IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ATUL SREEDHARAN

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 25th OF JULY, 2025

MISC. PETITION No. 3535 of 2025

M/S JAISHREE RAIL CONSTRUCTION AND OTHERS

Versus

UNION BANK OF INDIA

Appearance:

Shri Sanjay Agrawal - Senior Advocate assisted by Shri Anuj Agrawal - Advocate for the petitioners.

Shri Kapil Duggal - Advocate for the respondent-Bank.

ORDER

Per. Justice Atul Sreedharan

The present petition has been filed by the petitioners who are aggrieved by the order dated 27.06.2025 (Annexure P-18) in Securitization Application No.407/2025 passed by the learned DRT, Jabalpur. By the said order, the conditional interim relief from the forceful possession of two of its properties was granted to the petitioner, subject to the payment of Rs.2 crores to the bank. It is also necessary to mention here that if the amount of Rs.2 crore was deposited by the petitioner with the bank, then the sale certificate in favour of auction purchaser would not be executed by the bank.

2. The learned counsel for the petitioner submits that the petitioner became a defaulter of the bank to the tune of more than Rs.6 crores. Three properties

were offered as collateral securities. The main contention of the petitioner was that with reference to section 13(2) of the SARFAESI Act, that before proceedings to take forcible possession of the properties of the petitioner, the provisions of section 13(2) of the SARFAESI Act, were mandatorily required to be complied with. The first step in that process was the classification of the petitioner's account as a non-performing assets by the bank and thereafter, a notice has to be issued to the borrower, in writing, to discharge his full liabilities to the bank within 60 days from the date of the notice, failing which, the bank would be entitled to take such measures against the properties pledged as collateral security as provided under section 13(4) of the Securitization Act. However, the petitioner has also submitted that it was essential that once a notice, under section 13(2) was received by the petitioner, the petitioner had a right to prefer a representation under Section 13(3A) and if the objection/proposal of the borrower is not acceptable to the bank, the same shall be intimated in writing to the borrower within 15 days of the receipt of his representation. Undisputedly, there has been compliance upto Section 13(3A), whereby the representation/proposal put forth by the petitioner was rejected by the bank.

3. Learned Counsel, in order to overcome the barrier of approaching this Court while there exists an alternate remedy in the form of an appeal to the DRAT, has put forth the argument that where the regulations of the RBI have not been followed/ complied with by the bank, in such a situation it is the settled law that the petitioner can approach the High Court under article 227 of Constitution of India. In order to buttress his submissions, he has relied

upon the judgment of a co-ordinate bench of this Court passed in WP No.14010 of 2024, dated 31.07.2024, where in a similar situation, the petition filed by the defaulting banks were considered and how in the light of an alternate remedy also, the learned co-ordinate bench relying upon the judgments of the Supreme Court came to the conclusion that the case of the petitioner in those cases fell within the "exceptional category", wherein it was not necessary to avail the alternate remedy.

4. It is further argued before this court, that the legal infirmity in the impugned order was that the learned DRT did not consider at all the submission put forth by the petitioners before it that the rules and regulations of the RBI relating to MSMEs, sought to be proceeded against under the SARFAESI Act, were not observed by the respondent bank here. Thereafter, the learned counsel for the petitioner has referred to the impugned order passed in this case, which is (Annexure P/18), dated 27.06.2025, which is an elaborate order of 43 paragraphs and speaking in nature. However, the same is questioned by the learned senior counsel for the petitioner that though elaborate, the non-consideration of the primary argument of the petitioner that the bank did not follow the procedure set by the RBI regulations pertaining to the application of the SARFAESI Act against an MSME, which was equivalent to a denial of hearing. In other words, learned counsel for the petitioner has argued that it was essential for the learned DRT to have considered the argument, given its reasons and thereafter come to a conclusion as to why the said argument was not applicable in favour of the petitioner and having not done so, there was violation of the principles of

natural justice as non -consideration of arguments amounted to denial of opportunity.

5. At the very outset, this court respectfully disagrees, there is a marked difference between 'denial of opportunity' and 'non-consideration of submissions'. One cannot mean the other. The denial of opportunity arises in a situation where without even hearing a party which would be adversely affected, an order is passed by the DRT. That is not the case in the present petition. For reasons that shall follow, it will be seen that it was the petitioner's Securitization Application which led to the passing of the impugned order; it was the petitioner who initiated the entire process before the DRT. Orders would also reflect that the petitioner forwarded extensive arguments before the learned Tribunal which were recorded in its order dated 04.06.2025 which shall be adverted to in the latter part of this order. Therefore, this Court holds that non-consideration by the learned DRT would not amount to a denial of opportunity and thereby a violation of natural justice, giving the petitioner adequate cause to approach this court under Article 227.

