



2026:AHC-LKO:14105-DB

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 48 of 2026

S.B.I. Stressed Assets Recovery Branch Thru. Chief Manager
Shri Amit Kumar Singh and another

.....Appellant(s)

Versus

M/s G.S.M. Bricks and Tiles Thru. Proprietor Mrs. Manpreet
Kaur and 3 others

.....Respondent(s)

Counsel for Appellant(s)	: Alok Saxena,
Counsel for Respondent(s)	: Jitendra Saksena,

**Judgement reserved on:29.01.2026
Judgement delivered on:23.02.2026**

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

(Per : Rajan Roy, J.)

1. Heard Shri Alok Saxena, learned counsel for the appellants,
Shri Jitendra Saxena, learned counsel for the respondent nos.
1 to 3 and Shri Sarvesh Kumar Tiwari, learned counsel for the
respondent no. 4.

2. By means of this special appeal the appellant-Bank has
assailed a judgment and order passed by learned Single Judge

Bench of this Court in a Writ Petition filed under Article 226 of the Constitution of India *albeit* exercising powers under Article 227 thereof, as stated therein.

3. By the impugned judgment the learned Single Judge has quashed an order dated 20.09.2025 passed by the Debt Recovery Tribunal, Lucknow in S.A. No. 290 of 2025 rejecting the interim relief application of the applicant before the DRT, Lucknow.

4. As regards maintainability of this appeal filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 we may fruitfully refer to a Co-ordinate Bench judgment of this Court rendered in *Special Appeal No. 220 of 2023; Sharp Industries Vs. Bank of Maharashtra and Ors.*, wherein, after considering Chapter VIII Rule 5 of the Rules, 1952 and the decision of a Full Bench of this Court it has been held that constitution of Debt Recovery Tribunal being in exercise of powers by the Parliament under Entry 45 of List I i.e. banking, and not under any entry of the State List or Concurrent List, the exclusionary clauses contained in Rule 5 of Chapter VIII referred above does not apply and a special appeal in such matters would be maintainable. The said decision has been followed by another Division Bench of which one of us (Rajan Roy, J.) was a

Member in ***Special Appeal No. 61 of 2024; M/s Susheela Taxfab Private Limited Vs. Debts Recovery Tribunal, Lucknow*** decided on 03.04.2024.

5. In view of the aforesaid exposition of law, we hold that this special appeal under Chapter VIII Rule 5 of the Rules, 1952 challenging the judgment and order passed by learned Single Judge, is maintainable.

6. As regards merits of the appeal it has been contended by the learned counsel for the appellant-bank that there is an effective statutory remedy available under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act, 2002') against the order passed by Debt Recovery Tribunal (hereinafter referred to as 'DRT') but, instead of availing of said remedy and in violation of the law declared on this issue by Hon'ble the Supreme Court right from the case of ***United Bank of India Vs. Satyawati Tondon and Ors.*** reported in ***(2010) 8 SCC 110*** to the latest decision rendered on 16.10.2025 in Civil Appeal arising out of ***SLP (C) Nos. 27984-27988 of 2023; Leelawati N. and Ors. Vs. State of Karnataka and Ors. and connected appeals***, a writ petition was filed by the respondent nos. 1 to 3 under Article 226 of the

Constitution of India challenging the above-mentioned interim order passed by the DRT, Lucknow in proceedings under Section 17 of the SARFAESI Act, 2002 and the writ Court not only entertained the writ petition but allowed it on the first day itself without giving any opportunity to the appellant-bank to file a counter affidavit in the matter nor issuing any notice to the auction purchaser who was arrayed as an opposite party therein.

7. It is submitted that a mention was made in the morning for taking up the case and the case was taken up on the same day and the writ petition was allowed. The submission was that Hon'ble the Supreme Court has deprecated entertainment of writ petitions by the High Court under Article 226 or petitions under Article 227 of the Constitution of India against such an order in spite of availability of statutory remedy under the SARFAESI Act, 2002. He invited our attention in this regard to Para 43 to 46 and 55 of the judgment in *Satyawati Tandon* (supra), especially, Para 55 wherein Hon'ble the Supreme Court expressed its serious concern that despite its repeated pronouncements the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the rights

of banks and other financial institutions to recover their dues as also the hope expressed by the Supreme Court that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection. Reliance was also placed on subsequent decisions wherein the said concerned and hope was reiterated.

