HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on 22.03.2024
Pronounced on 12.04.2024
(Through Virtual Mode)

CM No. 5737/2023 in
WP(C) No. 2429/2023

M/S Hotel Alpine Ridge and Ors …Petitioner(s)/Appellant(s)

Through: Mr. Arif Sikander Mir, Advocate, &
Ms. Laraib Anjaleena, Advocate

Vs.

Union of India and Ors ...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI, with
Ms. Rehana Qayoom, Advocate.
Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 6583/2021 in
WP(C) No. 1982/2021

M/S Wajahat Hameed and Company …Petitioner(s)/Appellant(s)

Through: Ms. Asma Rashid, Advocate.
Mr. Hakim Sami Yaqoob, Advocate.

Vs.

Jammu and Kashmir Bank Limited ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 419/2022 in
WP(C) No. 168/2022

Shamima Mir and Ors …Petitioner(s)/Appellant(s)

Through: Mr. Mr. Altaf Haqani, Sr. Advocate, with
Mr. Shakir Haqani, Advocate, &
Mr. Asif Wani, Advocate.

Vs.

Authorised Officer and Ors ...Respondent(s)

Through: Mr. Mubashir Malik, Advocate, &
Mr. Mohammad Younis.

CM No. 2890/2022 in
WP(C) No. 1173/2022

Rouf Traders and Anr …Petitioner(s)/Appellant(s)

Through: Mr. N.A. Ronga, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

WP(C) No. 3023/2022

M/S Khawaja Shamsdin Mohammad Yousuf and Company …Petitioner(s)/Appellant(s)

Through: Ms. Ahra Syed, Advocate

Vs.

UT of J&K and Ors ...Respondent(s)

Through: Mr. N.A. Dandroo, Advocate

CM No. 5467/2023 in
CM(M) No. 215/2023

M/S Azad Enterprises and Ors …Petitioner(s)/Appellant(s)

Through: Mr. F.A. Wani, Advocate

Vs.

Union of India and Ors ...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI., with
Ms. Rehana Qayoom, Advocate
Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 2853/2023 in
WP(C) No. 1204/2023

Ajaz Parvez Shah …Petitioner(s)/Appellant(s)

Through: Mr. Zaffar Qadri, Advocate.

Vs.

UT of J&K and Ors ...Respondent(s)

Through: Mr. N.A. Dandroo, Advocate
Mr. Jehangir Ahmad Dar, GA.

CM No. 3175/2023 in
WP(C) No. 1351/2023

Mohd Farooq Chechi …Petitioner(s)/Appellant(s)

Through: Mr. Imtiyaz Ahmad Sofi, Advocate

Vs.

Baramulla Central Cooperative Bank Ltd ...Respondent(s)

Through: Mr. Sajid Ahmad Bhat, Advocate, vice
Mr. M.Y. Bhat, Sr. Advocate.

CM No. 3559/2023 in
WP(C) No. 1514/2023

Dar Traders …Petitioner(s)/Appellant(s)

Through: Mr. Gulzar Ahmad Bhat, Advocate

Vs.

UT of J&K and Ors ...Respondent(s)

Through: Mr. Alla-ud-din Ganaie, AAG
Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 3660/2023 in
WP(C) No. 1564/2023

Ghulam Ahmad Mir …Petitioner(s)/Appellant(s)

Through: Mr. Qazi Rashid Shamas, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Shafqat Nazir, Advocate

CM No. 5215/2023 in
WP(C) No. 2232/2023

Nazim Din Wadera …Petitioner(s)/Appellant(s)

Through: Mr. A.M. Dar, Sr. Advocate, with
Mr. Danish Majid, Advocate, &
Mr. Bhat Shafi, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 5235/2023 in
WP(C) No. 2242/2023

Mohammd Ayoub Ganie and Ors …Petitioner(s)/Appellant(s)

Through: Mr. Malik Mushtaq, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 5263/2023 in
WP(C) No. 2250/2023

M/S Just Awsum Inc. Srinagar Kashmir …Petitioner(s)/Appellant(s)

Through: None.

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 5464/2023 in
WP(C) No. 2325/2023

M/S K.B. Labs …Petitioner(s)/Appellant(s)

Through: Ms. Ahra Syed, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 5535/2023 in
WP(C) No. 2353/2023

M/S Mohammad Yousuf and Sons …Petitioner(s)/Appellant(s)

Through: Ms. Sabeena Naveed, Advocate.

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 5565/2023 in
WP(C) No. 2367/2023

M/S Iqbal Motor Transport Service …Petitioner(s)/Appellant(s)

Through: Mr. Syed Faisal Qadiri, Sr. Advocate, with
Ms. Tayba Gulnar, Advocate

Vs.

UT of J&K and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 5843/2023 in
WP(C) No. 2468/2023

Nazrul Islam and Anr …Petitioner(s)/Appellant(s)

Through: Mr. A.M. Dar, Sr. Advocate, with
Mr. Danish Majid, Advocate, &
Mr. Bhat Shafi, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 5871/2023 in
WP(C) No. 2481/2023

Sajad Ahmad Baba …Petitioner(s)/Appellant(s)

Through: Mr. Ahmad Javid, Advocate

Vs.

Union Bank of India and Ors ...Respondent(s)

Through: Mr. Abrar Hussain, Advocate.

CM No. 6486/2023 in
WP(C) No. 2725/2023

Ramiz Ahmad Ganie …Petitioner(s)/Appellant(s)

Through: Mr. Tawheed Ahmad, Advocate

Vs.

The Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 6611/2023 in
WP(C) No. 2776/2023

Bashir Ahmad Dar …Petitioner(s)/Appellant(s)

Through: Mr. Tariq M. Shah, Advocate

Vs.

The Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Aadil Aasmi, Advocate

CM No. 6635/2023 in
WP(C) No. 2782/2023

M/S JK Crockery …Petitioner(s)/Appellant(s)

Through: Mr. F.A. Wani, Advocate

Vs.

UT of J&K and Ors ...Respondent(s)

Through: Mr. N.A. Dendroo, Advocate
Mr. Sajjad Ashraf, GA

CM No. 6713/2023 in
WP(C) No. 2817/2023

Imtiyaz Ahmad Dalkaw and Anr …Petitioner(s)/Appellant(s)

Through: Mr. Nisar Ahmad, Advocate.

Vs.

The Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. T.M. Shamsi, DSGI., with
Ms. Rehana Qayoom, Advocate
Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 6845/2023 in
WP(C) No. 2874/2023

Bilal Ahmed Chopan …Petitioner(s)/Appellant(s)

Through: Mr. M.A. Rathore, Advocate

Vs.

UT of J&K and Ors ...Respondent(s)

Through: Mr. Sajjad Ashraf, GA
Mr. Sajid Ahmad Bhat, Advocate, vice
Mr. M.Y. Bhat, Sr. Advocate.

CM No. 7044/2023 in
WP(C) No. 2956/2023

M/S Jay Kay Electronics …Petitioner(s)/Appellant(s)

Through: Mr. Mohammad Yawar Hussain, Advocate

Vs.

Union Bank of India and Ors ...Respondent(s)

Through: Mr. Abrar Hussain, Advocate.

CM No. 7244/2023 in
WP(C) No. 3053/2023

M/S Shaf Sons and Anr …Petitioner(s)/Appellant(s)

Through: Mr. S.A. Makroo, Sr. Advocate,

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 7245/2023 in
WP(C) No. 3054/2023

M/S Valley Green and Anr …Petitioner(s)/Appellant(s)

Through: Mr. Salim Gupkari, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Anr ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 7277/2023 in
WP(C) No. 3063/2023

Adil Nisar Khan and Anr …Petitioner(s)/Appellant(s)

Through: Mr. Mian Tufail, Advocate, vice
Mr. M.A. Qayoom, Advocate

Vs.

Authorised Officer Punjab and Sindh Bank and Ors ...Respondent(s)

Through: Mr. J.J. Singh, Advocate

CM No. 7406/2023 in
WP(C) No. 3112/2023

M/S Sanjiv Saraf and Associates …Petitioner(s)/Appellant(s)

Through: Mr. Shariq J. Reyaz, Advocate.

Vs.

The Jammu and Kashmir Bank Ltd. and Anr ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 7505/2023 in
WP(C) No. 3143/2023

M/S Irfan Carpets …Petitioner(s)/Appellant(s)

Through: Mr. Shariq J. Reyaz, Advocate.

Vs.

