

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

**ON THE 8<sup>th</sup> OF MAY, 2024**

**WRIT PETITION No. 26862 of 2023**

***PATANJALI FOODS LIMITED THROUGH ITS AUTHORISED  
REPRESENTATIVE MR. VINAY KUMAR***

*Versus*

***UNION OF INDIA AND OTHERS***

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***Appearance:***

*Shri Ashwini Kumar Mata, learned Senior Advocate alongwith Shri Brian Desilva, learned counsel, Shri Alok Kumar Sharma, learned counsel, Shri Surekh Kant Baxy, learned counsel and Shri Sarabvir Singh Oberai, learned counsel for the petitioner.*

*Shri Praveen Newaskar, learned Deputy Solicitor General for the respondents No.1 to 3/Union of India.*

*Shri Vivek Khedkar, learned counsel and Ajay Tyagi, learned counsel for the respondent No.5.*

*Shri Vijay Kumar Yadav, learned counsel for the Company respondents.*

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**ORDER**

By way of the instant petition extra-ordinary jurisdiction of this Court under article 226 of the Constitution of India had been invoked, assailing the illegal actions of Respondents No. 3 to 5 affecting the valuable rights of Petitioner concerning certain properties situated at Guna and other places, which is in total contravention of the final order and Judgment passed by this Court in W. P. No. 2/2004, whereby it had released the encumbrance over the subjected properties and extinguished the debt owned by predecessor in title towards the subjected properties, while sanctioning the scheme of compromise moved by Respondent no.5.

2. Further, challenge is to the consequent action/proceedings/coercive

measures threatened to be taken by Ld. Recovery Officer, DRT, Jaipur through Respondent No. 3 against the said properties, as the same are sub-silentio and per-incuriam to the orders of this Court, which were affirmed till Apex Court.

Facts in Brief:

3. On 30/11/1993 and 29/10/1994, present Respondent No.6 had entered into a Consortium agreement with State bank of India, State Bank of Bikaner & Jaipur and the Bank of Rajasthan and as per the consortium agreement State Bank of India was designated as the "Lead Bank". In pursuance to the said agreement respondent No.6 availed financial facilities in the nature of Cash Credit, letter of credit, letter of guarantee.

4. To avail the aforesaid facilities, Respondent No.6 had executed number of security documents such as Demand promissory notes, letters of waiver and continuity of promissory, export credit agreement, packing credit agreement, general letter of hypothecation for inland/foreign bills, indemnity bonds, hypothecation of goods, as well as deposit of title deeds by way of hypothecation, in favour of each of the Bank forming part of the consortium either individually or collectively. To be precise; title deeds of following lands were hypothecated:-

- a. Land admeasuring 0.627 Hect., situated at survey number 296 situated at village Kusmoda, Ward No. 218, Guna, M.P.

b. Plot No.298-B, admeasuring 2 Hect., situated at village, Kusmoda, Guna, M.P.

c. Land admeasuring 2.71 Hect., situated at village Haripura, Khasra No.10.

d. Land admeasuring 1.29 Hect. Situated at village Haripura, Khasra No.12.

5. Around the month of May-June, 1997, the consortium Banks issued loan recall notices upon respondent No.6, on account of alleged defaults by the company and since the said loan was not repaid, on 27/10/1997 an Original Application No.215/1997 came to be filed u/s 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before, DRT, Jaipur.

6. In the meanwhile respondent No.6 filed a reference u/s 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985 and while considering the said reference the Board declared Respondent No.6 as a sick industrial company and appointed IDBI as operating agency to examine the viability of the company. On 04/10/2004, the Board issued a show cause notice, as it could not come up with any viable plan and vide order dated 23/11/2004 declared that Respondent No.6 is not likely to become viable in future and therefore, it would be just, equitable and in public interest to wound up the Company. Simultaneously, Respondent No.6 also approached this Court vide Company Petition No. 2/2004 whereby sanction was sought of the

scheme of compromise/settlement in respect of Respondent No.6 and its creditors u/s 391 of the Companies Act.

