HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No. **Parties Name**	**W.P. No.5629/2021** *Madan Mohan Shrivastava* *vs.* *Additional District Magistrate (South) Bhopal and others*
Date of Order	**01 /04/2021**
Bench Constituted	**Division Bench :** **Justice Prakash Shrivastava** **Justice (Smt) Anjuli Palo**
Order passed by	**Justice Prakash Shrivastava**
Whether approved for reporting	Yes
Name of counsels for parties	For petitioner : Shri Kapil Duggal, Advocate For respondents No.3: Shri Arun Kumar Mishra, Advocate For respondent No.6 : Shri Anuj Agrawal, Advocate
Law laid down	(i) Section 13(4) of the Securitisation Act permits the secured creditor to take recourse to the measures prescribed therein to recover the secured debt. One such measure is to take possession of the secured asset. Section 14 of the Act gives remedy to the secured creditor to obtain possession of the secured asset by approaching the District Magistrate. Hence, the action of the District Magistrate under Section 14 is in furtherance of the provision contained under Section 13 (4) of the Act. Such an action is after the stage of Section 13 (4), therefore, remedy of appeal under Section 17 is available against the order under Section 14 of the Act. (ii) The bar contained in Section 14(3) of the Act does not affect the remedy before the Tribunal under Section 17 of the Act.
Significant paragraph numbers	5, 6, 7, 8 & 9

O R D E R
(01.04.2021)

Per : Prakash Shrivastava, J.

This writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner aggrieved with the order of the Additional Collector dated 25.01.2021 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '**the Act**') directing the Tehsildar to ensure delivery of possession of the mortgaged property to the respondent-Bank.

2. Learned counsel for the respondent No.3/Bank has raised the preliminary objection that against such an order the petitioner has remedy of filing an appeal under Section 17 of the Act. He has placed reliance upon certain judgments in support of his submission.

3. The submission of learned counsel for the petitioner is that the remedy of appeal is not available against the order passed under Section 14 of the Act and that in terms of sub-section (3) of Section 14 of the Act, the order under Section 14 is final and it cannot be challenged in any court except in the High Court under Article 226 of the Constitution of India.

4. We have heard the learned counsel for the parties and perused the record.

5. Section 17 of the Act provides for remedy of appeal and reads as under :-

> "**17. Application against measures to recover secured debts** —(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 authorized 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 measure had been taken:"

A bare perusal of above provision indicates that remedy of appeal is available against any of the measures referred to under Section 13 (4). Section 13(4) reads as under :-

> "**13. Enforcement of security interest**.-
>
> (1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

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

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

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

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

Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;

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

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

Section 13(4) of the Act permits the secured creditor to take recourse to measures prescribed therein to recover the secured debt. One such measure is to take possession of the secured asset. Section 14 of the Act gives remedy to the secured creditor to approach the District Magistrate when possession of any secured asset is required to be taken and it further empowers the District Magistrate to take possession of such secured asset.

Hence it is clear that action taken by the District Magistrate is in furtherance of the provision contained under Section 13(4).

6. Under Section 17 any person aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer can file appeal to DRT. Under sub-section (2) of Section 17, the Debts Recovery Tribunal can consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of the Act and the rules. In terms of Section 17 (3), if the Debts Recovery Tribunal finds that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it can pass appropriate order for restoration of management or possession.

7. Section 17 provides for remedy before the Tribunal against any measure to recover secured debt. Under Section 17 any aggrieved person can approach the Tribunal against any measure referred in Section 13(4) and taken under Chapter III of the Act. Securing possession is one of the measure provided under Section 14 of the Act which also falls in Chapter III. Scheme of the Act makes it clear that DRT has jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) in respect of any measure referred therein. Section 13(4)(a) provides for taking over the possession of secured asset by the secured creditor and Section 14 is one of the mode of taking over the possession of secured asset. Action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), therefore, against such an action remedy of appeal under Section 17 is available.