Jammu and Kashmir Bank Ltd. and Anr ...Respondent(s)

Through: Mr. Shafqat Nazir, Advocate

CM No. 7579/2023 in
WP(C) No. 3167/2023

Mohammad Ishaq Pampori and Ors …Petitioner(s)/Appellant(s)

Through: Mr. Zaffar Mehdi, Advocate, vice
Mr. M.M. Dar, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Mir Suhail, Advocate.

CM No. 7709/2023 in
WP(C) No. 3211/2023

M/S Abu Industries Rangreth …Petitioner(s)/Appellant(s)

Through: Mr. Muzaffar Hamid Bhat, Advocate.

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Shafqat Nazir, Advocate.

CM No. 7729/2023 in
WP(C) No. 3221/2023

Barzam Structures Private Limited and Anr …Petitioner(s)/Appellant(s)

Through: Mr. F.A. Wani, Advocate

Vs.

UT of J&K and Ors ...Respondent(s)

Through: Mr. Sajjad Ashraf, GA.
Mr. Mir Suhail, Advocate.

CM No. 7775/2023 in
WP(C) No. 3234/2023

M/S Infahs Private Limited …Petitioner(s)/Appellant(s)

Through: Mr. Hilal Ahmad Wani, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Anr ...Respondent(s)

Through: Mr. Mir Suhail, Advocate.

CM No. 7810/2023 in
WP(C) No. 3252/2023

Showkat Hussain Rather …Petitioner(s)/Appellant(s)

Through: Mr. Altaf Haqani, Sr. Advocate, with
Mr. Shakir Haqani, Advocate, &
Mr. Asif Wani, Advocate

Vs.

J&K State Cooperative Bank Limited ...Respondent(s)

Through: None.

CM No. 7840/2023 in
WP(C) No. 3267/2023

M/S Pureweave Fashions Private Limited …Petitioner(s)/Appellant(s)

Through: Mr. Mohammad Yawar Hussain, Advocate

Vs.

Managing Director and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 7942/2023 in
WP(C) No. 3310/2023

M/S Vascular Devices and Implants and Anr …Petitioner(s)/Appellant(s)

Through: Mr. Aijaz A. Bhat, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Adil Asimi, Advocate.

CM No. 8047/2023 in
WP(C) No. 3353/2023

M/S Abdul Rehman Wani …Petitioner(s)/Appellant(s)

Through: Mr. Arif Sikander Mir, Advocate, with
Ms. Laraib Anjaleena, Advocate
Mr. Jahangir Ahmad Malik, Advocate.
Ms. Asifa Rashid Padder, Advocate.

Vs.

Union of India and Ors ...Respondent(s)

Through: Mr. T M Shamsi, DSGI with
Ms. Rehana Qayoom, Advocate.

CM No. 8145/2023 in
WP(C) No. 3381/2023

M/S Durrani Enclave …Petitioner(s)/Appellant(s)

Through: Mr. Arif Sikander Mir, Advocate, with
Ms. Laraib Anjaleena, Advocate
Mr. Jahangir Ahmad Malik, Advocate.
Ms. Asifa Rashid Padder, Advocate.

Vs.

Union of India and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 337/2024 in
WP(C) No. 184/2024

Ghulam Mohammad Mir …Petitioner(s)/Appellant(s)

Through: Mr. Sheikh Mushtaq, Advocate, and
Mr. Owais Shafi, Advocate,
Mr. Owais Ashraf, Advocate.

Vs.

The Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Shafqat Nazir, Advocate.
Mr. Mir Suhail, Advocate.
Mr. Abu Bakr Pandit, Advocate

CM No. 339/2024 in
WP(C) No. 185/2024

Hajra Bano …Petitioner(s)/Appellant(s)

Through: Mr. Shabir Ahmad Naik, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. N.A. Dendru, Advocate

CM No. 645/2024 in
WP(C) No. 286/2024

M/S Faiz Shawls and Anr …Petitioner(s)/Appellant(s)

Through: Mr. Mohammad Yawar Hussain, Advocate

Vs.

Jammu and Kashmir Bank Ltd. and Ors ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 793/2024 in
WP(C) No. 338/2024

Syed Mohammad Iqbal and Or. …Petitioner(s)/Appellant(s)

Through: Mr. Sikander Hyaat Khan, Advocate

Vs.

The Jammu and Kashmir Bank Ltd. and Anr ...Respondent(s)

Through: Mr. Shafqat Nazir, Advocate

CM No. 1268/2024 in
WP(C) No. 473/2024

Bilal Ahmad Dar …Petitioner(s)/Appellant(s)

Through: Mr. T. M. Shah, Advocate

Vs.

Jammu and Kashmir Bank Ltd. ...Respondent(s)

Through: Mr. Pallav Saxena, Advocate *(through VC)*
Mr. Syed Arsalan Abid, Advocate *(through VC)*
Mr. Prateek Khaitan, Advocate *(through VC)*
Mr. Abu Bakar Pandit, Advocate *(through VC)*
Mr. Chatanya Sharma, Advocate *(through VC)*
Mr. Shitij Chakravarty, Advocate *(through VC)*
Miss. Taniya, Advocate

CM No. 1941/2022 in
WP(C) (PIL) No. 4/2022

S. Jaswinder Singh …Petitioner(s)/Appellant(s)

Through: Mr. Parveen Kapahi, Advocate

Vs.

U O I &Ors. ...Respondent(s)

Through: Mr. Vishal Sharma, DSGI

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

O R D E R

(N. KOTISWAR SINGH, CJ)

1. An issue of seminal importance has arisen in this batch of 46 writ petitions where the actions of the Banks/Financial Institutions/Secured Creditors initiated under Sections 13 and 14 of "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002" (hereinafter referred to as "SARFAESI Act/Act"), have been questioned by the borrowers and the guarantors and aggrieved persons on the plea, amongst others, that though there is a statutory remedy available, it is of a limited nature and not efficacious and hence, they have been compelled to approach this Court by invoking jurisdiction under Article 226 of the Constitution of India. Naturally, the Banks/Financial Institutions have opposed this plea contending that since statutory remedy available is indeed efficacious and hence, these petitions are not maintainable.

2. It has been strenuously argued before us on behalf of the petitioners that, even though the statute provides an alternative remedy under Section 17 of the SARFAESI Act against actions initiated under Section 13 and 14 of the Act, in the facts and circumstances obtaining in these petitions, the same cannot be said to be an efficacious remedy and hence this Court may entertain these writ petitions.

3. As we proceed to examine this preliminary issue, a brief foot note may be added. In most of these petitions, this Court has granted ad interim reliefs to the petitioners directing the Banks/Financial Institutions not to take any coercive measures against the petitioners/borrowers subject to payment of certain amounts to the Bank. This Court passed an order on 06.09.2023 in WP (C) No.2232 of 2023 directing the Bank/Financial Institution not to take any coercive action against the petitioner borrower which would cover all the other cases including the writ petition, WP (C) No. 2429 of 2023(M/s Hotel Alpine Ridge and Ors. Vs Union of India and Ors.). We have been informed that as against the aforesaid interim order, an SLP has been preferred before the Hon'ble Supreme Court in SLP (Civil) Diary No. 8318 of 2024 in respect of WP (C) No. 2429 of 2023, "M/s Hotel Alpine Ridge and Ors. Vs Union of India and Ors.". However, there was no stay order passed by the Hon'ble Supreme Court as against the aforesaid interim order passed by this Court, and the Hon'ble Supreme Court vide order dated 01.03.2024 directed the said SLP to be listed on 11.03.2024 and it was further directed that in the meanwhile, the High Court would be free to decide the preliminary objection. Subsequently, when the matter was listed on 11.03.2024, the Hon'ble Supreme Court issued notice and further directed the Union of India to explain why the Debts Recovery Tribunal under the Recovery of Debts and Bankruptcy Act, 1993 has not been established within the Union Territory of Jammu and Kahmir but the Hon'ble Supreme Court did not modify its earlier order enabling this Court to decide the preliminary objections. Accordingly, this Court proceeded to hear the matter on the preliminary issue as regards the maintainability of the writ petitions before this Court.

4. This Court, in spite of taking up the matter on a day-to-day basis, however, could not conclude the hearing earlier on the issue of maintainability as 46 writ petitions have been tagged together and all the counsel in these petitions were afforded opportunity of submitting their views on this issue and hearing could be concluded only on 22.03.2024 and accordingly, the preliminary issue is being decided by this order.