7. On 07/01/2005, this Court while hearing the Petition directed for convening a meeting of secured creditors and on 21/02/2005 Respondent No.6 presented its scheme. In the meeting held between the creditors, which included Bank of Rajasthan, except for M.P. State Industrial Development Corporation Ltd., all the secured creditors attended the meeting and the scheme was approved with the modification that Respondent No.6 shall pay an amount of Rs.6 crores instead of Rs.5.5 crores and the said amount shall be paid on or before 30/04/2005. In view of the aforesaid this Court on 20/04/2005 approved/sanctioned the compromise. In the order it was observed that the approved scheme shall be binding on all the secured creditors, including the Bank of Rajasthan.

8. Thereafter, on 02/05/2005, a compliance affidavit was filed by Respondent No.6 before this Court categorically indicating compliance in relation to the payments made to the secured creditors, including Bank of Rajasthan. In the affidavit it was mentioned that on 29/04/2005, Respondent No.5 was tendered with a Demand Drafts No.686933 and 406576 amounting to Rs.43.55 Lakhs and since till date Respondent No.5 had not agitated the said fact before any forum, it can be presumed that

Respondent No.5 is in receipt of the amount, as stipulated in the scheme.

9. Immediately, thereafter, respondent No.6 on 12/05/2005 moved an application before DRT, Jaipur in the original application filed before it, seeking its dismissal on the ground that the scheme as approved/sanction by this Court had been complied with, thus, the OA stands infructuous, be dismissed. Ld. DRT issued notices of the said application and posted the matter for arguments on 18/07/2005.

10. On the other hand the order's dated 20/04/2005, sanctioning the scheme and its modification order dated 27/04/2005, were challenged by Bank of Rajasthan in appeal No. 5/2005 before this Court, but the said appeal got dismissed vide order dated 06/09/2005 and the order dated 20/04/2005 was affirmed. Against the said order Bank of Rajasthan preferred two separate Civil Appeal No.'s 7064-7065/2005 before Supreme Court.

11. While, Bank of Rajasthan was busy in challenging the order of sanction, State Bank of Indore and State Bank of Bikaner & Rajasthan filed separate applications seeking withdrawal of the impugned OA in terms of the approved scheme. Ld. DRT, Jaipur, allowed the said applications so far as State Bank of Indore and State Bank of Bikaner & Rajasthan were concerned but in wake of pendency of SLP it directed that

the OA shall continue in relation to Bank of Rajasthan.

12. As per section 391(2) of the Companies Act, 1956 upon approval of the scheme by creditors comprising of more than 3/4<sup>th</sup>, the scheme automatically becomes binding on all the creditors. Thus, the effect of order dated 20/04/2005 was that (i) after the effective date, interest if any payable, shall be waived, (ii) the amounts proposed to be paid shall be binding and mandatorily to be accepted by the secured creditors as final and binding, (iii) all other claims of the secured creditors shall stands waived, (iv) upon payment, the security interest, including mortgage/charge of any nature shall stand extinguished/discharged without any further act and (v) upon tender of payment, all the proceedings initiated by the secured creditors shall stand withdrawn without any further act or deed.

13. Meanwhile, in the appeal preferred before Supreme Court by Bank of Rajasthan, since there was no interim order staying the order of sanction, the effect of the order of sanction became binding, thus, on immediately making the payment to Respondent No.5 on 29/04/2005, as well as to all the secured creditors, all the securities created by Respondent No.6 in their favour including creation of mortgage on the properties stood released. In the mean while Ruchi Soya Industries Limited (referred to as RSIL) acquired the said properties kept as security from respondent No.6.

Property situated at survey No. 296, Village Kusmoda, Ward No.218, Guna was purchased by way of a sale deed dated 11/12/2008, lease deed's dated 18/11/2008 and 05/01/2009 in relation to khasra No's. 10 & 12, admeasuring 2.71 Hect. and 1.29 Hect. and plot No. 298-B admeasuring 2 Hect. situated at Haripura, District Baran, Rajasthan and village Kusumoda, Guna, M.P. were executed on 18/11/2008 and 05/01/2009 resp.