8. The Supreme Court considering Sections 13, 14 and 17 of the Act in the matter of **Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others, (2011) 2 SCC 782** has held that the action under Section 14 of the Act constitutes an action taken after the stage of Section

13(4) and, therefore, same would fall within the ambit of Section 17(1) of the Act, therefore, the Act contemplates an efficacious remedy for borrower or any person affected by an action taken under Section 13(4) of the Act by providing for an appeal before the DRT. In that case, the order under Section 14 of the Act was passed by the Chief Metropolitan Magistrate and the High Court had dismissed the petition on the ground that alternative remedy was available under Section 17 of the Act. The Hon'ble Supreme Court has upheld the order of the High Court by holding that :

> "21. In Indian *Overseas Bank & Anr. Vs. Ashok Saw Mill4*, the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated under Section 13(4) of the Act? On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court, held as under :(SCC pp. 375-76, paras 35-36 & 39)
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> > "35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub- section (3) thereof.
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> > 36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.
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> > 39. We are unable to agree with or accept the submissions made on behalf of the appellants that the

> DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."
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> (Emphasis supplied by us)
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> 22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT. "

9. The similar issue came up before the Supreme Court in the matter of **Authorized Officer, State Bank of Travancore and another vs. Mathew K.C., 2018 SCC OnLine 55** in reference to challenge to the proceedings under Section 13(4) of the Act and the Supreme Court held that :

> "4. The SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on *United Bank of India V. Satyawati Tandon,* 2010 (8) SCC 110, and *General Manager, Sri Siddeshwara Cooperative Bank Limited V. Ikbal*, (2013) 10 SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same."

10. In the matter of **Standard Chartered Bank vs. V. Noble Kumar and others, 2014 (1) MPLJ 396,** the Supreme Court has held that :

> "30. The "appeal" under Section 17 is available to the borrower against any measure taken under section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under section 13(4). Alienating the asset either by lease or sale etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower. Therefore, the borrower is always entitled to prefer an "appeal" under section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under section 17 is available."

11. The Division Bench of this Court also in the matter of **Aditya Birla Finance Limited Vs. Carnet Elias Fernandes Vemalayam, 2019(1) MPLJ 471** has held that :

> "3. Though the learned Single Bench has held that there is no alternative remedy against an order passed by the District Magistrate under Section 14 of the Act, but, a Division Bench of this Court in W.P. No.19028/2017, *Sunil Garg vs. Bank of Baroda and others decided* on 16-4-2018 [2018(3) M.P.L.J. 615] has held that remedy of an aggrieved person against an order passed by the District Magistrate is before the Debts Recovery Tribunal under Section 17 of the Act. Therefore, such finding of the learned Single Bench cannot be sustained."

12. The Division Bench of this Court in the matter of **Sunil Garg Vs. Bank of Baroda and others in W.P. No.19028/2017** vide order dated 16.04.2018 has considered the issue of availability of alternative remedy against the order under Section 14 of the Act and has held that :

> "08. The invocation of jurisdiction of the District Magistrate under Section 14 of the Act is one of the modes available to the

secured creditor to take possession of the secured assets. Therefore, when the District Magistrate under Section 14 of the Act hands over possession to the secured creditor, it is possession as is contemplated under sub-section (4) of Section 13 of the Act. Therefore, for an aggrieved person against an action taken by the secured creditor either under sub-section (4) of Section 13 or under Section 14 of the Act, the remedy is by way of an application under Section 17 of the Act before the Tribunal.

09. In **G.P. Ispat's** case (supra), the attention of the Chhattisgarh High Court was not drawn to the earlier judgment of the Supreme Court in **Transcore's** case (supra). Therefore, we are unable to agree with the reasoning recorded given in **G.P. Ispat's** case (supra). The Full Bench of Allahabad High Court in **N.C.M.L.** case (supra) has examined the judgment of Supreme Court in **Transcore's** case (supra) and held that the said judgment deal with the right of secured creditor to take possession under Section 13 (4) of the Act. Therefore, the same was found not applicable to hold that an order passed by the District Magistrate to take possession under Section 14 of the Act can be challenged by way of an application under Section 17 of the Act. The relevant extract from the judgment in the case of **N.C.M.L.** reads as under :-

> "**19.3**. The judgment in **Transcore (supra)**, as quoted above, needs to be read in the light of the question that fell for consideration. The question in short was whether taking possession contemplated under Section 13 (4) comprehends the power to take actual possession. While dealing with this question, the Supreme Court considered the relevant Rules which prescribe the procedure for taking over possession of secured assets. The Supreme Court did not consider the question whether an application under Section 17(1) of the Act could be filed even before the measures/possession are/is taken as contemplated under sub-section 4 of Section 13. In other words, the Supreme Court did not consider the question whether an application under Section 17(1) of the Act is maintainable before the measures, such as taking possession as provided for under Section 13(4) (a) is available. A notice under Rule 8 of the Rules, as prescribed with Appendix IV is required to be given to the borrower who has failed to repay the amount informing him and the public that the bank has taken possession of the property under sub-section (4) of Section 13, read with Rule 9 of the Rules."

