner availed credit limit from the Bank of Baroda (for short the "Bank"), respondent No. 2 herein and the petitioner stood guarantor by executing a deed of mortgage without possession in favour of the bank on 22.5.2008.

3. On 8.11.2010 supplemental memorandum of entry was executed by the petitioner Company towards mortgage in favour of the bank. Later, on 2.9.2011 a tripartite agreement was executed between the petitioner, respondent No. 3 and HIMUDA, thereby leasing out a part of the industrial plot No. 32 in favour of respondent No. 3.

4. Subsequently, the accounts of respondent No. 3 were declared as Non-Performing Assets (for short "NPA"). Consequently, the bank on 2.7.2014 issued notice to the petitioner Company under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI" Act), bringing to its notice the default in payment made by respondent No. 3. The petitioner Company was called upon to settle the accounts by remitting the entire amount due i.e. Rs. 13,61,32,996.01 within sixty days, failing which the property of the petitioner lying mortgaged with the bank shall be possessed and put to auction.

5. The petitioner is now aggrieved by the order passed by the District Magistrate, Solan, (Annexure P-9), whereby the Tehsildar Kasauli, District Solan has been directed to handover the possession of the secured assets to the secured creditor, i.e. respondent No. 2.

6. Mr. N.K. Sood, Senior Advocate, assisted by Mr. Sumit Raj Sharma, Advocate has vehemently argued that once respondent No. 3 had filed objections to the notice under Section 13(2) of the SARFAESI Act, then no further action in the matter can be taken till and so long the decision thereof is not objectively taken by respondent No. 2 bank, in terms of judgment passed by Hon'ble Supreme Court in Keshav Lal Khemchand & Sons (P) Ltd. v. Union of India , (2015) 4 SCC 770.

7. He has further argued that no action under Section 14 of the SARFAESI Act could have been taken by the District Magistrate, unless the owner of the property i.e. HIMUDA had been arrayed as a party, since respondent No. 3 is holding the property in question under the lease agreement. He in support of this submission has placed reliance on the decision of the Hon'ble Supreme Court in Harshad Goverdhan Sondagar Versus International Assets Reconstruction Company Limited and others , (2014) 6 SCC 1.

8. Before considering the aforesaid submissions, it needs to be re-asserted that the SARFAESI Act is a self contained mechanism and the aggrieved party has to invoke only the remedies provided by the SARFAESI Act. This was so held by this Court in CWP No. 2783 of 2015, titled SPS Steels Rolling Mills Ltd. Versus State of Himachal Pradesh and others, decided on 25th June, 2015, in the following terms:--

"5. It appears that action has been drawn against the writ petitioner in terms of Section 13 (4) of The Securitisation and Reconstruction of Financial Assets and Enforcements of Security Interest Act, 2002 (for short "SARFAESI Act"). SARFAESI Act is self-contained mechanism and the aggrieved party has to invoke

the remedies provided by the SARFAESI Act. The writ petitioner has remedy of appeal as per the mandate of Section 17 of the SARFAESI Act. It is apt to reproduce relevant portion of Section 17 of the SARFAESI Act herein:

"17. Right to appeal. - (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation. - For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.

..... "

6. The Apex Court in a series of judgments in the cases titled as United Bank of India versus Satyawati Tondon and others, reported in (, 2010) 8 Supreme Court Cases 110; Union Bank of India and another versus Panchanan Subudhi, reported in (, 2010) 15 Supreme Court Cases 552; Indian Bank versus M/s. Blue Jaggers Estate Ltd. & Ors., reported in 2010 AIR SCW 4751; Kanaiyalal Lalchand Sachdev and others versus State of Maharashtra and others, reported in (, 2011) 2 Supreme Court Cases 782; Standard Chartered Bank versus V. Noble Kumar and others with Senior Manager, State Bank of India and another versus R. Shiva Subramaniam and another, reported in (, 2013) 9 Supreme Court Cases 620; J. Rajiv Subramaniam and another versus Pandiyas and others, reported in (, 2014) 5 Supreme Court Cases 651; and Keshavlal Khemchand and sons Private Limited and others versus Union of India and others, reported in (, 2015) 4 Supreme Court Cases 770, has discussed the issue and held that the writ petition is not maintainable.

7. This Court in CWP No. 4779 of 2014, titled as M/s. Indian Technomac Company Ltd. versus State of H.P. & ors., decided on 04.08.2014, held that when an alternate remedy is available, writ petition is not maintainable. The said judgment of this Court has been upheld by the Apex Court on 22.08.2014 in SLP (C) No. 22626-22641 of 2014.