14. On the basis of the legally executed and registered instruments RSIL became the lawful owner of the said properties and continued to remain in possession and ownership, without there being any challenge.

15. In the meanwhile, on 28/10/2010 Reserve Bank of India allowed amalgamation of Bank of Rajasthan and ICICI Bank Ltd. and thus, ICICI Bank Ltd. became the Applicant in the Original Application proceedings and thereafter, on 20/05/2014 Respondent No.5 assigned its debt in relation to impugned proceedings in favour of Respondent No.4 i.e. ICICI Bank Ltd.

16. On 05/08/2015 Supreme Court dismissed the Civil Appeal's No.7064-7065/2005 filed by Respondent No.5 holding that since the scheme was sanctioned by 90% of the creditors, the question raised in the appeals remained merely academic, which does not require indulgence, thus, in light of the order of the Apex Court, the order of sanction passed

by this Court became final and as the DRT had kept the impugned OA pending qua Respondent No. 4 & 5 due to pendency of Civil Appeals before Supreme Court, after their dismissal the OA should have also been dismissed, but the order passed by Supreme Court in Appeal was concealed by Respondent No. 5 from DRT, which made the DRT to pass an order dated 31/07/2019 observing that the impugned OA since was filed on 27/10 1998 and is pending from 1999 and till 2005 no order staying the proceedings of OA or any progress of Civil Appeals before Supreme Court was made available, as a last chance time was granted to Respondent No. 4/5 for placing the same on record.

17. In the meanwhile a Company Petition No. CP(IB) 1371 and 1372 (MB) of 2017 titled as “Standard Chartered Bank and DBS Bank Ltd. Vs. Ruchi Soya industries Ltd.” came to be filed before NCLT Mumbai Branch. The said petition was admitted vide order dated 08/12/2017 and a Corporate Insolvency Resolution Process (CIRP in short) was initiated against Ruchi Soya Industries Ltd. ( erstwhile Patanjali Foods Ltd) and on 21/12/2017 a public notice inviting claims was issued by the Interim Resolution Professional (IRP) and in pursuance thereof consortium of Patanjali filed a resolution plan under the IB Code, 2016, for seeking acquisition of RSIL. The said resolution plan was approved by the Committee of Creditors of RSIL and subsequently it was approved by



NCLT on 04/09/2019 and thereafter, the Petitioner acquired RSIL on clean slate basis i.e. all the claims of the creditors settled as per section 53 of the IB Code, 2016 and all the unfiled claims stood extinguished, in addition RSIL was granted immunity enshrined under section 32A of IB Code towards restraining any action against the property of RSIL for any offence/omission/liability pertaining to the period prior to the approval of the resolution plan.

18. In the meantime, on 03/09/2019, the order of Supreme Court dated 05/08/2015 was produced before DRT by Respondents No.4/5, but instead of dismissing the OA, Ld. DRT exceeding its power observed that the impugned OA can continue. Ld. DRT vide its order dated 16/09/2019, proceeded ex-parte against Respondent No.6 and allowed the OA and a recovery certificate was issued against it, for an amount of Rs.14, 95, 22, 820/- and it was ordered that respondent No.5 could recover the debt from the sale of mortgage properties, which included the properties which were in the possession and ownership of the Petitioner. Later on, on 17/12/2019 Ld. DRT modified its own order dated 16/09/2019 to the extent that the amount directed to be paid under the RC shall be 2, 29, 94, 478/- with 10% interest instead of Rs.14, 95, 22, 820/-.