8. In spite of it, the writ petition was filed, entertained and allowed on the first day itself quashing the interim order passed by the DRT, Lucknow, though, it was amenable to challenge under Section 18 of the SARFAESI Act, 2002.

9. It was also his submission that the case at hand did not fall in any of the three exceptions referred in *Satyawati Tandon* (supra) and other cases, as, the order impugned before the writ Court was one which had been passed after hearing learned counsel for the parties and noticing in detail the submissions of rival parties and giving reasons for rejection of the interim relief application.

10. It was also his submission that very basis of the impugned order passed by the learned Writ Court that the order passed by the DRT, Lucknow was a non speaking order, is factually incorrect. The fallacy of it would be evident on a bare reading of the interim order passed by the DRT, Lucknow.

11. He also invited our attention to Section 17(3) of the SARFAESI Act, 2002 under which the DRT after examining the facts and circumstances of the case and evidence produced by the parties, comes to conclusion 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 the Act, 2002 and the rules made thereunder, can pass restitutive orders, to the effect of restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, and in that regard may, pass suitable orders in terms of Clause (a), (b) and (c) referred therein.

12. Learned counsel for the auction purchaser Shri Sarvesh Kumar Tiwari heavily relied upon the recent decision of Hon'ble the Supreme Court rendered in the case of *Leelawati N. (supra)* to contend that the writ petition itself was not maintainable in the first place what to say of it being allowed on the very first day without even issuing any notice to his client i.e. auction purchaser.

13. He further emphasized the fact that though the writ petition was filed under Article 226 of the Constitution of India, the learned Single Judge allowed the writ petition and

passed the impugned order exercising the powers under Article 227 of the Constitution of India, though, he did not have jurisdiction to exercise such powers under Article 227 of the Constitution of India and the said jurisdiction vested, by order of Hon'ble the Chief Justice, in two different Benches as per the roster determined by him on 31.07.2025 which was effective as on 23.09.2025 i.e. date of passing of the impugned order.

14. Learned counsel for the respondent nos. 1 to 3 on the other hand contended that his clients had taken three loans in respect of three bank accounts and had also applied under the OTS Scheme for one time settlement which was accepted and in spite of closure of one of the accounts the notice for recovery etc. was issued including the loan amount in respect of all the three accounts. The loan amount pertaining to the closed bank account was about 5 lac and odd and total loan amount, according to him, was Rs.55 lacs and odd, but, ignoring this fact the proceedings were held.

15. He also submitted that various submissions made before the DRT, Lucknow on behalf of his clients were not taken note of and the order was a non speaking order. He attempted to address the Court on the merits of the order passed by the

DRT, Lucknow to contend that it is wholly illegal order. He also emphasized the fact that the order passed on 20.09.2025 by the DRT, Lucknow which was a Saturday and the next day being a Sunday and as 23.09.2025 was the date fixed for taking of the possession, therefore, his clients had no other remedy but to file a writ petition before the High Court and on a mention being made the same was taken up on 23.09.2025 itself and requisite orders were passed. He relied upon a decision of Hon'ble the Supreme Court rendered in the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.* reported in *(1998) 3 SCC 1*, wherein, exceptions have been carved out for entertaining a writ petition in spite of availability of statutory remedy, to support the impugned judgment of the learned Singh Judge Bench.

16. In response, learned counsel for the appellant- Bank refuted the contention of the learned counsel for the respondent nos. 1 to 3 by stating that one of three bank accounts was closed only after settlement had been arrived at in the OTS Scheme and not because loan amount had been paid, but, subsequently respondent nos. 1 to 3 failed to deposit the amount as per the OTS Scheme, as such, they were liable to be proceeded for the due amount and there was no illegality in this regard. He submitted that all these objections were brought on record