5. The petitioners have approached this issue from the following broad perspectives.

(i) Right of "access to justice" though not expressly provided as a fundamental right under the Constitution, has been recognized as a sacrosanct part of Article 21 of the Constitution in **Anita Kushwaha vs. Pushap Sudan**, (**2016) 8 SCC 509.**

(ii) As to what constitutes the essence of access to justice has been spelt out by the Hon'ble Supreme Court in the aforesaid case of **Anita Kushwaha Vs. Pushap Sudan** (supra) as follows: -

i. The State must provide an effective adjudicatory mechanism.

ii. The mechanism so provided must be reasonably accessible in terms of distance.

iii. The process of adjudication must be speedy.

iv. The litigant's access to the adjudicatory process must be affordable.

(iii) Though the SARFAESI Act may provide an alternative forum for remedy in the Debt Recovery Tribunal located in Chandigarh to the aggrieved persons or the litigants in the UT of Jammu and Kashmir and UT of Ladakh, under Section 17 of the Act, against actions taken by the Bank/secured creditors under Section 13 (4) of the Act, it has been submitted that it cannot be considered to be an efficacious remedy since there is no easy access to the same. Hence, this denial of easy access to justice is violative of Article 21 of the Constitution. It has been accordingly submitted that if fundamental right is breached, the aggrieved party can certainly invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redress of grievances.

(iv) The petitioners have sought inspiration from the decision of the Supreme Court in **S.P. Sampath vs. Union of India, (1987) 1 SCC 124** wherein the Supreme Court had dealt with the scope of Tribunals established under Articles 323-A and 323-B introduced by the 42nd Constitutional amendment by which these special Tribunals are proposed to replace the traditional Courts including the High Court for redressal of grievances, and the Hon'ble Supreme Court had laid great emphasis on the importance to make these Tribunals effective and efficacious. The Hon'ble

Supreme Court also emphasized the need to establish such Tribunals in every State and wherever needed to establish Circuit Benches so that there is easy access to these Tribunals by the public/litigants inhabiting in various part of the country. The said principles had been reiterated by the Hon'ble Supreme Court in **Rojer Mathew Vs. South Indian Bank Ltd. and Ors., (2020) 6 SCC 1.**

(v) It has been submitted that considering the geographical location of the UT of Jammu and Kashmir and UT of Ladakh and absence of easy access and lack of proper communication from various locations in the UT of Jammu and Kashmir to Chandigarh, the litigants have to face enormous and numerous difficulties to reach Chandigarh. For instance, Chandigarh is accessible from Srinagar only through Air or by Road. Travel by Air is highly expensive. In fact, the Air fare is comparatively higher than the rest of the country which makes it extremely costly for the litigants to travel by Air from Srinagar to Chandigarh. The Air connectivity is also limited to only one flight in a day. Chandigarh is not connected by Air from Jammu or any other place in the UT of Jammu and Kashmir.

(vi) As far as the road connectivity is concerned, ordinarily, it takes about 15 hours to reach Chandigarh from Srinagar via Jammu and the road connectivity is frequently disrupted because of landslides during the rainy season or snow during the winters and for maintenance, and there is no Rail link between Srinagar and Chandigarh.

(vii) Similarly, as far as the connectivity of Leh and Kargil in the UT of Ladakh with Chandigarh is concerned, there is no convenient road connectivity between Leh and Kargil with Chandigarh and they have to take a circuitous route through Srinagar. Though, there is Air connectivity between Leh and Chandigarh, it is prohibitively costly,andthere is no Air connectivity between Kargil and Chandigarh.

(viii) In view the geographical distance and the lack of proper connectivity, litigants from the UT of Jammu &Kashmir find the journey to Chandigarh extremely expensive, cumbersome and time consuming. Thus, it is a serious impediment to access to justice, for which reliance was placed on the decisions in **Rakhaldas Mukherjee Vs. SP Ghose AIR 1952 Calcutta 171** and **Assistant Collector**

of Central Excise Vs. Jainson Hosiery Industries, AIR1979 SC 1889.

(ix) It has been held by the Hon'ble Supreme Court in **Whirlpool Corporation vs. Registrar of Trademark, Mumbai (1998) 8 SCC 1** that the rule requiring consideration of existence of statutory remedies before the writ is issued, is a rule of policy, convenience, and discretion rather than rule of law. It has been held that existence of alternative statutory remedy will not be a bar for invoking the writ jurisdiction. Since, there are many impediments and practical hurdles in approaching the DRT at Chandigarh, this Court ought not to decline entertaining petitions challenging the actions under the SARFAESI Act.

(x) Another submission is that the alternative remedy provided under Section 17 of the SARFAESI Act is limited in scope inasmuch as the aggrieved person can invoke Section 17 only if aggrieved by an action taken under Section 13(4) of the SARFAESI Act. It has been submitted that before the bank/financial institution invokes Section 13(4) of the Act, it has to comply with the related provisions under Section 13(2) and as to what will happen if there is infraction of the provisions of the Section 13(2) has not been clearly laid down in the statute and if any person is aggrieved by the action initiated by the Bank or secured creditor under Section 13(2), such an aggrieved person will be left with no remedy available, in which event, such an aggrieved person can invoke Article 226 relying on the decision in **Executive Engineer Vs. M/s Sri Seeta Ram, (2012) 2 SCC 108.**

(xi) It has been further submitted that only when there is mismatch between the asset and the liabilities with the financial institutions or the secured creditor, such an asset can be declared as NPA after which, they can invoke the provisions of Section 13(2) of the SARFAESI Act as observed in **Transcore vs. UOI &Anr. (2008) 1 SCC 125**. Thus, if any action is taken by the secured creditor/financial institutions by not undertaking the aforesaid exercises before invoking Section 13(2), the aggrieved person will be left with no remedy.

(xii) The other deficiencies in the functioning of the DRT have been also highlighted. It has been submitted that there is only one Member of the Tribunal who looks after all the

cases relating to SARFAESI Act from the UTs of J&K and Ladakh. Similarly, there are many cases pending before the DRT Chandigarh and since it consists of only one Member, it will be impracticable for a single Member DRT located in Chandigarh to deal with expeditiously all these cases. There is bound to be delay in disposal. Hence, there cannot be speedy disposal,which is an important facet of the right to access the justice and of an efficacious remedy.

(xiii) It has been also submitted that merely providing virtual link to enable the litigant to approach the DRT located in Chandigarh, cannot render it an efficacious forum. Virtual link or virtual proceeding cannot be a substitute for the physical hearing. Virtual Court or proceeding can be a supplement but cannot supplant the physical hearing.

It has been submitted that even appearing through virtual mode is fraught with various difficulties and hurdles faced by litigants in view of lack of proper internet connectivity, digital infrastructure, lack of digital awareness amongst the litigants and many of the lawyers. In fact, because of the deficiencies in providing digital infrastructure the Hon'ble Supreme Court had issued a string of directions in **Swapnil Tripathi v/s Supreme Court of India, 2018 (10) SCC 639** and in **Sarvesh Mathur v/s Registrar General High Court of Punjab and Haryana, 2023 SCC Online SC 1293.**

(xiv) The same principles/directions will apply in respect of proceedings under the SARFAESI Act before the DRT in Chandigarh as serious infrastructural deficiencies are also to be found in the DRT, Chandigarh.

(xv) It has been also highlighted that if DRTs can be established in other States, there is no reason why the same cannot be established in UTof Jammu &K and UT of Ladakh failure of which would amount to discrimination, violative of Article 14 of the Constitution.

6. On the other hand, the respondents have vehemently opposed the plea of the petitioners contending, inter alia, that the law is more or less well settled that this Court by invoking jurisdiction under Article 226 ought not entertain petitions challenging actions taken under Section 13 and 14 of the SARFAESI Act, in view of a series of decisions rendered in that regard by the Hon'ble Supreme Court.

Further, if there are difficulties on the part of litigants in the UTs of Jammu & Kashmir, and Ladakh to appear physically before the Debts Recovery Tribunal at Chandigarh, virtual links are provided so that the litigants can file their documents through electronic mode and also appear virtually. Since, they can take part in the proceedings virtually, the remedy available to the litigants of UT of Jammu &Kashmir and UT of Ladakh is undoubtedly efficacious, and in-fact many borrowers have already approached the Debts Recovery Tribunal at Chandigarh for redressal of their grievances. Any such difficulties arising out of physical or geographical reasons have thus been taken properly care of.