19. On 26/08/2022 Ld. Recovery Officer in Recovery Case No.861/2019

appointed one Shailendra Singh Sisodiya as receiver, who issued a notice dated 13/09/2022 to respondent No.6, seeking delivery of physical possession of the properties, held by Petitioner. Immediately after receiving the said notice Petitioner on 28/09/2022 moved an application before the Recovery Officer seeking intervention. In parallel Respondent No.6 also preferred a review petition No. RA/14/2022 before DRT for recalling its order dated 16/09/2019. On 16/12/2022, the Petitioner also filed objections before Recovery Officer and sought stay of the auction proceedings in relation to the properties owned by the Petitioner in view of the finality of order of sanction of the scheme by this Court, as well as in view of the principles of IB Code, but the Recovery Officer dismissed the objections vide order dated 24/01/2023.

20. Aggrieved by the said order, Petitioner preferred an appeal before Presiding Order DRT which was numbered as 7/2023. Notices were issued to the respondents and in the meantime Recovery Officer vide order dated 31/03/2023 directed issuance of notice for sale of the properties held by the Petitioner. On 20/04/2023 a notice dated 17/04/2023 of settlement of sale proclamation issued by RO-I, DRT, Jaipur was pasted on the property of the Petitioner and was published in the localities.

21. Aggrieved by the aforesaid action Petitioner filed an application

No.820/2023 on 01/05/2023 for early hearing of the matter, but the said application was rejected on the ground that the said notice was only for settling the sale proclamation, which is different from actual notice of sale proclamation and does not have effect of sale notice thus, the matter is not required to heard at an early date.

22. The Petitioner, thereafter, immediately approached the Debt Recovery Appellate Tribunal by way of a Misc. application No. 251/2023 seeking a relief that the application for interim stay filed along with appeal No. 7/2023 be taken up on urgent basis, considering the actions of RO seeking to sale the properties held by the Petitioner.

23. The said application was disposed of by the DRAT on 09/05/2023, with a direction to DRT to hear the matter expeditiously and in pursuance to the aforesaid directives, DRT took up the matter on 17/05/2023 and condoned the delay in filing the appeal, but instead of dealing with the issue of interim relief, adjourned the hearing to 19/05/2023. The matter than was taken up on 13/06/2023, wherein it was observed that the matter needs to be heard, as it requires deeper scrutiny, but directed RO to continue with the proceedings of auction, however, it may not be finalized. Against the said order the petitioner again filed an appeal No.112/2023 before the DRAT, which was again disposed of with a direction to DRT to

the take the matter on urgent basis.

24. Consequently, DRT dismissed the appeal No.7/2023 with observations that (i) the order of Apex Court dismissing the appeals of Respondents No.4/5, had not considered the question whether the proceedings in OA could continue or not, (ii) the whole question is whether the properties belong to the Petitioner or to Respondents No.4/5, (iii) principles of IB Code, 2016 has no bearing on the matter, (iv) if Respondents No. 4/5 had breached the scheme sanctioned, the same can be agitated before it, (v) mere copies of demand draft issued by Respondent No.6 is no proof of payment.

25. Since the above facts clearly established that the effect of the order dated 20/04/2005 passed by this Court, despite the same being confirmed upto Apex Court, had been entirely ignored and over reached by Respondents No.4/5 and acting in concert had sought to enforce the encumbrance and debt which was specifically dissolved and closed by this Court. The Respondent No.3 had also passed orders which are contrary to the mandate of the said judgment of this Court, thus, in view of the above facts the Petitioner had preferred the present Petition.

26. A reply had been filed in the matter on behalf of Respondent No.5 and as preliminary objections it had been averred that the present Writ had

been filed only against the actions of respondents No.4/5 and since both do not fall under the definition of State as envisaged under article 12 of the Constitution, the petition deserves to be dismissed with exemplary costs.

27. With regards to merits of the matter it was averred that DRT, Jaipur, had issued a proclamation of sale on 11/05/2023 for auction to be held on 17/07/2023, but the auction failed, therefore, the proclamation of sale dated 11/05/2023 had come to an end and for further re-auction fresh proclamation of sale has to be issued.