We are unable to agree with the Full Bench judgment of Allahabad High Court in **N.C.M.L.'s** case (supra), as when the secured creditor invokes jurisdiction of the District Magistrate, it is, in fact, invoking right to take possession under Section 13 (4) of the Act itself.

10. The reliance on the judgment of Supreme Court in **Standard Chartered Bank. Vs. V. Noble Kumar and others**

reported as **(2013) 9 SCC 620** again does not advance the argument raised by the petitioner. In **Noble Kumar's** case (supra), the High Court in the order under appeal held that when the creditor faces resistance to take possession of the secured assets only then the creditor could resort to the procedure under Section 14 of the Act. The argument raised was that action to take possession under Section 13(4) or Section 14 of the Act are alternate procedures. The Supreme Court set aside the finding recorded and held as under :-

> "**20**. In every case where the objections raised by the borrower are rejected by the secured creditor, the secured creditor is entitled to take possession of the secured assets. In our opinion, such action–having regard to the object and scheme of the Act – could be taken directly by the secured creditor. However, visualising the possibility of resistance for such action, Parliament under Section 14 also provided for seeking the assistance of the judicial power of the State for obtaining possession of the secured asset, in those cases where the secured creditor seeks it.
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> **21**. Under the scheme of Section 14, a secured creditor who desires to seek the assistance of the State's coercive power for obtaining possession of the secured asset is required to make a request in writing to the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, secured asset is located praying that the secured asset and other documents relating thereto may be taken possession thereof. The language of Section 14 originally enacted purportedly obliged the Magistrate receiving a request under Section 14 to take possession of the secured asset and documents, if any, related thereto in terms of the request received by him without any further scrutiny of the matter.
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> **26**. It is in the above-mentioned background of the legal frame of Sections 13 and 14, we are required to examine the correctness of the conclusions recorded by the High Court. Having regard to the scheme of Sections 13 and 14 and the object of the enactment, we do not see any warrant to record the conclusion that it is only after making an unsuccessful attempt to take possession of the secured asset, a secured creditor can approach the Magistrate. No doubt that a secured creditor may initially resort to the procedure under Section 13(4) and on facing resistance, he may still approach the Magistrate under Section 14. But, it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under Section 14. The submission that such a construction would deprive the borrower of a remedy under section 17 is rooted in a misconception of the scope of Section 17.

> **27**. The "appeal" under Section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (*sic* the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available."

11. The finding of the Chhatisgarh High Court and Allahabad High Court that the remedy of the borrower is after taking actual possession of the secured assets, is based upon an observation in Para 27 of the judgment in **Noble Kumar's** case (supra). But, in our view, the Supreme Court declined the right to seek remedy under Section 17 of the Act to the borrower for the reason that the borrower stalled the proceedings for a period of almost four years. The Court in fact held that the borrower would have a right to prefer an appeal under Section 17 of the Act raising objections regarding legality of the decision of the Magistrate. The relevant extract of the judgment reads as under :-

> "**40**. In view of our conclusion on the scope of Section 17 recorded earlier it would normally have been open to the respondent to prefer an appeal under Section 17 raising objections regarding legality of the decision of the Magistrate to deprive the respondent of the possession of the secured asset. But in view of the fact that the respondent chose to challenge the decision of the magistrate by invoking the jurisdiction of the High Court under Article 226 of the Constitution and in view of the fact that the respondent does not have any substantive objection as can be discerned from the record, we make it clear that the respondent in the instant case would not be entitled to avail the remedy under Section 17 as the respondent stalled the proceedings for a period of almost 4

> years. It is worthwhile remembering that the respondent did not even choose to raise any objections to the demand issued under Section 13(2) of the Act. However, we make it clear that it is always open to the respondent to seek restoration of his property by complying with sub-Section 8 of Section 13 of the Act."

