

(2015) 04 DEL CK 0255

In the Delhi High Court

Case No : WP (C) 4021/2015 & CM 7192 of 2015

Yashwant Singh and Others

APPELLANT

Vs

Indian Bank and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), 13(3A), 13(4), 17, 17(3)

Citation : (2015) 04 DEL CK 0255

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Mohit Chaudhary and Damini Chawla, for the Appellant; Brijesh Kumar Tamber, Arshad Chaudhary and Quaisar Ali, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.—There are several reliefs sought for in the present writ petition. Shorn of verbiage the main grievance of the petitioners is, that the respondent no.1,i.e., the Indian Bank, has taken recourse to the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 2002 Act), [as amended by the Act of 2012] without the jurisdictional facts obtaining in the matter. In other words, the petitioners claim that the regime provided under the 2002 Act could not be triggered till such time the subject loan account was classified as a Non-Performing Asset (in short NPA).

1.1. This submission is based on the provisions of Section 13(2) of the 2002 Act. As to when an asset can be declared as an NPA, reliance is placed by the petitioners on the two Master Circular issued by the Reserve Bank of India (RBI) dated 30.06.2012 and 30.06.2013.

1.2. This plea is supported by the petitioners based on the fact that in an earlier round, it had approached this court for the same purpose by way of a writ

petition under Article 226 of the Constitution. The said writ petition was numbered as WP(C) 2961/2013. This writ petition was withdrawn by the petitioners who are represented by the very same counsel, who appears for them today, i.e., Mr. Mohit Chaudhary, with liberty to approach the Debt Recovery Tribunal (DRT).

2. Undoubtedly, the petitioners thereafter approached the DRT, which according to the petitioners passed an order dated 23.10.2013 in their favour. By this order, the DRT, inter alia, held that the classification of the account as NPA, was bad, and consequently directed the respondent no.1 bank to revise the statement of account; by deleting all objectionable entries; taking away capitalization effect on penal interest; and re-scheduling the instalments and, in that process fix the tenure of re-payment upto 31.05.2019, with current rate of interest, sans penal interest.

2.1. The entire exercise was to be carried out within a period of thirty days, with the obligation put on the petitioners, to continue to make payments as per the revised schedule.

3. It is the case of the petitioners that the loan account was re-structured on 10.09.2014, whereby they were asked to make payments by 15th day of each month. Therefore, according to the petitioners, the first quarter would have ended on 31.12.2014 and, thus, if this date is taken to be the correct date, in terms of clause 2.1.3 of Master Circular dated 30.06.2012, the said account could be declared as an NPA only at the end of the ninety day period, which, would end on 31.03.2015 and, that too, only if, the interest due and charged was not serviced fully, within the said time frame.

3.1. The other contention is, that in any event the revised amount calculated by respondent no.1 bank, pursuant to the order of the DRT dated 23.10.2013, is wrongly calculated. In this behalf, it is contended that respondent no.1 bank has not taken into account the contractual rate of interest and furthermore, has not given credit for amounts paid till 01.12.2009, when it was declared as an NPA for the first time.

3.2. The grievance is also made that the respondent bank had not disclosed their Bench Prime Lending Rate (BPLR) subsisting since the date of the disbursement of the loan, i.e. 04.03.2005, which according to the petitioners is the rate applicable for calculation of interest.

4. It is in this context that the petitioners have contended that respondent no.1 bank, via its authorized officer, i.e., respondent no.2, could not have issued a notice dated 23.01.2015 under Section 13(2) of the 2002 Act. I may only note that the petitioners also say that they came to know about the said notice only on 10.03.2015, that too, via a third party, one, M/s. Aggarwal and Associates, who offered their services with respect to the proceedings initiated against them by respondent no.1 bank under Section 13(2) of the 2002 Act.

4.1. What is not in dispute though, is that, the petitioners filed their objections to the aforementioned notice under Section 13(3A) of the 2002 Act. These objections are dated 13.03.2015.

5. As per the requirement of the 2002 Act, respondent no.1 bank dealt with objections raised by the petitioners. A decision in that behalf was rendered by respondent no.2, on 30.03.2015.

5.1. By the said decision, respondent no.1 bank has, inter alia, communicated to the petitioners that as per the decision of the DRT dated 23.10.2013, it re-structured the subject loan account, and revised the statement of account, as directed.