6. Learned counsel for the respondent of the other hand has attacked the very conduct of the petitioner by submitting that the petitioner has abused the process of law and has tried to overreach the DRT, while the proceedings (which are still pending before the DRT) were being heard. In this regard, learned counsel for the respondent-bank has argued that never once before the DRT has this argument been taken that the bank ignored the RBI regulations relating to SARFAESI proceedings against MSMEs. He has

further submitted that this argument has been placed before this Court for the first time and never before the learned DRT. In this regard, in order to elaborate upon his submissions, learned counsel for the respondent bank has referred to Annexure-P-17, which is a record of proceedings of the DRT dated 04.06.2025 recorded at 12:25 pm, in the presence of the advocates of both the petitioner and the respondent-bank. This court has been informed that the practice followed by the learned DRT is to summarize the arguments in point forms which have been argued by both the sides before it and pass the order based upon those arguments. In that process, in the order dated 04.06.2025, in the presence of the counsel from both the sides, the learned DRT recorded 11 submissions from both the sides. Learned counsel for respondent has drawn the attention to paragraph 7 of the said order which records that the most important objection taken by the applicant before it is that the service of the notice under Section 13(2) was never affected personally on the petitioner. It further recorded the submission of the petitioner before it that the postal department has endorsed that the petitioner was not available and the same has been returned with such an endorsement. It is also the argument of the petitioner before the DRT that the proceedings for substituted service was yet to be taken and that the other objection that was taken was that the classification of the loan of the petitioner as an NPA during the COVID period was an irregularity. Thus, learned counsel for the respondent-bank has submitted that what is being touted as the star argument of the petitioner before this court which is with regard to the non-compliance of RBI regulations relating to MSMEs to be proceeded under the

SARFAESI, was never an argument before the learned DRT. Under the circumstances learned counsel for the petitioner has submitted that the petition before this court is not sustainable.

7. In order to further show the lack of bonafide on the part of the petitioner and that he had falsely averred before the DRT, in paragraph 7 of the record of proceedings dated 4.6.2025, learned counsel for the respondent has referred to his reply with specific reference to (Annexure R-5) which is the securitization application filed by the petitioners before the learned DRT and has drawn the attention of this court to Annexure A-4, where the notice under Section 13(2) is dated 30.9.2024 and at the end of the first page itself of that notice, there is an endorsement by the petitioner that the document has been received on 3.10.2024. In other words, learned counsel for the respondent bank has argued that that the petitioner before this court has made a false statement before the DRT itself in paragraph 7, where after having received the notice and which has been annexed to their S.A. itself, which would logically have been done so, only if they had themselves received the notice, has stated otherwise before the DRT.

8. Learned counsel for the respondents has further argued that after filing the S.A. before the DRT, the petitioner preferred a criminal revision before the Court of Sessions against the order under section 14 of the SARFAESI Act for forceful possession, passed by the CJM. In this regard, learned counsel for the respondent submits that the respondent filed an application on 03.06.2025 before the DRT, praying for dismissal of the S.A for concealing the fact that during the pendency of the S.A before the DRT, the petitioner

had filed a criminal revision before the Court of Sessions. Learned senior counsel appearing on behalf of the petitioner has clarified that the petitioner moved an application for withdrawal of that Criminal Revision on 04.06.2025, and the learned Court of Sessions dismissed the said Criminal Revision as withdrawn on 4.6.2025 itself. But what has not been explained is the conduct as to why the said Criminal Revision was filed in the first place, but for stating that the petitioners were wrongly advised.

9. Learned counsel for the respondent-bank has also drawn the attention of this Court to an FIR that was registered on 07.06.2025 by the respondent bank against the petitioners herein, bearing bearing Crime No.282/2025 of P.S. Ashok Garden, alleging therein that two of the properties which were taken possession of by the bank were forcibly entered into after breaking the locks. In this regard, learned counsel for the respondent-bank and learned counsel of the petitioners do not dispute the fact that before the order of 04.06.2025 which gave interim protection to the petitioner, one of the mortgage properties was already taken possession of physically by the respondent-bank. However, the dispute is with regard to two other properties which the bank says that they had taken possession of, but was forcibly entered into by the petitioners on account of which the FIR has been registered; whereas the learned senior counsel appearing on behalf of the petitioner has submitted that the bank forcibly entered into one of the two remaining properties of the petitioner which the petitioner took possession again after complaining to the police. Therefore, according to the learned counsel for the petitioner, the petitioner still is in lawful and physical

possession of two of the properties pledged to the bank. Learned senior counsel has also attacked the conduct of the bank on the ground that the bank has resorted to extra-judicial measures of trying to forcibly enter and take into possession the property of the petitioners after the interim protection was granted by the DRT on 04.06.2025.