28. Further, it is averred that from bare perusal of the contents of the writ petition, it would be revealed that the petitioner is aggrieved by the orders of DRT, Jaipur and as per section 20 of Recovery of Debts due to Banks and Financial Institutions Act, 1993, an appeal is provided to DRAT and when the Petitioner is having an efficacious alternative remedy available with it, the present petition is not maintainable.

29. In the return an objection with regard to territorial jurisdiction of this Court in hearing the present Petition had also been raised alleging that infinite cause of action, since except for the land in question is situated within the territorial jurisdiction of this Court, no other cause of action had arisen, this court has no jurisdiction to entertain this Petition.

30. Further, it had been averred that the sale deed dated 11/12/2008

reveals that the erstwhile owner i.e. Respondent No.6 had admitted in specific terms that the payment to bank of Rajasthan was not made and the payment had to be made good, which proves the fact that the mortgage created by Respondent No.6 still subsists and the rights over the subject property at all times belonged to Bank of Rajasthan and now with ICICI by virtue of being mortgagee of the said properties and as the said properties were sold to Ruchi Soya Industries with a promise by Respondent No.6 that the litigation with the Bank of Rajasthan, as existed at that time, will be amicably sorted out, which could not be sorted out as on the date, resulting in issue of recovery certificate. Further, it is averred that the title deeds in the hands of Ruchi Soya Industries and now with the Petitioner makes it clear that it suffers from inconsistencies, which had never been cured, thus, on the basis of a defective title no rights can be claimed.

31. It was further averred that the basic contention of the Petitioner is that Bank of Rajasthan had merged with Respondent No.4, which was one of the creditors of Respondent No.6 and Respondent No.6 had preferred a petition under section 391 of the Companies Act, 1956, for approval of the scheme of compromise with its creditors and as Bank of Rajasthan absented from voting on the scheme of compromise since it was not satisfied with the conditions of the settlement, but as an order u/s 391 of the Companies Act, 1956 has a statutory force and is binding on the

dissenting creditors, therefore, DRT has no jurisdiction to proceed with the matter pending before it, but said contentions of the petitioner are factually incorrect and legally untenable, since the conditions which were accepted by the Court were never complied by Respondent No.6. Further in the proceedings before DRT Respondent No.6 though had appeared through Counsel but had never raised any objections that the payment had been made to Bank of Rajasthan and they had complied the terms of settlement and since neither the scheme was accepted by the Bank of Rajasthan nor as per the scheme any amount has been deposited by Respondent No.6, hence the successors of Respondent No.6 i.e. the Petitioners are not entitled for any relief, thus, it was prayed that the petition being not maintainable, this court having no territorial jurisdiction and even on merits since the petitioners have no case be dismissed.

32. A rejoinder had been filed in the matter and the assertions made in the reply had been denied in their entirety except which were admitted expressly. With regard to maintainability of the petition since it is solely directed against Respondents No. 4/5, who are private banking institutions and do not fall under the definition of State as defined under article 12 of the Constitution, it is averred that the said objection is wholly misconceived and holds no merits, as the Petitioner by way of the present petition seeks to challenge the illegal actions of Respondent No.3 to 5,

which had affected the valuable fundamental and legal property rights concerning properties situated at Guna, that too in complete over-reach and contravention of the final order and judgment passed by Apex Court in C.P. No. 2/2004 dated 20/04/2004, whereby it had released the encumbrance over the subjected properties and had extinguished the debt owned by the predecessor owner towards the subjected properties, while sanctioning the scheme of compromise moved by Respondent No.5. It is further averred that the Petitioner is also challenging the consequent actions/proceedings/coercive measures threatened to be taken by the Recovery Officer of DRT, Jaipur, through Respondent No.3, against the subjected properties, as the same are sub-silentio and per incuriam to the orders of this Court, affirmed by Apex. Court.

33. It is further averred that the present petition is maintainable as it is not seeking enforcement of any contractual obligation but is seeking directions against State i.e. Respondents No.2 to 5, who as per article 12 of the Constitution are State and are discharging functions by over-reaching the orders passed by this Court and the Apex Court.