7. It has been also submitted that it is now well settled by the Hon'ble Supreme Court that the High Courts in exercise of power under Article 226 should not interfere with the proceedings initiated under the SARFAESI Act and should relegate the matter to the DRTs, and in fact in many cases, this Court had also directed the aggrieved parties to approach the DRT at Chandigarh. Hence, these petitions are not maintainable.

8. As we try to unravel the legal conundrum on this preliminary issue, it is imperative to understand the context in which the issue has emerged. Every legal issue is to be understood from the contextual perspective, by examining the legal provisions in which the issue has arisen and the factual details obtaining in the case. Thus, any decision must be rendered in the context of the specific facts and circumstances of the case, in accordance with the relevant legal provisions provided in the statute.

9. After understanding the contextual background, encompassing both statutory provisions and factual aspects of the case, our next step will be to analyze the legal position obtaining. For this, we will examine the legal principles that are pertinent and relevant to the case, taking into account the decisions rendered by the Apex Court as well as by this Court.

10. Thus, taking into consideration the contextual background and the relevant judicial pronouncements, we will examine the issue at hand to arrive at the appropriate legal conclusion regarding the posed legal question.

11. As evident from above, this batch of writ petitions have been filed challenging various actions initiated and undertaken by the secured creditors/banks/financial institutions to recover dues from the borrowers/guarantors by invoking provisions of the SARFAESI Act.

12. The SARFAESI Act is relatively a new advent in the Indian legal system, triggered by serious impediments and challenges faced by the secured creditors/Banks/Financial Institutions in realizing speedily dues from borrowers and guarantors. Traditionally, banks and creditors had to resort to the normal procedure of filing money suits before the civil courts to recover debts. However, this process often dragged on for decades, rendering many a times attempts to recover dues speedily dues illusive. Such traditional legal actions involved multiple stages, including first obtaining a favourable decree; and subsequently, the execution process of the decree, which proved to be equally cumbersome and time-consuming. These prolonged proceedings had a pernicious effect on the interests of the secured creditors/banks, which had a cascading impact on the economy of the Nation.

13. Having recognized the challenges in the speedy recovery of debts from borrowers and guarantors, it was felt that certain novel measures were required to be taken to streamline and expedite the process of securing the debts, which led the Parliament to enact the Recovery of Debts and Bankruptcy Act, 1993 by creating specialized tribunals, viz., Debts Recovery Tribunals to exclusively deal with cases involving rupees ten lakhs and above. Despite the enactment of the aforesaid Act and creating specialized tribunals for simplifying the procedures, it was felt necessary to devise a more effective means for securing debts. Consequently, based on the recommendations from expert committees, Parliament enacted the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). This legislation enabled financial institutions, secured creditors, and banks to take possession of secured assets without resorting to courts or tribunals, thus avoiding the cumbersome and time consuming process, but by themselves, enhancing the efficiency and speed of debt recovery processes.

14. The statement of objects and reasons behind the enactment would clearly demonstrate the purpose and intent for enactment of the SARFAESI Act to achieve this end. Accordingly, the same is reproduced below: -

"STATEMENT OF OBJECTS AND REASONS

The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitization of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitization and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce nonperforming assets by adopting measures for recovery or reconstruction."

15. For our purpose, it may not be necessary to delve into all the provisions of the SARFAESI Act. Instead, our focus will be primarily on Chapter III of the Act, which pertains to the enforcement of security interest created in favour of the Banks/Financial Institutions. This Chapter is particularly relevant to the subject matter under consideration before us. In view of the above, it may be apposite to briefly refer to the relevant provisions of the Act as provided under Chapter III.

16. Section 13 under Chapter III of the Act empowers the financial institutions/secured creditors to enforce any security interest created in their favour without the intervention of the Court or Tribunal. In terms of Section 13 (2) of the Act, after an account in respect of a debt has been classified as a non-performing asset (NPA), the secured creditor is required to inform the borrower in writing of his liabilities and demand discharge of the same within 60 days of notice.

17. The notice issued under Section 13 (2) is mandated to include details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor. Upon issuance of such notice under Section 13 (2) giving time for repayment within 60 days, if the borrower makes any representation or raises objections in the meantime, the secured creditor is obliged to consider such representation or objection. If the secured creditor comes to the conclusion that such representation or objection lacks merit and is unacceptable, the decision of the secured creditor must be communicated to the debtor in writing within 15 days of receiving the representation, as stipulated under sub-Section 3-A of Section 13 of the Act.

18. Once the bank/secured creditor has taken the aforementioned steps and the borrower fails to discharge his liability, sub-section 4 of Section 13 can be invoked which empowers the secured creditor/bank to take possession of the secured assets or assume management of the borrower's business. This includes the right to transfer assets through lease/assignment etc. or appoint any person to manage the secured assets. Additionally, the creditor may require any person who has acquired any of the secured assets in the meantime to pay the secured creditor. Thus, sub-section 4 of Section 13 enables the secured creditor/bank to undertake the measures outlined therein towards the discharge of debt by the debtor.

19. In addition to the aforementioned powers vested in the secured creditor/bank/financial institution for discharge of the liability and secure payment of the dues on its own, the secured creditor may if deemed necessary, seek the assistance of the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or

documents are situated or found, under Section 14 of the Act. As per Section 14, when any such request is made by the creditor, accompanied by necessary details provided in the form of an affidavit, to the Chief Metropolitan Magistrate or the District Magistrate for taking possession to such assets or documents, the District Magistrate or the Chief Metropolitan Magistrate, as the case maybe after satisfying himself of the contents of the affidavit, shall pass appropriate orders for taking possession of the secured assets and handover to the creditor.

20. Thus, from the aforementioned statutory scheme, it is evident that the secured creditor/banks/financial institutions can take necessary actions independently for dealing with the secured assets in the manner provided under Section 13, by following the prescribed procedure for payment of the debts by the borrower/guarantors etc. Additionally, the statute provides that if any assistance is required by the creditor from the concerned Chief Metropolitan Magistrate/District Magistrate having jurisdiction over the matter, such assistance will be rendered by the Chief Metropolitan Magistrate/ District Magistrate, as provided under Section 14 of the Act.

21. The aforementioned procedure for dealing with secured assets does not entail any intervention or adjudication on merit by the Court or Tribunal. However, if any person is aggrieved by the action taken under sub-section 4 of Section 13, he may approach the Debts Recovery Tribunal under Section 17 of the Act. Since the effectiveness of the statutory remedy available under Section 17 is central to the controversy, it may be apposite to reproduce it for our proper understanding. Accordingly, the same is reproduced as below: -

> ***"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 authorised officer under this Chapter,1 [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:*
>
> *Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.*
>
> *Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower*

by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall 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 this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the 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 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 may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.

17A. [Making of application to Court of District Judge in certain cases.] Omitted by the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020) and Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).”

22. Having outlined the statutory position as above as relevant to us, it is pertinent to note that the petitioners herein are all residents of UT of Jammu and Kashmir. They have challenged various actions initiated by the financial institutions/banks under Sections 13 and 14 of the SARFAESI Act, by contending that since the forum in the form of Debts Recovery Tribunal is distantly located in Chandigarh, it does not offer efficacious remedy to them.

Accordingly, they have knocked the door of this Court by invoking Article 226 of the Constitution of India.

23. The factual scenario indicates that the petitioners are residents of the Union Territory of Jammu & Kashmir, and the properties involved/secured assets are also located within Jammu and Kashmir. Moreover, the transactions were primarily undertaken within the jurisdiction of the Union Territory of Jammu & Kashmir. Thus, almost the entire cause of actions arose within the territory of UT of Jammu & Kashmir and of this Court.

24. Now that we have referred to the statutory and factual contextual background, we may recall the various judicial decisions rendered on the jurisdiction of the High Courts under Article 226 of the Constitution to intervene in the matters relating to actions initiated by the financial institutions/banks under the SARFAESI Act.

25. There is a host of decisions of the Apex Court including the one rendered by this Court (with one us sitting in the Bench) in **M/s Ablum Electrical Industries Vs. Authorized Officer, Cluster Head, J&K Bank, and others** [WP(C) No.1515/2023] decided on 26.06.2023,in which this Court had held that considering the objectives and purpose for which SARFAESI Act has been enacted, which is primarily to empower the Bank and Financial Institutions to take possession of secured assets and to deal with these by way of sale/disposal management etc., even without the intervention of the Court or Tribunal, and since alternative statutory remedy is available under the statute which empowers the Debt Recovery Tribunal not only to declare any act under Section 13 and 14 of SARFAESI Act invalid, but also to restore possession and management of property to the aggrieved person, normally and ordinarily, any challenge to any action taken by the Banks/Financial Institutions under Section 13 or any order passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act, which is pursuant to the steps taken by the secured creditors under Section 13 of the Act, should be relegated to the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, and intervention of the High Court under Article 226 of

the Constitution of India should be avoided and can be done only in exceptional circumstances and rare cases.