12. We may notice that the judgment in **Transcore's** case (supra) has been quoted with approval in a recent judgment of Supreme Court in **Civil Appeal Nos. 2928-2930 of 2018 (ITC Limited Vs. Blue Coast Hotels Ltd. and others)** decided on 19.3.2018. The relevant extract from the judgment reads as under :-

> "**30**. Moreover, this provision provides for communication of the reasons for not accepting the representation/objection and the requirement to furnish reasons for the same. A provision which requires reasons to be furnished must be considered as mandatory. Such a provision is an integral part of the duty to act fairly and reasonably and not fancifully. We are not prepared in such circumstances to interpret the silence of the Parliament in not providing for any consequence for non-compliance with a duty to furnish reasons. The provision must nonetheless be treated as 'mandatory'.
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> We agree with the view of this Court in this regard in **Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311, Transcore v. Union of India, (2008) 1 SCC 125** and **Keshavlal Khemchand & Sons (P) Ltd. vs. Union of India, (2015) 4 SCC 770**."

13. A Division Bench of this Court in the case of **India Sem Asset Reconstruction Co. Ltd. Vs. State of M.P. and others - Writ Appeal Nos.489/2016** (Indore Bench) decided on 21.12.2017 has held that there is effective remedy to approach the Tribunal under section 17 of the Act in respect of an order passed under Section 14 of the Act. It was held that an order under Section 14 of the Act could be challenged before the Tribunal under Section 17 of the Act. The relevant extract from the judgment reads as under :-

> "**22**. On due consideration of the aforesaid and the law laid down by the Five Judges Bench of this court in the case of **Jabalpur Bus Operators Association & Others Vs. State of M.P. & Another, 2003 (1) MPLJ 513**, so also the fact that judgment of **United Bank of India**, **Jagdish Singh V/s. Heeralal & Others, (2014) 4 SCC 479**, were not considered while upholding the view taken in the matter of **M/s. Ambika Solvex Ltd. Vs. State Bank of India and others, (2016) SCC Online MP 5772**, we are more incline to follow the earlier judgment of the Hon'ble

> Supreme Court where the question of maintainability of writ petition has been considered in great detail, we find that the appellant has an effective alternative remedy to approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, the writ appeal filed by the appellant has no merit and is accordingly, dismissed with a liberty to the appellant to avail the remedy of appeal under Section 17 of the SARFAESI Act, in accordance with law."

13. In the matter of **Sunil Garg** (supra), it has been further held that:

> "15. In respect of an argument that the order passed by the District Magistrate or the Chief Metropolitan Magistrate, or any other officer authorized by them cannot be called in question in any Court or before any authority is again not tenable. Such provision excludes the jurisdiction of the Civil Court but not of the Tribunal, who has been conferred the jurisdiction to entertain an application under Section 17 of the Act. It is well settled principle of interpretation of statutes that there has to be conjoint and harmonious construction of the various provisions of a Statute. Keeping in view the said principle, if the provision of Sections 13 (4) and 14 (3) and Section 17 of the Act are read together, it is clear that bar under sub-section (3) of Section 14 is not in respect of the remedy before the Tribunal in terms of Section 17 of the Act.
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> 16. In view of the above, the impugned order passed by the Tribunal is set aside, as it has the jurisdiction to decide an application under Section 17 of the Act. Therefore, the Tribunal is directed to decide an application under Section 17 of the Act on merits in accordance with law. It shall be open to the petitioner to seek an interim order from the Tribunal itself, if so advised. It is also clarified that it shall be open to an aggrieved person to seek exclusion of time in filing of an application before the Tribunal in view of the time spent before this Court in writ petition where the question of maintainability of alternative remedy was pending."

Thus, in **Sunil Garg** (supra) it has also been settled that bar under Section 14(3) does not affect the remedy before the Tribunal under Section 17 of the Act.