5.2. It is further noted in the said decision that this fact was communicated to the petitioners on 01.09.2014 and, once again, on 10.09.2014. Furthermore, a specific observation has been made that letter dated 01.09.2014, along with a statement of account, was dispatched to the petitioners by registered post, on their address, available on record. In addition, it was communicated that a letter dated 10.09.2014, along with the statement of account was received in person (I presume by petitioner no.1 to whom the decision is directed), on that day itself i.e., 10.09.2014.

5.3. While, it is noted that the petitioners had raised objections to the statement of account, the observation is that no specific error could be pointed out by the petitioners, in the statement of account.

6. What is more pertinent, and a fact which was not disputed before me by the counsel for the petitioners, was that, an application bearing No. 142/2014, was filed by the petitioners, in the proceedings bearing No. TSA 17/2013, which were disposed by the DRT, as indicated above, vide order dated 23.10.2013. This application was dismissed by the DRT on 30.01.2015. While dismissing the application, the DRT made the following observations:

"..2. The grievance of the applicant is that respondent failed to comply the direction and it was repeatedly brought to the notice of the respondent through letters. Since the bank failed to comply the direction applicant has filed this MA to give directions to the respondent bank to recalculate the interest in the two term loans, to reconcile the statement of account of the bank with the statement of account obtained by the applicant through their Chartered Accountant and to direct the respondent to disclose the BPLR from 04.03.2005 till this date.

3. The Ld. counsel for the respondent bank submits that the applicant stopped payment, thereafter the account again became NPA, the loan has been recalled and an OA has been filed before this Tribunal. In such circumstances, it is stated that crystallization of the amount outstanding would be a matter to be decided in OA and not a matter to be decided in continuation with the SA that has attained finality. The counsel also has pointed out that the rate of BPLR as far as respondent bank is concerned is a document available in public domain and no

direction need be issued to this effect. The counsel is correct. The document is available over net in the website of the bank and if the applicant is so particular he may get information for which a direction of this Tribunal is not called for. Now the bank has filed a statement of account along with the OA. The applicant has filed a statement of account through his Chartered Accountant and it is a matter to be adjudicated in the OA and I feel it not proper to decide on the correctness of the statement in this MA. Certainly, the applicant shall have all the liberty to challenge the statement of account and he can also take all the contentions to prove that the amount claimed is not the actual amount outstanding. That liberty is available with the applicants.

4. The applicant has stated that as on this date he has paid the sum of Rs.6,41,65,543/-. The counsel for the applicant submits that as per his calculation the amount outstanding would be Rs.19,49,043/-. Since this is an admitted amount by the applicant he is directed to make payment of this amount to the respondent bank within 45 days and the respondent is directed to adjust this amount towards the debt due. At this juncture, counsel for the respondent submits that receipt of this amount would be without prejudice to their rights to take any action as per law.

5. In the above circumstances, I find that there is nothing further to be adjudicated in this SA because the bank has now already recalled the loan and they have claimed the amount due by filing an OA.

Any finding by me in this application would have an impact on the OA which is now pending before me and it may not be justifiable either in favour of the applicant or in respect of the respondent bank. All the observations made in this application are for disposal of this MA only but applicant shall have the liberty to challenge the statement of account relied upon by the respondent bank in claiming the amount in OA. Reserving that right the MA is closed.."

(emphasis is mine)

6.1. Admittedly, the petitioners have not paid the sum of Rs. 19,49,043/-, as directed by the DRT, vide order dated 30.01.2015.

7. In the background of the aforesaid facts, Mr. Chaudhary, learned counsels for the petitioners submitted that the writ petition was the only efficacious remedy available to the petitioners, having regard to the fact that respondent no.1 bank had wrongly classified the loan accounts of petitioner no.1 as NPAs. In support of this submission, Mr. Chaudhary sought to place reliance upon clause 2.1.3 of the Master Circular dated 30.06.2012 and the letter dated 28.10.2014 issued by respondent no.1 bank, whereby intimation was given that the subject loan accounts had been restructured.

7.1. Mr. Chaudhary said that against a loan of Rs. 5.08 crores, the petitioner no.1 had already paid a sum of Rs. 6,41,65,543/- and thereafter the action of respondent no.1 bank was manifestly unfair.