26. As we proceed to examine this issue vis-à-vis the provisions of the SARFAESI Act, we may note the broad principles which have evolved in due course as regards the power of the High Court to exercise extra-ordinary jurisdiction under Article 226 of the Constitution vis-à-vis existence of alternative remedy by referring to some of the decisions.

27. For this, without going in detail of the various judicial pronouncements, we may first refer to the decision of the Hon'ble Supreme Court in **Harshad Govardhan Sandagar vs. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1**.

In the said case, the Hon'ble Supreme Court was considering the claim of the tenants of the premises which were mortgaged to different Banks as securities for loans advanced by the Banks. A particular Bank invoked Section 14 of the SARFAESI Act for taking over the possession of the premises and handing over the same to the Bank. In view of threat looming of dispossession of the tenants, the tenants moved the Bombay High Court for intervention, which was refused on the ground that the remedy lies before the Debts Recovery Tribunal. The same was challenged before the Hon'ble Supreme Court. The Apex Court considering the scope of Sections 13 and 14 of the SARFAESI Act, held that the decision of the Chief Metropolitan Magistrate or the District Magistrate exercised under Section 14 of the SARFAESI Act can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party. The Hon'ble Supreme Court considering the finality attached to the order passed by the Chief Metropolitan Magistrate under sub-section (3) of Section 14 was of the view that merely because statutory provisions provide for attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision, it will not bar the High Court or the Supreme Court to exercise jurisdiction vested by the Constitution as statutory provisions cannot take away a power vested by the Constitution and,

accordingly, it was observed in para 29 in the aforesaid decision in **Harshad Govardhan Sondagar**(supra), as follows:

> ***"29.****Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorized by the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution*
>
> ……
>
> *In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law."*

28. We will also refer to some of the decisions where the Apex Court had taken a contrary view and directed the aggrieved parties to approach the alternative statutory forum available, many of which have been also relied by the Respondents before us.

29. (i) In **Standard Chartered Bank v. V.Noble Kumar, (2013)9 SCC 620,** the Hon'ble Supreme Court held that it would be open to the borrower to file an appeal under Section 17 any time after the measures are taken under Section 13(4) and before the date of sale/auction of the property and the same would apply if the secured creditor resorts to Section 14 and takes possession of the property with the help of the officer appointed by the Magistrate.

(ii) In **ITC Ltd. v. Blue Coast Hotels Ltd., (2018)15 SCC 99**, the Hon'ble Supreme Court held that considering the fact that debtor did not respond to the notice of demand of a loan taken and the creditor having considered the representation submitted and on failure of debtor to clear the dues in spite of several opportunities offered, he cannot approach the High Court under Article 226 of the Constitution of India.

(iii) In **State Bank of Travancore v. Mathew K.C.,(2018) 3 SCC 85**, the challenge was to the proceedings initiated under Section 13 (4) of the SARFAESI Act before the High Court under Article 226 of the Constitution, on the ground that the Bank failed to consider the request for regularization of the loan account and in absence of a right to appeal under Section 17 against order passed under Section 13 (3-A), the borrower was left with no option but to approach the Court under Article 226 of Constitution. However, the Hon'ble Supreme Court in the aforesaid case, observing that as the proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act 1993 have become synonymous with those before the regular courts affecting expeditious adjudication, did not approve of the High Court entertaining the writ petition staying the proceedings at the stage of Section 13 (4) of the SARFAESI Act.

(iv) In **Bala Krishna Rama Tarlev. Phoenix ARC Pvt.Ltd. And others :(2023)1 SCC662**, the Hon'ble Supreme Court held that if any person is aggrieved by the actions taken under Section 14 of the Act, he can take recourse to Section 17 of the Act by raising objections.

(v) In **Kotak Mahaindra Bank Limited v. Girnar Corrugators Private Limited &Ors: (2023) 3 SCC 210**, it was also held by the Hon'ble Supreme Court that if a person is aggrieved by an order passed under Section 14, he has to approach the DRT under Section 17 of the SARFAESI Act.

(vi) In **Authorized Officer, Indian Overseas Bank &anr. v. Ashok Saw Mill :(2009) 8 SCC 366**, it was held by the Hon'ble Supreme Court that DRT had jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act.

(vii) In **Jagdish Singh v. Heeralal and others: (2014)1SCC479**, the Hon'ble Supreme Court held that Section 17 of the Act provides a forum to any aggrieved person against any "measures" taken by the secured creditor under Section13(4) of the Act.

(viii) In **ARCE Polymers Pvt. Limited v. Alphine Pharmaceuticals Pvt. Ltd. and Ors.:(2022)2SCC221**, it was held by the Hon'ble Supreme Court that the series of steps from the date of auction by the secured creditor under Section13 (2) of the SARFAESI Act upto the date of auction and sale confirmation can be challenged by the borrower when it challenges the measures referred to in sub-section (4) to Section 13 under Section 17of the SARFAESI Act.

30. In the light of the aforesaid decisions of the Hon'ble Supreme Court, this Court in **Ablum Electrical Industries** (supra) made the following observations:-

> **"<u>Observations of the Court</u>**
>
> *On consideration of the facts and circumstances of the case as obtaining in the present case, in the light of the decisions discussed above, we can make the following observations: -*
>
> *(i) Section 13 of the SARFAESI Act deals with enforcement of security interest created in favour of any secured creditor without the intervention of the court or tribunal.*
>
> *(ii) Section 13(4) of the Act empowers the secured creditor to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment, or sale for releasing the secured asset.*
>
> *(iii) Where a secured creditor seeks the assistance of the Chief Judicial Magistrate for taking possession of the secured assets or for sale or transfer, he can apply to the CJM under Section 14 of the Act.*
>
> *(iv) Thus, from the scheme of the Act, it is evident that the assistance sought by a secured creditor from the CJM is towards facilitating the right of the secured creditor to take*

possession of the secured assets, sale or transfer etc. which under Section13 the secured creditor can do himself without the intervention of the court or tribunal. This right of the secured creditor already existing under Section 13 is sought to be strengthened with the assistance of the CJM.

(v) Section 14 thus provides an additional prop by the Magistrate for securing possession of the secured assets.

(vi) However, before availing this aid of the Magistrate, the conditions precedents as provided under Section 13 must be satisfied. These conditions are also enumerated under the first proviso to sub-section (1) of Section14, as quoted and discussed earlier.

(vii) Considering the stringency of the provisions of the SARFAESI Act, enabling the secured creditors to enforce the security interest by way of taking possession of the secured assets etc., without the intervention of the court or tribunal, the creditors have to meticulously and scrupulously follow and comply with these conditions. Some of these conditions, like the requirement to give notice to the borrower, to consider the reply/representation given by the borrower pursuant to the notice as provided under sub-section(3-A)of Section 13 have been held to be mandatory, violation of which may vitiate the process.

(viii) Though the CJM is a judicial authority discharging judicial duties and functions, while exercising function under Section 14 of the SARFAESI Act, CJM does not discharge any judicial function, which has been described as ministerial without involving judicial application of mind.

(ix) The role of the CJM is to verify the contents of the affidavit filed along with the application by the secured creditor before the CJM.

(x) The verification process undertaken by the CJM is not a judicial scrutiny of the contents of the affidavit, but merely for the satisfaction that the requisite contents are mentioned in the affidavit, and not to ascertain whether the contents are true or not.

(xi) Section 14, on careful examination, appears to be a part of or extension of the process for taking possession of the secured assets by the secured creditor as permitted under Section 13(4)(a) of the Act.

(xii) Section 13(4) (a) enables the secured creditor to take possession of the secured assets of the borrower to recover his secured debts and to transfer by way of lease, agreement or sale. Under Section13 (4)(a), the secured creditor can do so without the help of the court or tribunal.

(xiii) Section 14, however, enables the secured creditor to do the same with the help of the CJM. The CJM therefore, only extends a helping hand to the secured creditor to take possession of the secured assets, for which the secured creditor has to fulfill the requirements as stipulated under Section 13, including sub-section (3-A) of Section 13 of the Act.