14. The another Division Bench of this Court in the matter of **Shrikant Jain vs. Additional District Magistrate (North) Bhopal** by order dated 10.12.2018 in W.P. No.28096/2018 has re-examined the position and has held as under :

> "**8.** The invocation of jurisdiction of the District Magistrate under Section 14 of the Act is one of the modes available to the secured creditor to take possession of the secured assets. Therefore, when the

District Magistrate under Section 14 of the Act hands over possession to the secured creditor, it is possession as is contemplated under sub-section (4) of Section 13 of the Act. Therefore, for an aggrieved person against an action taken by the secured creditor either under sub-section (4) of Section 13 or under Section 14 of the Act, the remedy is by way of an application under Section 17 of the Act before the Tribunal.

9. The Division Bench of this court in the case of **Sunil Garg Vs. Bank of Baroda & others, W.P.No.19028/2017, decided on 16-04-2018** examined the validity of the order passed by the Debt Recovery Tribunal in the proceedings under Section 17 of the SARFAESI Act, whereby the application was dismissed on the ground that the same is not maintainable till the actual possession is taken. The Division Bench referring the various judgments of the Apex Court held that the appeal under section 17 of the SARFAESI Act would be maintainable against the order passed under Section 14 of the of the SARFAESI Act.

10. In a recent judgment passed by the Supreme Court in the case of **Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C. (2018)3 SCC 85,** considering a case under SARFAESI Act, held that discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in given facts of a case and in accordance with law. Normally a writ petition under Article 226 ought not to be entertained if alternative statutory remedies are available, except in cases falling within the well-defined exceptions. Relevant para-16 is reproduced below:

> *"16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient jurisdiction to have declined interference."*

11. In view of the aforesaid enunciation of law, the present petition is not maintainable as alternative and efficacious remedy is available against the impugned order passed under Section 14 of the SARFAESI Act."

15. The same is the view also taken by Punjab and Haryana High Court in the matter of **United Automobiles Railway Road Vs. Authorised Officer,**

Indian Overseas Bank, Assets Recovery Department, 2011 Legal Eagle (P&H) ESR 5272.

16. Learned counsel for the petitioner has placed reliance upon the judgments of the Single Bench of this Court in the matter of **M/s Sri. Ambika Solvex Ltd. Vs. State Bank of India and others,** dated 16th December, 2015 reported in **2015 SCC OnLine MP7053**; **Smt. Meera Gupta and another Vs. M/s Anurudh Builders & Developers**, dated 5th May, 2015, reported in **2015 SCC OnLine MP 611**; and **M/s Vardhman Solvent Extraction Industries Ltd. Thru. Mr. Mahesh Paliwal Vs. The State of Madhya Pradesh,** dated 4th November, 2016, reported in **2016 SCC OnLine MP 7436** but these are the orders passed by the learned Single Judge, therefore, the petitioner is not entitled to the benefits of these orders in view of the Division Bench judgment in the case of **Sunil Garg** (supra). Counsel for the petitioner has also placed reliance upon the judgment of the Supreme Court in the matter of **Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited** and **Others (2014) 6 SCC 1** wherein taking note of Section 14 (3) of the Act, the Hon'ble Supreme Court has held that the finality has been attached to the decision under Section 14 as it cannot be challenged before any court or any authority but that will not exclude the jurisdiction of the High Court under Article 226/227 of the Constitution of India. In that judgment, the Hon'ble Supreme Court has not expressed any opinion if the jurisdiction of the Tribunal/DRT is also excluded under sub-section (3) of Section 17 of the Act. The Division Bench of this Court in the case of **Sunil Garg** (supra) has already expressed that the provision excludes the jurisdiction of the civil court and not the Tribunal which has been conferred with the jurisdiction to entertain the application under Section 17 of the Act.

17. Hence, it is clear that against the order passed under Section 14 of the Act, aggrieved person has an alternative effacious remedy available before the Tribunal under Section 17 of the Act.

18. The record further reflects that the co-borrower/respondent No.6 has already approached the DRT by filing an appeal against the impugned order by invoking the provisions of Section 17 of the Act.

19. In view of the above, we are of the opinion that since against the impugned order, the petitioner has alternative effacious remedy of appeal before the Tribunal under Section 17 of the Act, therefore, no case for interference at this stage is made out.

20. The writ petition is accordingly **dismissed,** however with liberty to the petitioner to avail the remedy of appeal.

(PRAKASH SHRIVASTAVA)
JUDGE

(SMT ANJULI PALO)
JUDGE

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