10. Heard the learned counsel to the parties that perused the records of the case.

11. As already held hereinabove, this court rejects the argument put forth by the learned counsel for the petitioner that a non-consideration of an argument does not tantamount to a denial of opportunity. This Court arrived at an opinion as the impugned order passed by the learned DRT, granting interim protection to the petitioners upon payment of Rs.2 crores to the bank, is an elaborate order running into 42 paragraphs and giving reasons for its conclusion. Even assuming for the sake of an argument that, the legal point relating to violation of RBI guidelines by the bank was actually made before the learned DRT and its non-consideration, would not be a denial of opportunity and this petition ought to have been dismissed purely on that ground alone. However, after hearing the learned counsel for the respondent where the conduct of the petitioner itself has been called into question; where the order dated 04-06-2025 (which is the record of proceedings, noting down the arguments of both sides for interim relief) does not reflect that the argument relating to violation of RBI regulations pertaining to MSMEs in relation to the SARFAESI Act was ever made before the learned DRT. Therefore, its non-consideration by the DRT, rather than giving an

opportunity to the petitioner to approach this court under Article 227, was justified in passing the order impugned. As regards the judgment of a co-ordinate bench of this Court passed in WP No.14010 of 2024, dated 31.07.2024, where in a similar situation, the petition filed by the defaulting borrower were considered in the light of an alternate remedy, this court is of the considered opinion that the same does not have the force of precedent as no ratio has been set in that case. The Ld. Co-ordinate bench has entertained the petition only on the ground of the same falling within "exceptional category" without elucidating what the exceptional category was. In such cases the settled law is that with matters pertaining to disputes between Bank/Financial Institution and borrowers, the borrower must avail the alternate remedy under the SARFESI Act, with the only exception permitting the borrower to approach the High Court under its writ jurisdiction being in a situation where a directive/circular/regulation of the RBI has been violated by the bank.

12. It is also relevant to note that arguments of the learned counsel for the petitioner pointed out to the paragraph 21 of the order dated 04.06.2025, whereby the learned DRT has referred to the argument put forth by the learned counsel for the bank in paragraph 21 and 22 where it was argued that the notice under Section 13(2) was served on Mr. Love Kumar Chouhan, the proprietor of M/s Jaishree Rail Construction, but not to the applicant No. 3 (before the DRT, Mrs. Sushila Chouhan). Thereafter, the impugned order dated 27.06.2025 was later passed, which has been challenged in this case. The counsel for the respondent has referred to the judgment on the Supreme

Court in **ICICI Bank and others vs. Umakanta Mohapatra and others (2019) 13 SCC 497**, where the Supreme Court, in a strongly worded order, has deprecated the practice of the High Courts, entertaining petitions under Article 227 arising out of the SARFAESI Act, and thereby delaying the proceedings before the Tribunal. Referring to another judgment passed by the Supreme Court in **State Bank of Travancore & Anr. vs. Mathew K.C. (2018) 3 SCC 85**, which itself has referred to another judgment of the Supreme Court in **Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works Ltd. (1997) 6 SCC 450**, where the Supreme Court held in paragraph 32, that where a position in law is well settled as a result of judicial pronouncement of the Supreme Court, it would be an act of 'judicial impropriety to say the least', for the Courts below the Supreme Court, including the High Court, to ignore the settled decision and pass judicial orders, which would be an act of judicial adventurism, which the Supreme Court strongly deprecate.

13. The judgments placed before this Court are the subsequent judgments of the Supreme Court, where any violation of the RBI regulation by the bank would be a sufficient ground for a petition of the borrower to be entertained by the High Court under Article 227, bypassing the alternate remedy. However, the present case does not fall in that category. Therefore, this Court is of the opinion that the present petition is not sustainable before this court, as there is an effective alternate remedy by way of an appeal to the DRAT, and the Court time has only been utilized by the petitioner in order to escape the payment of Rs.2 crores, which would be a condition precedent to

sustain such an appeal before the DRAT. Therefore, this petition is **dismissed**.

14. Despite the existence of an alternate relief, substantial amount of time of this Court has been consumed in a case which was not maintainable before it under Article 227. Besides this, the petitioner has indulged in misguiding this Court by stating that the main argument before the DRT which was non-consideration of the violation of RBI regulations by the bank, was actually never made before the DRT. Therefore, this court is of the opinion that in order to bring this case under Article 227, an incorrect statement has been made by the petitioner with regard to an argument that was never taken before the DRT at all, which this court has discovered on account of the same being pointed out by the learned counsel for the respondent. Therefore, by way of exemplary cost, this court deems it essential to impose a **cost of Rs 50,000/- (Rupees Fifty Thousands only) on the petitioner, which shall be payable to the respondent-bank within a period of 30 days from the date of this order being uploaded on the site of the High Court**, failing which, the bank shall be entitled to take such measures to enforce this order.

15. Accordingly, this Misc. petition stands **disposed off** in terms of the above.

(ATUL SREEDHARAN)
JUDGE

(ANURADHA SHUKLA)
JUDGE

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