(xiv) Anyone who is aggrieved by any action taken by the secured

creditor under sub-section (4) of Section 13 can approach the Debts Recovery Tribunal under Section 17 of the Act. However, no specific provision has been mentioned in the Act about any redressal forum against any order passed by the CJM under Section 14.

(xv) Since any of the measures referred to under sub-section (4) of Section 13 taken by the secured creditor may be challenged before the Debts Recovery Tribunal under Section 17 of the Act, and since the purpose of invoking Section 14 is also to achieve one of the measures referred to under sub-section (4)(a) of Section 13, that is, to take possession of the secured assets, as a natural corollary, actions taken under Section14 should be also appealable under Section17ofthe Act.

(xvi) This silence in the statute about appeal ability of the order passed under Section 14 of the Act has opened the scope for invoking the writ jurisdiction under Article226 of the Constitution as in the present case. This is on the premise that when there is no alternative remedy available, writ jurisdiction can be invoked, more so when violation of statutory provisions is alleged.

*(xvii) The Supreme Court, thus, held in **Harshad Govardhan Sondagar**(supra) that the decision of the Chief Metropolitan Magistrate or the District Magistrate under Section 14 can be challenged before the High Court under Article226 and 227 of the Constitution by any aggrieved party. However, the said decision was in the context of a grievance of a lessee, not a borrower.*

(xviii) However, ina number of cases, the Supreme Court considering the statement of objects and reasons for which the SARFAESI Act was enacted for facilitating securitization of financial assets and empower the Bank and financial institutions to take possession of securities and dispose of these, the Hon'ble Supreme Court has held that any aggrieved person against any order passed under Section 14 of the Act can avail the forum under Section17of the Act.

a) Standard Chartered Bank v. V. Noble Kumar, (2013) 9 SCC620:

***"37.** ……. As held by a Bench of three Judges in Mardia Chemicals12, it would be open to the borrower to file an appeal under Section 17 any time after the measures are taken under Section 13(4) and before the date of sale/auction of the property. The same would apply if the secured creditor resorts to Section 14 and takes possession of the property with the help of the officer appointed by the Magistrate."*

12:Mardia Chemicals Ltd. V.Union of India,(2004)4SCC 311

b) Bala Krishna Rama Tarle v. Phoenix ARC Pvt. Ltd. Andothers :(2023) 1 SCC 662:

***"18.**Thus,thepowersexercisablebyCMM/DMunder Section 14 of the SARFAESI Act are ministerial steps andSection14doesnotinvolveanyadjudicatoryprocessquap*

oints raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal."

c) Kotak Mahindra Bank Limited v.Girnar Corrugators Private Limited &Ors :(2023)3 SCC210:

"34. *Under Section 14 of the SARFAESI Act, the District Magistrate or the Chief Metropolitan Magistrate as the case may be is required to assist the secured creditor in getting the possession of the secured assets. Under Section14 of the SARFAESI Act, neither the District Magistrate nor the Metropolitan Magistrate would have any jurisdiction to adjudicate and/or decide the dispute even between the secured creditor and the debtor. If any person is aggrieved by the steps under Section 13(4)/order passed under Section 14, then the aggrieved person has to approach the Debts Recovery Tribunal by way of appeal/application under Section 17 of the SARFAESI Act."*

(xix) *Our High Court in the decisions in **M/s New Kashmir Fruit Centre** (supra) and **Jabeena Afroz** (supra) had entertained petitions under Article 226 of the Constitution challenging the order passed by the CJM under Section 14 of the Act.*

(xx) *Thus, the legal position appears to be that though the High Court in exercise of writ jurisdiction under Article 226 of the Constitution can entertain petitions assailing the orders passed under Section 14 of the SARFAESI Act, considering the efficacious remedy available under the statute, and considering the objective and purposes underlying the enactment of SARFAESI Act to empower the Banks and financial institutions to enforce security assets, ordinarily, the aggrieved party should be relegated to the Debts Recovery Tribunal, specifically created to deal with such matter, under Section 17 of the Act, unless, there is palpable and blatant violation of the provisions of the Act.*

(xxi) *Debts Recovery Tribunal has been held to be an effective redressal forum as it has the power not only to declare the recourse to any or one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditor as invalid [vide Section 17(3)(a)]but also to restore the*

possession of the secured assets or management of the secured assets to the borrower [vide Section17(3)(b)] and also pass such other order as it may consider appropriate and necessary vide Section 17(3)(c)].

(xxii) We would like to observe that because of the stringent provisions of Section 13 of the Act, and since the CJM, when invoking his jurisdiction under Section 14 of the Act, does not act judicially to verify the correctness of the contents of the affidavit filed by the secured creditor, but discharges non judicial function, which is primarily ministerial in nature, the secured creditor has to punctiliously abide by the conditions mentioned under Section 13 as well as Section 14 by providing the statutorily required relevant and mandatory information in the affidavit. Consequently, if the secured creditor or his authorized officer in correctly provides the information in the affidavit as required and enumerated under the first proviso to sub-section (1) of Section 14 of the SARFAESI Act, the secured creditor or his authorized officer may face perjury for having filed false affidavit to secure a benefit of the protective arm of the judicial institution of the Chief Judicial Magistrate.

(xxiii) The fact that the statute requires that any application filed under Section 14 of the Act must be accompanied by an affidavit shows that such application cannot be filed casually but must be done with all seriousness. Filing of affidavit involves stating of facts to the knowledge or information of the deponent upon a solemn oath. Since, there is no scope for verifying the truth fullness or correctness of the contents of the affidavit by the CJM while exercising powers under Section14 of the Act, and the CJM invokes his powers for taking possession of the secured assets based on the affidavit filed by the secured creditor, we may put a word of caution to the secured creditor that any wrong information furnished in the affidavit may attract the charge of committing perjury for filing false affidavit.

Considering the objectives and purpose for which SARFAESI Act had been enacted, primarily to empower the Banks and financial institutions to take possession of secured assets and to deal with these by way of sale, disposal, management, etc. and as effective statutory remedy is provided under the statute, which empowers the Debts Recovery Tribunal not only to declare any act done under Sections 13 and 14 illegal, but also restore possession and management of the property, normally and ordinarily, any challenge to an order passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act should be relegated to the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

Intervention by this Court under Article 226 of the Constitution should be only in exceptional circumstances and rare cases."

31. From the conspectus of judicial pronouncements rendered by both the Apex Court as well as by this Court, it is evident that ordinarily, the High Court should refrain from intervening in matters arising from actions initiated by the banks/financial institutions under SARFAESI Act by invoking Article 226 of the Constitution of India. Instead, the parties should be relegated to the statutory redressal forum and mechanism envisaged under Section 17 and other related provisions of the SARFAESI Act.

32. However, as observed above by this Court in the case of **Ablum Electrical Industries** (supra), this Court has not adopted entirely a hands-off approach and opened a window of opportunity to the litigants to knock the doors of this Court to intervene in rare circumstances under Article 226 of the Constitution. We are also mindful of the well settled principle that the power of this Court under Article 226 of the Constitution of India is plenary in nature and the Court will intervene where injustice is alleged for the redressal of the grievances, as also held by the Hon'ble Supreme Court in **Dwarka Nath v. ITO, (1965) 3 SCR 536 : AIR 1966 SC 81** wherein it was held as follows:

> ***"4.*** *We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads:*
>
> > *"……every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."*
>
> This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables

> the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in **T.C. Basappa v. T.Nagappa and another, (1954) 1 SCC 905 and Irani v. State of Madras (1955)ISCR 250."**

33. From the numerous decisions already rendered in this regard, it is evident that the Apex Court has been taking the stand that if there is an alternative remedy available under the statute, the aggrieved party should seek recourse to the alternative forum provided under the statue. Thus, this Court must also in deference to the judicial pronouncements of the Highest Court of the land should adhere to this view. Accordingly, under ordinary circumstances, this Court should refrain from invoking jurisdiction under Article 226 of the Constitution to intervene in matters pertaining to actions initiated by secured creditors, financial institutions or banks under SARFAESI Act.

However, the specific issue raised in this batch of petitions as to whether the statutory alternative remedy available under Section 17 of the SARFAESI Act, in the context of the litigants residing in the UTs of J&K and Ladakh is efficacious or not, was not raised and considered, and thus not addressed in those cases.