7.2. In support of his submissions, Mr. Chaudhary, relied upon the following judgements: *Sravan Dall Mill P. Limited Vs. Central Bank of India and Another*, AIR 2010 AP 35 : (2009) 6 ALD 615 : (2010) 1 ALT 321 : (2010) 2 BC 96 and *Stan Commodities Pvt. Ltd. Vs. Punjab and Sind Bank and Others*, AIR 2009 Jhar 14 : (2008) 56 BLJR 2914 : (2008) 4 JCR 162 .

8. On the other hand, learned counsel for respondent no.1 bank argued that the loan given to petitioner no.1, contrary to what has been articulated in the petition, was not simplicitor a housing-loan, but was instead a term loan. That apart, the counsel reiterated the fact that no payment had been made by petitioner no.1 vis-a-vis the subject loan accounts since 01.09.2014, and consequently, an amount in excess of Rs. 4.63 crores was due and payable. The learned counsel further submitted that the petitioners' contention that the subject accounts were not NPAs was incorrect, as the accounts which were restructured, were to be liquidated in 66 monthly instalments commencing from 15.10.2014, with interest to be paid as and when charged. It was stated that the interest for the month of September, 2014 was payable on 01.10.2014, and because it was not paid for 90 days, the subject accounts were classified as NPAs on 31.12.2014. It was, therefore, the learned counsel's contention that the notice dated 23.01.2015 issued under Section 13(2) of the 2002 Act, was thus, in order.

8.1. The learned counsel for respondent no.1 bank went on to say that the notice dated 23.01.2015 was dispatched by registered post on 24.01.2015. This notice was returned on 29.01.2015 and 03.02.2015 with the remark that the addressee was out of station for a long period of time. The counsel submitted that it was in these circumstances that respondent no.1 bank published the notice under Section 13(2) in the "Business Standard", on 19.02.2015.

8.2. More pertinently, the learned counsel for respondent no.1 bank brought to the notice of the court that the petitioner no.1 in the letter dated 22.09.2014 has, contrary to what is contended before this court, accepted the fact that the revised statement of accounts was supplied to him on 10.09.2014. It was thus contended that the petitioners' contention that they became aware of the 13(2) notice only on 10.03.2015, via a third party, is completely false.

8.3. Learned counsel for respondent no.1 bank also submitted that even in the letter dated 28.10.2014, it was clearly indicated to the petitioners that they should make repayments qua the subject accounts which were due from October, 2014, as fixed and deliberated in their earlier letter dated 01.09.2014.

8.4. Learned counsel for respondent no.1 bank submitted that in accordance with clause 2.1.2 sub-clause (i) of the RBI guidelines of the Master Circular dated 30.06.2012, a loan or an advance becomes an NPA when interest and/or principal remain overdue for a period of more than 90 days in respect of a term loan.

8.5. Learned counsel for respondent no.1 bank stated that undoubtedly in

petitioner no.1's case both interest and principal were overdue, and on completion of 90 days, which expired on 31.12.2014, the subject accounts became NPAs and, therefore, having been so classified, a notice dated 23.01.2015 was issued under Section 13(2) of the 2002 Act. Learned counsel submitted that the petitioners' counsel was wrongly relying upon clause 2.1.3 of the very same guidelines as that clause adverted to only "overdue interest" and did not refer to overdue "principal amount".

8.6. It was thus the submission of learned counsel of respondent no.1 bank that the judgements cited on behalf of the petitioners were clearly distinguishable on facts.

8.7. Counsel for respondent no.1 bank further relied upon the following judgements in support of his contention that this court ought not to entertain a petition under Article 226 of the Constitution in view of the remedies available to the petitioners under the 2002 Act. Messrs Digivision Electronics Ltd. vs. Indian Bank 2005 (4) BC 502 , Ravindra Agrawal Vs. Bank of India, (2003) 2 BC 235 : (2005) 123 CompCas 266 : (2005) 61 SCL 91 , City Palace Resorts Ltd. Vs. Union of India (UOI) and Others, AIR 2009 Ori 1 : (2008) CLT 63 Supp and Rajesh Kumar vs. Union of India and Ors. 2005 (2) BC 185.