34. It is also averred that the scheme of compromise once approved, has a statutory force and is statutorily binding on all the creditors and had an effect of legally restructuring the debt and liabilities of the company and



upon approval there remained no rights of the Respondent Banks to continue the impugned OA proceedings before DRT.

35. With regard to objection that since the proclamation of sale issued by DRT, Jaipur, since had failed and had come to an end, therefore, there exists no ground to file the present petition, it was averred that the Petitioner is not only challenging the proclamation of sale rather is also challenging the proceedings of the DRT, therefore the Writ is very well maintainable.

36. With regard to the objection that the writ petition deserves to be dismissed as the Petitioner has an alternate remedy of appeal to appellate tribunal u/s 20 of the Act of 1993, it was averred that the Petitioner herein is not challenging the orders of DRT rather is challenging the veracity of the proceedings which continued even after sanctioning of the settlement scheme by this Court u/s 391 of Companies Act, 1956 and affirmed by the Apex Court, thus, continuation of the proceedings before DRT is in utter derogation of the orders of this Court and thus, are liable to be quashed.

37. It is also averred that Respondent No.6 had filed a compliance affidavit dated 02/05/2005, wherein it has been categorically mentioned that respondent No.6 had tendered two demand drafts vide No. 686933 dated 27/04/2004 for Rs.42.87 Lakhs and DD No.406576 dated

27/04/2005 for Rs.66 Lakhs, totaling Rs.43.53 Lakhs and the payment was realized on 29/04/2005 and in the light of the same, it is rather dishonest on the part of Respondent No.5 and its predecessor's in interest to unjustly enrich themselves and continue to prosecute the recovery proceedings before DRT, Jaipur, thus, the proceedings before DRT are impermissible.

38. With regard to objection's regarding lack of territorial jurisdiction of this Court, it is averred this Court had earlier passed the orders dated 20/04/2005, 27/04/2005 and 06/09/2005 approving the scheme of compromise, on the basis of which the debt of Respondent No.1 qua Respondent No.6 stood settled and the mortgages created under the loan transactions stood released automatically, but despite the orders of this Court and the Apex Court, Respondents No.1 & 2 continued to proceed against the properties of the Petitioner including before Respondent No.3. Further, since the subject matter of the present writ is immovable properties which are situated within the jurisdiction of this Court, therefore, this Court has jurisdiction and since a substantial and meaningful part of cause of action arose within the jurisdiction of this Court, as the conveyance deed vide which the subjected properties are conveyed to the Petitioner, which are now sought to be rendered nugatory, were executed within the jurisdiction of this Court and as the impact of arbitrary, coercive actions of threatening by Respondents No. 3 to 5 is

operating over properties situated at Madhya Pradesh, this Court has territorial jurisdiction to hear this petition.

39. Regarding the objection that the writ petition needs to be dismissed as the sale deed dated 11/12/2008 reveals that Respondent No.6 had not made payment to the Bank of Rajasthan and thus, had not complied with the terms of the settlement scheme, it was controverted by averring that on 02/05/2005 a compliance affidavit was filed by Respondent No.6 before this Court categorically indicating that vide DD No.686933 and 406576 an amount of Rs.43.53 Lakhs was tendered to Bank of Rajasthan on 29/04/2005 and till date this fact had not been agitated before this Court. In the light of the above averments it was prayed that the relief as claimed in the Writ Petition be granted.

40. A counter to rejoinder has been filed by Respondent No.5 and it had been averred that there is a valid recovery certificate in its favour and the only remedy with the petitioner is of appeal before DRAT, as per the provisions of section 34 of Act of 1993, the RBD Act has an overriding effect over any other Law and therefore, the petitioner is bound to comply with the provisions of RBD Act. Further, neither Petitioner or Respondent No.6 after passing of the order in the company matter by this Court in the year 2005 had ever stated that the orders are not being complied with by

either Bank of Rajasthan or Respondent No.5, on the contrary the Petitioner/Respondent No.6 had taken part in the proceedings before DRT, Jaipur but without any protest, which proves that the proceedings before DRT, Jaipur were not illegal, thus, implying the theory “Once a mortgage always a mortgage until redeemed”, since the mortgage over the property had still not been redeemed, Respondent No.5 is entitled to recover its outstanding dues from the Petitioner through the mortgaged properties.