34. In the context of the UTs of Jammu & Kashmir and Ladakh, the effectiveness, adequacy and/or efficacy of the redressal forum provided under SARFAESI Act presently available in Debt Recovery Tribunal at Chandigarh has not been specifically dealt with either by the Apex Court, or by this Court in the case of **Ablum Electricals** (supra) or any other cases. In the case of **Ablum Electricals** (supra) this Court's decision was based on the premise that when an alternative forum is available under the statute, the aggrieved party should avail the same and not invoke the writ jurisdiction of the Court

under Article 226 of the Constitution of India. This Court did not specifically address the issue raised now, as to whether the forum available under the SARFAESI Act at DRT in Chandigarh indeed provides an efficacious remedy or not.

35. Accordingly, we have proceeded to hear this issue as discussed above. As also mentioned at the threshold, this issue is pending consideration before the Hon'ble Supreme Court. Normally and ordinarily, when the Apex Court is seized of a matter, the Courts below ought to refrain from making any observation or finding on merit on the same matter/issue. However, the Hon'ble Supreme Court, in its wisdom, had granted liberty to this Court vide its order dated 01.03.2024 to decide on the preliminary objection, i.e., the issue of maintainability of the writ petitions. Hence, we are deciding this issue by this order.

36. In the context of existence of alternative forum is concerned, the law is well settled that the remedy available under Article 226 of the Constitution is generally discretionary in nature and hence the Court may consider various aspects before passing any order when alternative remedy is available. The High Court may refuse to grant relief if there is an equally efficacious and adequate alternative remedy available. However, if it is demonstrated that the alternative remedy available is not efficacious or adequate, there is no legal impediment on the High Court to invoke its discretionary jurisdiction under Article 226 of the Constitution. Just to mention one amongst the numerous decisions in this regard, we may refer to **Tata Engineering and Locomotive Co. Ltd. v. Asstt. Commr. of Commercial Taxes, (1967) 2 SCR 751 : AIR 1967 SC 1401** wherein it was held that,

> ***"8**. The power and jurisdiction of the High Court under Art. 226 of the Constitution has been the subject of exposition from this Court. That it is extraordinary and to be used sparingly goes without saying. In spite of the very wide terms in which this jurisdiction is conferred, the High Courts have rightly recognised certain limitations on this power. The jurisdiction is not appellate and it is obvious that it cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if*

> *they are equally efficacious and declines to assume jurisdiction to enable such remedies to be by-passed. To these there are certain exceptions. One such exception is where action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case, the High Court may interfere to avoid hardship to a party which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked. In our judgment the present is an example of the exceptional situation above contemplated just as Himmat-Lal v. State of M. P., 1954 SCR 1122: (AIR 1954 SC 403) was another instance which came before this Court."*

37. Therefore, in the present case also, we are of the view that if it is established that the alternative redressal forum available under Section 17 of the Act, namely the DRT located at Chandigarh, is not considered to be efficacious and adequate, certainly, there will be no legal bar on this Court to invoke Article 226 of the Constitution of India to intervene even in the matters relating to SARFAESI Act.

38. As we proceed to examine this issue about the efficacy, adequacy, and effectiveness of the alternative forum, it is to be observed that this issue has two facets.

39. One of these facets pertains to the statutory provisions, which is purely in the realm of law, as to whether the statutory provisions provide an efficacious remedy. At times, it has been found by the Courts that the alternative remedy provided under the statute does not appear to be efficacious or is legally too burdensome or onerous in which event, the Courts may intervene.

40. As discussed above, there are well settled principles where the High Court has invoked writ jurisdiction under Article 226**.** Some of these are:

(i) absence or access of jurisdiction**[Bhutnath Chatterjee Vs. State of West Bengal and Ors, (1969) 3 SCC 675],**

(ii) infringement of fundamental right**[Himmat Lal Hari Lal Mehta Vs State of MP &Ors. AIR 1954 SC 405],**

(iii) where the law which gives jurisdiction is ultra vires or unconstitutional**[Whirlpool Corporation v. Registrar of trademarks, Mumbai, (1998) 8 SCC 1],**

(iv) where there is a violation of natural justice**[Seth Chand Ratan v. Pandit Durga Prasad,(2003) 5 SCC 399]**,

(v) where it has been found that the alternative remedy is too dilatory or too difficult to provide quick relief**[Assistant Collector of Central Excise vs. Jainson Hosiery Industries, (1979) 4 SCC 22].**

Similarly, when the alternative remedy was too onerous**[Titaghur Paper Mills Co. Ltd. Vs. State of Orrisa, (1983) 2 SCC 433]**or where it was found that filing of an appeal would be virtually from "Caesar of Caesars wife" i.e., empty formality or a futile exercise, as held in **Dhampur Sugar Mills limited Vs. State of U.P., (2007) 8 SCC 338],** the litigants can invoke the writ jurisdiction under Article 226 of the Constitution.

41. Apart from these instances where the High Court intervened under Article 226 of the Constitution of India, which emanate from inadequacies in legal standard in the provision of the statute, there may be other situations where invoking the alternative forum may be rendered inadequate or illusory, as in the case of lack of proper access to the forum, as held in **"Dhampur Sugar Mills limited Vs. State of U.P.", (2007 8 SCC 338)**.

Thus, this second facet for invoking jurisdiction under Article 226 is closely linked to the concept of access to justice.

42. The concept of access to justice, however, itself is multi-dimensional which may also involve some of the inadequacies in the legal provisions as discussed earlier. Yet, the primary attribute of the concept of access to justice arose out of difficulties faced by the litigants in having easy access to the justice delivery system.

43. As far as the first facet of inadequacy in the statutory provision of the alternative redressal forum is concerned, there does not appear to be much of any issue in the present cases. The decisions of the Apex Court as discussed above implore the High Court not to invoke jurisdiction under the Article 226 of the Constitution but to relegate the grievance to the DRT established, which implies that there is no legal deficiency in the alternative

forum provided under Section 17 of the SARFAESI Act and such forum can deal with the grievances of the aggrieved persons.

44. As discussed above, however, the Hon'ble Supreme Court has not examined this issue from the perspective of the second facet relating to the concept of access to justice i.e. from the perspective of denial of proper access to justice caused due to difficulties in approaching the DRT at Chandigarh, especially for the litigants in the UTs of Jammu and Kashmir and Ladakh.

45. As we address these two facets relating to inadequacy of the efficacy of the alternative remedy available, it may sometimes be difficult to distinctly delineate these two facets and these may occasionally become intertwined. However, we will make every effort to address these two facets separately to the extent possible.

46. Coming specifically to the issue of access to justice which is a component of the second facet of the efficacious alternative remedy, the learned Senior Counsel/Counsel for the petitioners unanimously assert that in the present case, there is no proper access to justice for the litigants in the UT of Jammu & Kashmir and also for the UT of Ladakh for various reasons, which we will discuss hereinafter.

47. The issue of access to justice has been a focal point for the Courts, including the Apex Court, while dealing with cases under various circumstances. Originally, the concept was invoked to address situations where litigants or aggrieved persons faced difficulties in accessing the justice delivery system due to economic or other disabilities. This led the Apex Court to issue a number of directions from time to time to ensure easy access to justice delivery system, particularly for marginalized groups such as poor litigants, underprivileged sections of the society, under-trial prisoners etc. by providing free legal aid etc.

48. The concept of access to justice is also closely tied to the emergence of public interest litigation, where the Courts, particularly the Apex Court, intervened in many matters by issuing numerous directions of

diverse nature aimed at providing legal assistance to the under privileged sections of the society, thereby making access to justice a reality for them.

49. We may not burden ourselves and delve deeply into the development of the concept of access to justice. However, we may only note that the enactment of the Legal Services Authorities Act, 1987 was one of the outcomes of the evolution of the concept of access to justice in India. The Legal Service Authorities Act, 1987 was established to provide free and competent legal services to the weaker sections of the society. Its primary aim is to ensure that opportunities for securing justice are not denied to anyone due to economic or other limitations, and to guarantee that the legal system operates in a manner that promotes justice based on equal opportunity.

50. While the main thrust of the Legal Services Authorities Act is to provide access to the justice delivery system to the under privileged sections of the society, however, the concept of access to justice is no longer solely associated with the under privileged sections of the society which the Legal Services Authority Act aims to address. The concept of access to justice has presently evolved beyond the original concern, and now covers an array of situations where litigants, not only from weaker sections of the society but also all strata of the society, who find difficulty in having easy access to justice delivery system.