8. The Apex Court in a latest judgment in the case titled as Union of India and others versus Major General Shri Kant Sharma and another, reported in (, 2015) AIR SCW 2497, held that when an alternate efficacious remedy is available to the writ petitioner, he should not be allowed to give a slip to law.

9. The Apex Court in the case titled as Sadashiv Prasad Singh versus Harender Singh and others, reported in , (2015) 5 Supreme Court Cases 574, held that the writ petition is not maintainable when a remedy of appeal is available to the writ petitioner. It is apt to reproduce para 23.3 of the judgment herein:

"23.3. Thirdly, a remedy of appeal was available to Harender Singh in respect of the order of the Recovery Officer assailed by him before the High Court under Section 30, which is being extracted herein to assail the order dated 5-5-2008:

"30. Appeal against the order of Recovery Officer.--(1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt on an appeal under Sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)."

The High Court ought not to have interfered with in the matter agitated by Harender Singh in exercise of its writ jurisdiction. In fact, the learned Single Judge rightfully dismissed the writ petition filed by Harender Singh."

10. Learned counsel for the writ petitioner has placed reliance on the judgment rendered by the Apex Court in a case titled as KSL and Industries Limited versus Arihant Threads Limited and others, reported in , (2015) 1 Supreme Court Cases 166, is not applicable in the facts and circumstances of this case.

11. Having said so, the writ petition is not maintainable."

9. Once the SARFAESI Act is held to be a self contained mechanism, the question would, therefore, arise as to whether the writ petition is maintainable, especially when the petitioner has an alternative and efficacious remedy available to it under Section 17 of the SARFAESI Act. This question too has recently been considered in detail by us in CWP No. 618 of 2016, titled M/s. Cecil Instant Power Company Versus Punjab National Bank and others, decided on 23rd March, 2016, wherein it was held:--

"11. The question relating to entertaining of petitions under Articles 226 and 227 of the Constitution of India against recovery of dues to banks has been under consideration before the Hon"ble Supreme Court from time to time.

12. In the case of Punjab National Bank v. O.C. Krishnan and others , (2001) 6 SCC 569, the Hon"ble Supreme Court held that where there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the constitutional scheme. This would be evident from the observations contained in paras 5 and 6 of the judgment which read thus:

"5. In our opinion, the order which was passed by the Tribunal directing sale of

mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this last track procedure cannot be allowed to be derailed either "b" taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision exists under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

13. In *United Bank of India v. Satyawati Tondon and others*, (2010) 8 SCC 110 after referring to various precedents on the subject, the Hon'ble Supreme Court held that Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest as would be evident from the following observations:

"12. Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest. Sub-section (1) thereof lays down that notwithstanding anything contained in Sections 69 or 69-A of the Transfer of Property Act, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act. Subsection (2) of Section 13 enumerates first of many steps needed to be taken by the secured creditor for enforcement of security interest. This sub-section provides that if a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt and his account in respect of such debt is classified as non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of the notice with an indication that if he fails to do so, the secured creditor shall be entitled to exercise all or any of its rights in terms of Section 13(4).

13. Sub-section (3) of Section 13 lays down that notice issued under Section 13(2) shall contain details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank or financial institution. Sub-section (3-A) of Section 13 lays down that the borrower may make a representation in response to the notice issued under Section 13(2) and

challenge the classification of his account as non-performing asset as also the quantum of amount specified in the notice. If the bank or financial institution comes to the conclusion that the representation/objection of the borrower is not acceptable, then reasons for non- acceptance are required to be communicated within one week.

14. Sub-section (4) of Section 13 specifies various modes which can be adopted by the secured creditor for recovery of secured debt. The secured creditor can take possession of the secured assets of the borrower and transfer the same by way of lease, assignment or sale for realising the secured assets. This is subject to the condition that the right to transfer by way of lease, etc. shall be exercised only where substantial part of the business of the borrower is held as secured debt. If the management of whole or part of the business is severable, then the secured creditor can take over management only of such business of the borrower which is relatable to security. The secured creditor can appoint any person to manage the secured asset, the possession of which has been taken over. The secured creditor can also, by notice in writing, call upon a person who has acquired any of the secured assets from the borrower to pay the money, which may be sufficient to discharge the liability of the borrower.

15. Sub-section (7) of Section 13 lays down that where any action has been taken against a borrower under sub-section (4), all costs, charges and expenses properly incurred by the secured creditor or any expenses incidental thereto can be recovered from the borrower. The money which is received by the secured creditor is required to be held by him in trust and applied, in the first instance, for such costs, charges and expenses and then in discharge of dues of the secured creditor. Residue of the money is payable to the person entitled thereto according to his rights and interest. Sub-section (8) of Section 13 imposes a restriction on the sale or transfer of the secured asset if the amount due to the secured creditor together with costs, charges and expenses incurred by him are tendered at any time before the time fixed for such sale or transfer.