9. Having heard the learned counsels for the parties and perused the record, what has emerged, is that, petitioner no.1 in March, 2005 had availed of multiple financial facilities. At the relevant time, petitioner no.1 was given two home loans, which were in the nature of term loans and one vehicle loan. Admittedly, the amount disbursed under the vehicle loan account stands paid.

9.1. At present, the controversy veers around two unpaid term loan accounts which were initially classified as NPAs by the respondent no.1 bank, on 01.12.2009. The respondent no.1 bank, consequently, had initiated proceedings under Section 13(2) and 13(4) of the 2002 Act.

9.2. As indicated above, the petitioners had approached this court by way of a writ petition bearing no. WP(C) No. 2961/2013, which was dismissed as withdrawn on 07.05.2013, since at that point in time, an application under Section 17 of the 2002 Act had been filed by the petitioners, which was pending consideration of the DRT.

9.3. The DRT vide order dated 23.10.2013 allowed the petitioners application and, inter alia, held that the classification of the subject accounts by respondent no.1 bank, as NPAs, was bad in law. Directions were issued by the DRT by the very same order to re-structure the re-payment schedule, in a manner, that the loan tenure extends till 31.05.2019. Further directions were also given for reversal of unauthorized debits; a facet to which I have made a reference above.

9.4. Suffice it to state that an appeal had been preferred with the Debt Recovery Appellate Tribunal (DRAT) by respondent no.1 bank, which was dismissed. The recourse to this legal remedy contributed to the delay in carrying out the

directions of the DRT.

9.5. It is the case of respondent no.1 bank that revised statement of accounts was dispatched to petitioner no.1 vide two letters dated 01.09.2014 and 10.09.2014. It is also the case of respondent no.1 bank that the first letter was sent by registered AD. This letter was, however, returned with the remark that the addressee was out of station for a long period.

9.6. In so far as the second letter is concerned, it is the stand of respondent no.1 bank that it was received by petitioner no.1 on 10.09.2014. While, the petitioners appear to deny this fact, the denial is clearly suspect, in view of the fact that petitioner no.1, in his letter dated 22.09.2014, has clearly made the following averment:

".... It is important to mention that the Bank was supposed to issue the corrected statement of A/c in accordance to the said judgement within 30 days from the date of the judgement i.e. 23.10.2013, but instead of that you delivered it to me on 10.09.2014...."

9.7. The fact that respondent no.1 bank sent a letter dated 28.10.2014, is also borne out from the record presently available. The caption of this letter itself makes a reference to its earlier letter dated 01.09.2014, and the petitioner no.1's letter dated 22.09.2014.

9.8. Consistent with its stand, respondent no.1 bank indicated to petitioner no.1 that it had in fact extended the tenure of the loan till March, 2020 as against May, 2019, as directed by the DRT. The respondent no.1 bank also asserted that the DRT, in its order dated 23.10.2013, had clearly accepted its contention that it had levied interest at the contractual rate. It is in this context that the respondent no.1 bank concluded its letter of 28.10.2014, with the following assertion:

".. We request you to honour the flexibilities extended and commence repayments in the account due from October 2014 as fixed and deliberated in our letter dt. 01.09.14..."

(emphasis is mine)

9.9. Thus in effect, respondent no.1 bank asserted that its revised statement of account was in line with the order of the DRT dated 23.10.2013. The respondent no.1 bank, therefore, clearly indicated to petitioner no.1 that amounts were due and payable w.e.f. October, 2014.

10. As noted above, petitioner no.1 had also tried his luck with DRT when, he filed M.A. 142/2014 in disposed of TSA 17/2013. The said MA was disposed of on 30.01.2014.

10.1. This MA was filed by the petitioner no.1 with the same grievance that the revised statement had been prepared by respondent no.1 bank contrary to the directions contained in the DRT's order dated 23.10.2013.

10.2. During the course of the arguments before the DRT, the respondent no.1 bank had clearly taken the position that since the petitioner no.1 had failed to make payments, as per the revised statement, the subject accounts had once again become an NPA, and therefore, the loan had been recalled.

10.3. The DRT was also informed that a consequent step of filing recovery proceedings, in the form of O.A., before it, had also been taken. It is in this context that the DRT disposed of the M.A. filed by petitioner no.1 vide order dated 30.01.2015. While disposing of the M.A. the DRT directed petitioner no.1 to pay at least what according to him, was the admitted outstanding amount, i.e., a sum of Rs. 19,49,043/-. A period of 45 days was given for the said purpose.