before the DRT, Lucknow. He reiterated that no opportunity was given to the appellant- Bank to file any counter affidavit before the writ Court. Though, orally an objection was raised by him with regard to the maintainability of the writ petition itself which has been noted but cursorily rejected on the ground that the order impugned was a non speaking order which was not the case. He also submitted that in view of the loan advanced by the bank in respect of three bank accounts the same house, which was belonging to respondents no. 1 to 3, was mortgaged and on non satisfaction of the loan, proceedings were undertaken under the SARFAESI Act, 2002. Consequently, an auction was held on 06.05.2025, wherein, respondent no. 4 was the auction purchaser. A Sale Certificate was also issued. Prior to the said auction, S.A. No. 290 of 2025 was filed by the respondent nos. 1 to 3, belatedly. During its pendency order was passed under Section 14 of the SARFAESI Act, 2002 for handing over possession of the secured assets to the secured creditor bank, therefore, amendment application was filed which was allowed. Thereafter, an interim application was filed for restraining the concerned Bank from taking possession of the secured assets which was rejected by the DRT, Lucknow by speaking order on 20.09.2025 after hearing all the necessary parties, against which there was a statutory

remedy under Section 18 of the SARFAESI Act, 2002 which was not availed, therefore, the writ petition was not maintainable.

17. After hearing learned counsel for the parties and perusing the records, especially, the impugned order as also the order dated 20.09.2025 passed by the DRT, Lucknow in proceedings under Section 17 of SARFAESI Act, 2002 bearing S.A. No. 290 of 2025, what comes out is that the only ground on which the writ petition was entertained was that the interim order passed by the DRT, Lucknow is a non speaking order. With respect, we have perused the order passed by the learned DRT, Lucknow. We find that the order notices contentions of the parties and the factual aspects in detail in at least three pages and thereafter, DRT has recorded its conclusion that all statutory compliances had been made by the Bank and the Sale Certificate had been issued in favour of the auction purchaser, hence there was no ground to restrain the appellants- bank from taking physical possession of secured assets in order to hand over the same to the auction purchaser, since after issuance of Sale Certificate the auction purchaser is the real owner of the property.

18. Now, in the light of the order passed by the DRT, Lucknow it can not be said that it is a non speaking order. Whether the

reasons given by the DRT, Lucknow are justified in the facts of the case can be a matter of challenge on the grounds which are permissible and available in an appeal under Section 18 of the SARFAESI Act, 2002. An appeal under Section 18 of the SARFAESI Act, 2002 can be filed against any order passed by the DRT, Lucknow under Section 17 of the SARFAESI Act, 2002. The scope of an appeal under the very provision is wide and it does not foreclose an appeal against an interim order passed by the DRT, Lucknow under Section 17 of the SARFAESI Act, 2002 whether granting or declining the interim relief.

19. Hon'ble the Supreme Court has repeatedly held right from the case of *Satyawati Tondon* (supra) till the latest decision in the case of *Leelawati N.* (supra) that the High Court should not entertain a writ petition under Article 226 or a petition under Article 227 of the Constitution of India where effective statutory remedies are available under the SARFAESI Act, 2002 and has, in fact, expressed serious concern in respect to such practice. The only exception being, if the order of the Tribunal is against the provisions of the SARFAESI Act, 2002 or rules made thereunder, it is against the principle of natural justice or is without the jurisdiction or vires of any provisions of SARFAESI Act, 2002 or Rules made thereunder are under challenge.

20. In the case at hand it is not as if the respondent nos. 1 to 3 were not heard before the DRT, Lucknow. In fact, it is their application which was argued and was rejected vide order dated 20.09.2025. As regards the order of the DRT, Lucknow being non speaking order we have already expressed our opinion that it can not be said to be a non speaking order. It can also not be said to be an order without jurisdiction. The learned Single Judge while setting it aside has not mentioned apparent violation of any provision of the SARFAESI Act, 2002 or the rules made thereunder. It was also not a case where vires of provision of SARFAESI Act, 2002 or rules made thereunder were under challenge. In this view of the matter we have no hesitation in saying that the impugned judgment of the learned Single Judge Bench is in the teeth of repeated pronouncements of Hon'ble the Supreme Court. We may in this regard refer to decisions of Hon'ble the Supreme Court rendered in the case of *Satyawati Tondon* (supra) (Para 43 to 46 and 55); *Phoenix ARC Private Limited Vs. Vishwa Bharti Vidya Mandir* reported in *AIR 2022 SC 1045* (Para 75.1, 75.2, 8 and 10); *South Indian Bank Limited Vs. Naveen Mathew Philip* reported in *AIR Online 2023 SC 427* (Para 15 and 17); *PHR Invent Educational Society Vs. UCO Bank and Ors.* reported in *(2024) 6 SCC 579* (Para 22 to 30, 36, 37 and 41). In fact, Para