16. Sub-section (9) of Section 13 deals with the situation in which more than one secured creditor has stakes in the secured assets and lays down that in the case of financing a financial asset by more than one secured creditor or joint financing of a financial asset by secured creditors, no individual secured creditor shall be entitled to exercise any or all of the rights under sub-section (4) unless all of them agree for such a course.

17. There are five unnumbered provisos to Section 13(9) which deal with pari passu charge of the workers of a company in liquidation. The first of these provisos lays down that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of Section 529-A of the Companies Act, 1956. The second proviso deals with the case of a company being wound up on or after the commencement of this Act. If the secured creditor of such company opts to realise its security instead of relinquishing the same and proving its debt under Section 529(1) of

the Companies Act, then it can retain sale proceeds after depositing the workmen's dues with the liquidator in accordance with Section 529-A.

18. The third proviso requires the liquidator to inform the secured creditor about the dues payable to the workmen in terms of Section 529-A. If the amount payable to the workmen is not certain, then the liquidator has to intimate the estimated amount to the secured creditor. The fourth proviso lays down that in case the secured creditor deposits the estimated amount of the workmen's dues, then such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited with the liquidator. In terms of the fifth proviso, the secured creditor is required to give an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

19. Sub-section (10) of Section 13 lays down that where dues of the secured creditor are not fully satisfied by the sale proceeds of the secured assets, the secured creditor may file an application before the Tribunal under Section 17 for recovery of balance amount from the borrower. Sub-section (11) states that without prejudice to the rights conferred on the secured creditor under or by this section, it shall be entitled to proceed against the guarantors or sell the pledged assets without resorting to the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets.

20. Sub-section (12) of Section 13 lays down that rights available to the secured creditor under the Act may be exercised by one or more of its officers authorised in this behalf. Sub-section (13) lays down that after receipt of notice under sub-section (2), the borrower shall not transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice without prior written consent of the secured creditor.

21. In terms of Section 14, the secured creditor can file an application before the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction the secured asset or other documents relating thereto are found for taking possession thereof. If any such request is made, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is obliged to take possession of such asset or document and forward the same to the secured creditor.

22. Section 17 speaks of the remedies available to any person including borrower who may have grievance against the action taken by the secured creditor under sub-section (4) of Section 13. Such an aggrieved person can make an application to the Tribunal within 45 days from the date on which action is taken under that sub-section. By way of abundant caution, an Explanation has been added to Section 17(1) and it has been clarified that the communication of reasons to the borrower in terms of Section 13(3-A) shall not constitute a ground for filing application under Section 17(1).

23. Sub-section (2) of Section 17 casts a duty on the Tribunal to consider whether the measures taken by the secured creditor for enforcement of security

interest are in accordance with the provisions of the Act and the Rules made thereunder. If the Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that the measures taken by the secured creditor are not in consonance with sub-section (4) of Section 13, then it can direct the secured creditor to restore management of the business or possession of the secured assets to the borrower. On the other hand, if the Tribunal finds that the recourse taken by the secured creditor under subsection (4) of Section 13 is in accordance with the provisions of the Act and the Rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor can take recourse to one or more of the measures specified in Section 13(4) for recovery of its secured debt.

24. Sub-section (5) of Section 17 prescribes the time-limit of sixty days within which an application made under Section 17 is required to be disposed of. The proviso to this sub-section envisages extension of time, but the outer limit for adjudication of an application is four months. If the Tribunal fails to decide the application within a maximum period of four months, then either party can move the Appellate Tribunal for issue of a direction to the Tribunal to dispose of the application expeditiously.

25. Section 18 provides for an appeal to the Appellate Tribunal.

26. Section 34 lays down that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Tribunal or Appellate Tribunal is empowered to determine. It further lays down that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken under the SARFAESI Act or the DRT Act. Section 35 of the SARFAESI Act is substantially similar to Section 34(1) of the DRT Act. It declares that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

The Hon"ble Supreme Court thereafter took serious note of the fact that the High Courts overlooked the settled law and continued to entertain petitions under Article 226 of the Constitution when an effective remedy was available to the aggrieved person and this rule applied with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of the banks and other financial institutions. It shall be apt to reproduce the following observations as contained in paragraph 43:

"43. 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."