10.4. I may also note that the DRT in the concluding part of the order indicated that there was nothing further to be adjudicated in the S.A. as respondent no.1 bank had already recalled the loan and was claiming recovery of the amount due by having instituted an O.A. The relevant parts of this have already been extracted by me, in paragraph 6 above.

11. Therefore, clearly, in the given facts, according to respondent no.1 bank, amounts were due and payable by the petitioners as on October, 2014. The contention of the learned counsel for the petitioners, to the contrary, in my view, is not sustainable.

12. The question, therefore, is whether the subject loan accounts were NPAs since, admittedly, no amounts were paid at least till 31.12.2014. As per clause 2.1.2 of the Master Circular dated 30.06.2012, the subject accounts were correctly declared as NPAs. The relevant portion of the said guidelines is extracted hereinbelow:

"...2. DEFINITIONS

2.1. Non Performing Assets

2.1.1. xxxx

2.1.2. A non performing assets (NPS) is a loan or an advance where;

i. interest and/or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan....."

12.1. As would be evident, upon a perusal of the said clause, it takes into account both overdue interest and principal and refers to a term loan. The petitioners in their letter of 22.09.2014 have referred to the subject loans as term loans. The reliance placed on clause 2.1.3 is clearly wrong as that takes into account only interest due.

12.2. Therefore, the argument advanced by the petitioners that this court should intercede in the matter while exercising jurisdiction under Article 226 of the Constitution, cannot be accepted.

13. The scheme of the 2002 Act shows that the legislature has in fact enacted the provisions in such a manner that intervention by the court is, a bare minimum. Aggrieved borrowers have been provided with remedies under the said Act, with the view to hasten the process by cutting out multiple interjections by courts.

13.1. An example of this is provided by way of proviso to Section 13(3A) and the explanation to Section 17 of the 2002 Act. Both provisions clearly indicate that the decision rendered by a secured creditor on the representation and/or the objection of the borrowers would not entitle an aggrieved person, which would include a borrower, to make an application under Section 17 of the 2002 Act. The purpose being, that it is only when the secured creditors take the next step, which is an action under Section 13(4) of the 2002 Act, that an aggrieved person can approach the DRT in a proceeding under Section 17.

13.2. Having said so, the power under Section 17 is wide. Under sub-section (2) of Section 17, the DRT is empowered to consider whether the measures taken by a secured creditor under Section 13(4) of the Act for enforcement of security are in accordance with the provisions of the 2002 Act and the rules framed thereunder.

13.3. This, to my mind, would also include an examination into the aspects, such as the one, raised by the petitioners before me, which is that the subject loan accounts were wrongly classified by the secured creditor/ respondent no.1 bank as NPAs.

13.4. Furthermore, under Section 17(3) the DRT has been conferred with a power to reverse every measure taken under Section 13(4) by the secured creditor, if on examination of the facts and circumstances of the case, and the evidence produced before it by parties, it comes to the conclusion that the said measures, were taken, by not adhering to the provisions of the Act and the rules framed thereunder.

13.5. Therefore, the DRT has, inter alia, power not only to restore the assets taken possession of by the secured creditor, but also to revert the management of such secured assets to the borrowers.

13.6. In addition to the above, the DRT can also grant compensation and costs to a borrower, if, it comes to a conclusion that the possession of secured assets was taken by the secured creditor in violation of the provisions of the 2002 Act and the rules made thereunder.

13.7. Thus, in my view, 2002 Act is a complete code, which provides the necessary remedies for any infractions that may be committed by a borrower while exercising its power under the 2002 Act. The Supreme Court in the case of United Bank of India Vs. Satyawati Tondon and Others, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010) 9 UJ 4395 : (2010) AIRSCW 7049 : (2010)

AIRSCW 5267 made following relevant observations:

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.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self- imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, AIR 1969 SC 556 : (1971) 2 SCC 489(1) : (1969) 1 SCR 518 , Whirlpool Corporation Vs. Registrar of

Trade Marks, Mumbai and Others, AIR 1999 SC 22 : (1998) 7 JT 243 : (1998) 5 SCALE 655 : (1998) 8 SCC 1 : (1998) 2 SCR 359 Supp : (1998) AIRSCW 3345 : (1998) 8 Supreme 176 and Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, AIR 2003 SC 2120 : (2002) 10 JT 561 : (2003) 2 SCC 107 : (2003) AIRSCW 126 : (2003) 1 Supreme 446 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass appropriate interim order.