41. Heard the Counsel for the parties and perused the record.

42. The first and foremost objection taken by Respondent N.5 which needs to be addressed is with regard to the writ being not maintainable as no relief had been claimed against the State and Respondents No. 4 & 5 do not fall under the definition of State as envisaged u/a 12 of the Constitution and further due to lack of territorial jurisdiction of this Court to hear this Writ, as the order challenged herein is passed by DRT, Jaipur, which in wake of availability of alternative remedy also is not maintainable. In this regard it would be profitable to quote a recent decision of the Apex Court in the matter of *Radha Krishan Industries v. State of H.P., reported in (2021) 6 SCC 771,*

*“25. In this background, it becomes necessary for this Court, to dwell on the “rule of alternate remedy” and its judicial exposition. In Whirlpool Corpn. v. Registrar of Trade Marks (1998) 8 SCC 1, a two-Judge Bench of this Court after*

reviewing the case law on this point, noted: (SCC pp. 9-10, paras 14-15)

*“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.*

*15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field”. (emphasis supplied)*

*26. Following the dictum of this Court in Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1], in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107], this Court noted that: (Harbanslal Sahnia case, SCC p. 110, para 7)*

*“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where*

*the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act 10 is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1].) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.” (emphasis supplied)*

**27. The principles of law which emerge are that:**

*27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*

*27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*

*27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.*

*27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*

*27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*

*27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively*

*of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

43. In light of the aforesaid principal of Law the present Writ appears to be very well maintainable against both the objections firstly the proceedings of DRT, Jaipur, challenged before this Court are directly affecting its fundamental and legal property rights concerning certain properties situated within the territorial jurisdiction of this Court due to alleged contravention of the final order dated 20/04/2005 passed in Company Petition No. 2/2004, whereby it is stated to had released the encumbrance over the said properties and had extinguished the debt owned by predecessor owner towards the property, while sanctioning the scheme of compromise. Since said action/proceedings of DRT, Jaipur, against the subjected property is challenged alleging it to be *sub-silentio* and *per incuriam* to the orders passed by this Court and the Apex Court, no bar as such of alternative remedy arises. Secondly, since the subject matter of the present writ is immovable properties which are situated within the jurisdiction of this Court, therefore, this Court has jurisdiction and since a substantial and meaningful part of cause of action had arose within the jurisdiction of this Court, as the conveyance deed vide by which the subjected properties are conveyed to the Petitioner, which are now sought to be rendered nugatory, were executed within the jurisdiction of this

Court and as the impact of alleged arbitrary, coercive actions of threatening by Respondents No. 3 to 5 is operating over properties situated at Madhya Pradesh, this Court has territorial jurisdiction to hear this petition, thus, this Court finds the Writ to be maintainable.

44. Now with regard to the impact of the orders dated 20/04/2005, where by the scheme of compromise/settlement was approved /sanctioned and the decisions of the appeals preferred before Supreme Court in Civil Appeal No.'s 7064-7065/2005, challenging the order dated 20/04/2005, it could be observed that while dismissing the Appeals it was observed by the Apex Court that "since the DRT act taking precedence over the Company Act has not been raised and therefore, considered in the impugned order, which dismiss the appeals," thus, from perusal of both the orders it is revealed that this Court while passing the order dated 20/04/2005 had accepted the compromise/arrangement set forth between present Respondent No.6 and the secured creditors for a final amount of Rs.6.00 crores, as per section 391(1) of the Companies Act, whereby 6 of 7 members attended the meeting, out of which 5 voted in favour of the scheme, which formed 3/4<sup>th</sup> majority of creditors or class of creditors or members or class of members as statutorily required, thus, was sanctioned by this Court, though admittedly Bank of Rajasthan though present did not voted.