Not only this, the Hon"ble Supreme Court showed its serious concern that despite repeated pronouncements by it, the High Courts were still ignoring the availability of statutory remedies under the DRT and the SARFAESI Act and exercising jurisdiction under Article 226 of the Constitution, by passing orders which had serious adverse impact on the rights of the bank and other financial institutions to recover their dues as would be evident from the following observations:

"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

14. In line with the aforesaid observation, the Hon"ble Supreme Court in *Kanaiyalal Lalchand Sachdev and others v. State of Maharashtra and others* , (2011) 2 SCC 782 held as under:

"25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal under Section 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."

10. Adverting to the first contention raised by the petitioner by placing reliance upon the judgment of Hon"ble Supreme Court in *Keshav Lal Khemchand & Sons (P) Ltd.* (supra), wherein it has been held that the express language of Section 13(3A) of the Act obligates the secured creditor to examine representation/objection, if any, made by the borrower on receipt of notice contemplated under Section 13(2) and communicate reasons to the borrower, if such representation is not accepted by the secured creditor. Suffice it to say that this ground is not available to the petitioner. Firstly the petitioner is not the borrower and secondly even the representation under Section 13(2) has not been filed at its instance, but has admittedly been filed by respondent No. 3. Therefore, if at all any person

can be considered to be aggrieved by non-communication of the decision it would be respondent No. 3 and not the petitioner.

11. That apart, the petitioner has even failed to place on record the objections, so submitted by respondent No. 3. Yet, regardless of the same, we on the basis of the material placed on record would rather assume that the objections have been decided because it is only thereafter that the further proceedings under Section 14 of the SARFAESI Act have been resorted to by respondent No. 2.

12. Coming to the other contention regarding exception being taken to the notice issued by the District Magistrate, even here it is either HIMUDA or respondent No. 3, who alone can be considered to be the parties aggrieved and the petitioner cannot be permitted to espouse the cause of either the HIMUDA or respondent No. 3. Even the ratio of the judgment of the Hon''ble Supreme Court in Harshad Goverdhan Sondagar's case, upon which much reliance has been placed by the petitioner, would again not be attracted to the facts of the present case, as the case relates to third party objections, wherein the lessee had approached the Hon''ble Supreme Court for the redressal of his grievances. The Hon''ble Supreme Court categorically held that since the Debt Recovery Tribunal has power to restore possession of secured assets only to the borrower vide Section 17(3), any such lessee of borrower whose property is intended to be sold would have no remedy under Section 17 to protect his possession under a valid or subsisting lease, therefore, the remedy of such lessee would only be under Articles 226 and 227 of the Constitution. Whereas, in the instant case, as already observed above, neither respondent No. 3, who is the alleged lessee nor HIMUDA who is the lessor have approached the Court. The petitioner is not a person aggrieved and therefore, has no locus standi to question the order of the District Magistrate.

13. That apart, we otherwise find no justifiable reason to entertain the writ petition preferred against notice issued under Sections 13(2) or 13 (4) of the SARFAESI Act and also against the alleged non-communication of reasons by the secured creditor to the borrower about non-acceptance of the representation or objection. Such communication cannot be considered to be an order or an action adversely affecting the borrower, but can only be considered to be a step forward for taking recourse to one or more measures provided under Section 13(4) of the SARFAESI Act.

14. It is only when such measure under Section 13(4) of the Act are taken that the borrower is aggrieved and even then the borrower can take recourse to the provisions of appeal provided under Section 17 of the SARFAESI Act, but in that event also a writ under Article 226 of the Constitution of India at the stage of notice under Section 13(2) or at the stage of communication of rejection of representation/objection under Section 13(3A) of the Act is not maintainable, as this would hamper the process of recovery, thereby defeating the very purpose of enactment of the SARFAESI Act.

15. At this stage, we may also notice that the respondent bank has already taken symbolic possession and then after possession, notice would be required to be issued under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, prohibiting the borrower from creating any encumbrance or third party right. In the said notice, public at large is informed not to deal with the property after issuance of notice. If the property in question is eventually bought by way of sale or auction or otherwise, the petitioner would still be entitled to 30 days notice to place its representation by clearing the outstanding loan amount. The stage is yet to come. If the petitioner is still aggrieved, the remedy available to it is under Section 17 of the Act and not by way of this writ petition.

16. Since we have held the petition to be not maintainable, we are, therefore, not entering into and deciding the other questions, more particularly regarding the liability of the petitioner who is the guarantor and not the principal debtor. Therefore, leaving all questions of fact and law open, we decline to entertain the writ petition and the same is dismissed as such. However, it shall be open to the petitioner to avail the remedy provided under the SARFAESI Act and raise all contentions including the contention raised in this petition. It is further made clear that the time spent in this litigation shall not come in the way of the petitioner, while computing limitation.

With the aforesaid observations, the petition is disposed of, so also the pending application(s), if any.