47. In Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, AIR 1964 SC 1419 : (1964) 6 SCR 654 : (1964) 15 STC 468 , the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under:

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.".....

.....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....."

13.8. This is not to say, that a writ court's power to issue an appropriate writ is emasculated. In a given case, where the action is without jurisdiction or there is a breach of principles of natural justice, a writ court may intervene in the matter. In the instant case, the respondent no.1 bank has taken a position with regard to the subject loan accounts being an NPA, based on relevant material. The revised statement of accounts came into existence only due to directions of the DRT. If the petitioners are to contest the position taken by the respondent no.1, then the matter will have to be examined by the forum conferred with the requisite authority in this respect, under the 2002 Act. These are not matters which can be adjudicated upon in writ jurisdiction.

14. I may also indicate that the Division Bench of the Madras High Court in two cases repelled the challenge to the notice issued under Section 13(2) of the 2002 Act on the ground that the loan accounts had been wrongly classified as NPAs. These judgements were delivered by two separate Division Benches of the Madras High Court in the following cases: Signal Apparels Pvt. Ltd. and Signal Export Vs. Canara Bank and Reserve Bank of India, (2011) 2 BC 124 and M/s. N.A.K.G. Cotfibres Private Ltd. Vs. The Zonal Manager and UCO Bank 328, Thambu Chetty Street Chennai - 600001 and The Authorised Officer UCO Bank 806-A, Thenkasi Road Rajapalayam

14.1. The Madras High Court in both cases took the view that remedy under Article 226 was not the appropriate remedy. I am in respectful agreement with the view taken by the Madras High Court. As the facts of this instant case would show, in the first round, the petitioners got the relief that they had prayed for. As a matter of fact, the petitioners, I am told, to date have not complied with the directions issued by the DRT, to pay at least the admitted amount of Rs. 19,49,043/-. Therefore, in my view, the writ petition is without merit and, accordingly, cannot be entertained.

15. Before I conclude, I must indicate that both judgements cited by counsel for the petitioners have no applicability to the facts of the present case, as in this case the respondent no.1 bank has applied its mind to the issue as to whether or not it had rightly declared the subject loan accounts as an NPA. The judgement in the case of Sravan Dall Mill P. Ltd. proceeded on the basis that the concerned bank had not applied its mind to the objection raised that its account could not be classified as an NPA. The reply of the bank in that case did not deal with the objection as raised by the borrower.

15.1. In this context, let me only quote the relevant extract from the order dated 23.10.2013 passed by respondent no.1 bank:

"..Whereas no payment has been made by the borrower in the said loan accounts since 01.09.2014 and an amount of Rs.4,63,84,456.88 is due and payable in loan accounts as on date.

Whereas since the loan accounts in question had once again become non-performing assets in accordance with the RBI circular on the subject. The

accounts were restructured payable in 66 monthly instalments starting 15th October 2014 and interest to be paid as and when charged. Thus September month interest payable on 01.10.2014 remaining unpaid for more than 90 days the account was classified NPA on 31.12.2014. Notice u/s. 13(2) dated 23.01.2015 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act was issued to the borrower by the undersigned.

The said notice was dispatched through registered AD post on 24.01.2015 but was returned on 29.01.2015 and 03.02.2015 with the remarks that the recipient is out of station for long time.

Consequently, the publication was made by the bank which was published in the daily Newspaper Business Standard on 19.02.2015..."

(emphasis is mine)

16. In so far as the judgement in the case of Stan Commodities Pvt. Ltd. is concerned, the same is also distinguishable for the reason that even while a notice under Section 13(2) was issued based on the fact that the borrower's account had been classified as an NPA, the borrower was allowed to operate the account and to avail of cash credit of large sums of money. Based on these facts, the court came to the conclusion that there had been a non- application of mind. The facts in this case demonstrate to the contrary.

17. Accordingly, I find no merit in the writ petition. The writ petition is, consequently, dismissed.

18. Needless to say, the observations made herein, will not come in the way in the petitioners" availing any statutory remedy under the 2002 Act.