45. In wake of the aforesaid settlement State Bank of Indore and State Bank of Bikaner and Jaipur, who along with Bank of Rajasthan had earlier preferred one OA No. 205/1998 before DRT, Jaipur, moved an application for withdrawal/dismissal of the said OA so far as they were concerned in terms of scheme of arrangement/compromise sanctioned by this Court in C.P. No. 2/2004. Ld. DRT, Jaipur vide order dated 27/01/2006, allowed the application and the OA was treated as fully satisfied and withdrawn against them, but with regard to Bank of Rajasthan, it was directed to be continued.

46. In the above context, the question whether in terms of compromise/arrangement vide order dated 20/04/2005 in C.P. 2 /2004, the settlement amount was ever paid to the Bank of Rajasthan, assumes importance. In compliance of the order dated 20/04/2005, on 02/05/2005, present Respondent No.6 submitted an affidavit, indicating compliance in relation to the payments made to the secured creditors, including the Bank of Rajasthan, wherein it was categorically disclosed that on 29/04/2005, Respondent No.5 was tendered demand drafts No.686933 and 406576 for an amount of Rs.43.53 Lakhs, the total due of Bank of Rajasthan, who was in proper receipt of the amount as stipulated in the scheme.

47. Though the said amount had been alleged to have been paid to Bank

of Rajasthan through demand draft, except for the statement there is no documentary evidence as to handing over of the said demand drafts to Bank of Rajasthan through any mode had been placed on second and also there is no material to show that the said amount was credited to the account of the Bank, as this fact had been denied by Respondents No. 4 & 5, coupled with the fact from the recitals of the sale deed dated 11<sup>th</sup> of December, 2008, which was executed after the so called payment to Bank of Rajasthan by Respondent No.6, the amount due to Bank of Rajasthan after compromise was still outstanding. Relevant extract of sale deed is reproduced herein below:

*“AND WHEREAS Seller has informed the purchaser that the case filed by the Bank of Rajasthan Ltd. Challenging the order of Madhya Pradesh High Court dated 06/09/2005 is still pending in the Supreme Court of India.*

*AND WHEREAS the Seller has further informed that notwithstanding the pendency of the above mentioned case, it is negotiating with the Bank of Rajasthan Ltd. for amicable settlement of its outstanding dues.*

*AND WHEREAS Seller further represents that whatever amount is payable by it to the Bank of Rajasthan Ltd. Shall be the liability of the Seller only and Seller agrees to indemnify the purchaser against any liability arising in respect of the dues payable by it to the Bank of Rajasthan Ltd.”*

48. Likewise, the order dated 05/08/2015 passed by Supreme Court, never considered the validity of the original application pending before DRT, Jaipur nor it was subject matter before it and the only question raised

there was with regard to “the DRT act taking precedence over the Company Act”, which was never raised thereafter, therefore, the said order had not bearing over the proceedings pending before DRT, Jaipur.

49. Since Respondent No.3/RBI vide order dated 12/08/2010 had allowed amalgamation of Bank of Rajasthan with ICICI Bank, thus, ICICI Bank Ltd. subsequently became the sole applicant of the OA and thereafter vide deed of assignment dated 20/05/2014 the debt had been assigned to Respondent No.5, thus, at the instance of Respondent No.5 the Original application No. 205/1998 is maintainable and the proceedings conducted therein cannot be said to become nugatory in the light of the order’s dated 20/04/2005, 27/04/2005 and 06/09/2005 and cannot be said to be arbitrary, illegal, unjust, contrary to the law and in violation of the fundamental rights under articles 14, 19, 21 and in violation of the constitutional guarantee envisaged under article 300A of the Constitution.

50. Accordingly, the petition being sans merits is hereby dismissed. Admission is declined.

**(MILIND RAMESH PHADKE)**  
**JUDGE**