41 of *UCO Bank (supra)* needs to be quoted for obvious reasons. It reads as under:-

"41. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in Satyawati Tondon since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy: (SCC p. 128, para 55)

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

21. Para 97 to 101 and 110.1 of *Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and Ors.* reported in *(2024) 2 SCC 1* are also relevant. They are quoted below:-

"97. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the Sarfaesi Act. This Court in Satyawati Tondon [United

Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] made the following observations : (SCC pp. 123 & 128, paras 43-45 & 55)

“43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the

enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

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

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

99. *In Phoenix ARC (P) Ltd.v.Vishwa Bharati Vidya Mandir [Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345 : (2022) 3 SCC (Civ) 153] , it was observed as under : (SCC pp. 359-61, paras 18 & 21)*

“18. Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the appellant herein under Article 226 of the Constitution of India against the proposed action/ actions under Section 13(4) of the Sarfaesi Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the Sarfaesi Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the Sarfaesi Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the Sarfaesi Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. [Praga Tools Corpn. v. C.A. Imanual, (1969) 1 SCC 585] and Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] relied upon by the learned counsel

appearing on behalf of the borrowers are not of any assistance to the borrowers.

21. Applying the law laid down by this Court in Mathew K.C. [State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the Sarfaesi Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the Sarfaesi Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the

amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed.”

100. In Varimadugu Obi Reddy [Varimadugu Obi Reddy v. B. Sreenivasulu, (2023) 2 SCC 168 : (2023) 1 SCC (Civ) 58] , it was held as under : (SCC p. 183, para 36)

“36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the Sarfaesi Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated

under the second proviso to Section 18 of the 2002 Act.”

101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the Rdbfi Act and the Sarfaesi Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] , it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the Rdbfi Act and the Sarfaesi Act.

110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the Sarfaesi Act."

22. Relevant extract of Para 23 of ***Kanaiyalal Lalchand Sachdev and Ors. Vs. State of Maharashtra and Ors.*** reported in **(2011) 2 SCC 782** is also quoted herein below:-

23. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See: *Sadhana Lodh v. National Insurance Co. Ltd. & Anr.*, *Surya Dev Rai v. Ram*

Chander Rai & Ors. and SBI v. Allied Chemical Laboratories)."

23. Moreover, we find merit in the submission of Shri Sarvesh Kumar Tiwari, learned counsel for the respondent no. 4 that the writ petition was allowed on the very first day without even issuing notice to the auction purchaser.

24. We also find merit in the contention of learned counsel for the appellant-bank that the writ petition in any case could not have been allowed on the very first day without giving any opportunity to the appellant-bank to file any counter affidavit and also that learned Single Judge Bench did not have jurisdiction to decide a matter under Article 227 of the Constitution of India on the date on which the writ petition was listed before him. We have perused the roster determined by Hon'ble the Chief Justice of this Court on 31.07.2025 and find that in fact, the jurisdiction of entertaining petitions under Article 227 of the Constitution of India and exercising such powers was not vested with the learned Single Judge Bench rather these matters were assigned to two Courts i.e. Court No. 5 and 7, but, Court No. 5 had such jurisdiction only in respect of specified matters under which an order passed by the DRT would not fall, therefore, such powers remained only with Court No. 7, whereas, the learned Single Judge Bench has

passed the order while sitting in Court No. 6. The roster dated 31.07.2025 be kept on record.

25. In view of the above discussion, as, the order passed by the learned Single Bench is in the teeth of the law declared by Hon'ble the Supreme Court and its dictum, is without jurisdiction and is unsustainable on the reasons given for entertaining the writ petition in spite of availability of a statutory remedy under Section 18 of the SARFAESI Act, 2002, the same is liable to be quashed. We accordingly quash the impugned order.

26. The respondent nos. 1 to 3 are at liberty to prefer an appeal under Section 18 of the SARFAESI Act, 2002 and seek such reliefs as may be permissible in law.

27. The Special Appeal is allowed.

(Abdhesh Kumar Chaudhary,J.) (Rajan Roy,J.)

February 23, 2026

R.K.P.