51. The evolving concept of access to justice has been elaborately discussed in the land mark decisions of the Hon'ble Supreme Court in "**Anita Kushwaha vs. Pushap Sudan", (2016) 8 SCC 509**, the principles of which were reaffirmed in the subsequent case of **"Rojer Mathew V. South Indian Bank Ltd. And Ors", 2020 6 SCC 1.**

52. The importance of the right to access to justice was emphasized in the case of **Anita Kushwaha** (supra), in the following words:

> *"22. Emphasizing the importance of access to justice and recognizing the right as a fundamental right relatable to Article 21 of the Constitution of India, this Court observed:*
>
> > *25. Unduly long delay has the effect of bringing about blatant violation of the rule of law and adverse*

impact on the common man's access to justice. A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of the right undermines public confidence in the justice delivery system and incentivises people to look for shot cuts and other fora where they feel that injustice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law.

26. It may not be out of place to highlight that access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and inequitable [see United Nations Development Programme, Access to Justice – Practice Note (2004)]

27. The present case discloses the need to reiterate that "access to justice" is vital for the rule of law, which by implication includes the right of access to an independent judiciary. It is submitted that the stay of investigation or trial for significant periods of time runs counter to the principle of rule of law, wherein the rights and aspirations of citizens are intertwined with expeditious conclusion of matters. It is further submitted that delay in conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of citizen's rights under the Constitution, in particular under Article 21."

29. To sum up : Access to justice is and has been recognised as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman Jurisprudential maxim of 'Ubi Jus Ibi Remedium', the development of fundamental principles of common law by judicial pronouncements of the Courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilized societies and systems recognise and enforce."

53. Subsequently, in the aforesaid case of **Anita Kushwaha**(supra), the Hon'ble Supreme Court summarized and spelt out the essence of access to justice in the following words:

> *33. Four main facets that, in our opinion, constitute the essence of access to justice are:*
>
> *i) The State must provide an effective adjudicatory mechanism;*
>
> *ii) The mechanism so provided must be reasonably accessible in terms of distance;*
>
> *iii) The process of adjudication must be speedy; and*
>
> *iv) The litigant's access to the adjudicatory process must be affordable.*

All these four aspects have been extensively discussed in the aforementioned case of ***Anita Kushwaha***(supra).

54. All the counsel for the petitioners were unanimous in their contention that all the aforementioned four facets of access to justice are missing in the present case.

It has been submitted that since "access to justice" is a fundamental right, absence of these elements in the present cases amounts to denial of access to justice, thereby infringing upon the fundamental right to life. It has been contended that, access to justice being a facet of right to life as guaranteed under Article 21 of the Constitution, this Court has the jurisdiction to intervene in these matters, even if these relate to the SARFEASI Act.

It has been contended by the counsel for all the petitioners in one voice that the alternative forum provided under Section 17 at DRT in Chandigarh does not meet the four requirements as elucidated above.

55. Regarding the first attribute of access to justice as expounded in the case of **Anita Kushwaha** (supra), namely, that the State must provide an effective adjudicatory mechanism, while the petitioners contend that the forum available under Section 17 of the SARFAESI Act is not effective, the respondents vehemently assert that it does provide an effective adjudicatory mechanism. In view of widely divergent views, we will deal with this issue at a later stage as this aspect is closely related to the remaining three attributes.

56. Coming to the second attribute of access to justice which stipulates that the mechanism provided must be reasonably accessible in terms of distance, we are of the opinion that the contention of the petitioners appears to be meritorious.

57. There is no denying the fact that the geographical distance from both Jammu and Kashmir to Chandigarh, where the Debts Recovery Tribunal is located, is considerable.

As far as the litigants from the UT of Jammu & Kashmir are concerned, it is important to note that Chandigarh is accessible from Kashmir primarily via air, with flights from Srinagar available only once a day. But there is no air connectivity between Chandigarh and Jammu. Moreover, as is also evident from the materials brought to our notice, the airfare for this route from Srinagar to Chandigarh is exorbitantly high, which is more than double the airfare for similar distances in other parts of the country. Accessibility of Chandigarh from various places in the UT of Jammu & Kashmir and UT of Ladakh is equally onerous.

58. The learned counsel for the petitioner in WP(C) No.2429/2023, has provided the following details regarding the distance and cost of airfare, bus fare supported by documents:

"DISTANCE FROM DIFFERENT DISTRICTS/PLACES OF JAMMU AND KAHSMIR TO CHANDIGARH

Distance from:

i.	Samba to Chandigarh is	328.2 Kms
ii.	Jammu to Chandigarh is	368.2 Kms
iii.	Rajouri to Chandigarh is	530.2 Kms
iv.	Poonch to Chandigarh is	618.2 Kms
v.	Udhampur to Chandigarh is	430.2 Kms
vi.	Doda to Chandigarh is	543 Kms
vii.	Bhaderwah to Chandigarh is	569.2 Kms
viii.	Kishtawar to Chandigarh is	598.2 Kms
ix.	Batote to Chandigarh is	488.2 Kms
x.	Ramban to Chandigarh is	517.2 Kms
xi.	Banihal to Chandigarh is	553.2 Kms

xii.	Qazigund to Chandigarh is	590.2 Kms
xiii.	Anantnag to Chandigarh is	622.2 Kms
xiv.	Pahalgam to Chandigarh is	718.2 Kms
xv.	Srinagar to Chandigarh is	662.2 Kms
xvi.	Baramulla to Chandigarh is	714.2 Kms
xvii.	Gulmarg to Chandigarh is	714.2 Kms
xviii.	Kupwara to Chandigarh is	749.2 Kms
xix.	Uri to Chandiarh is	764.2 Kms
xx.	Bandipora to Chandigarh is	717.2 Kms
xxi.	Sonamarg to Chandigarh is	746.2 Kms
xxii.	Zojila to Chandigarh is	766.2 Kms
xxiii.	Drass to Chandigarh is	810.2 Kms
xxiv.	Kargil to Chandigarh is	866.2 Kms
xxv.	Khaisi to Chandigarh is	996.2 Kms
xxvi.	Leh to Chandigarh is	1096.2 Kms

It has been submitted that the aforementioned information is based on distance chart (Road Distance Given in Kms) provided/uploaded by Motor Vehicle Department, Government of Jammu and Kashmir on their Website and Google Map.

COST ANALYSIS IN AVAILING REMEDY AT CHANDIGARH

The cost analysis for a one day travel from Leh to Chandigarh, Srinagar to Chandigarh is provided below:

BY AIR (One Hearing)

	Air Fare To and Fro (Rupees)	Hotel Charges (Rupees)	Food (Rupees)	Local Travel (Rupees)	Total (Rupees)
Leh to Chandigarh to Leh	7,645 +16,527 = **24,172**	**3551** (One Day Charges)	**1500**	**1500**	**30,723**
Srinagar toChandigarhtoSrinagar	4,727 +13,355 =**18082**	**3551** (One Day Charges)	**1500**	**1500**	**24,633**
Jammu to Chandigarh to Jammu	11,192 +16,638 = **27830**	**3551** (One Day Charges)	**1500**	**1500**	**34381**

BY BUS (One Hearing)

	BUS Fare To and Fro(Rupees)	Hotel Charges(Rupees)	Food(Rupees)	Local Travel(Rupees)	Total(Rupees)
Leh to SXR SXR toJMUJMU toCHD RETURNFARE	1058 + 799 + 619 = **2477** **2477(RS. 4953)**	**3551** (One Day Charges)	**1500**	**1500**	**11,504**
SXR to JMUJMU to CHD RETURN FARE	799 + 619 = **1418** **1418(Rs 2836)**	**3551** (One Day Charges)	**1500**	**1500**	**9387**
JMUJMU to CHD RETURN FARE	619 619 **(Rs. 1238)**	**3551** (One Day Charges)	**1500**	**1500**	**7789**

59. Though this Court may not subscribe to the exactitude correctness of the aforementioned data, we are of the opinion that the correct figures may not significantly differ from these furnished before us. In such a scenario, it can definitely be said that because of the sheer geographical distance and lack of proper communication and means of communication, Chandigarh cannot be said to be easily and readily accessible, rather it is onerous, expensive and time consuming.

60. In addition to the distance and lack of affordable connectivity via air and rail as adumbrated above, the unique topography, perilous terrain and extreme weather conditions of Jammu &Kashmir, and Ladakh present overwhelming challenges to those who commute by road. According to a report titled “Road Accidents in India – 2022”, published by the Ministry of Road Transport and Highways (MoRTH), a staggering total of 4287 lives were tragically lost due to road accidents from 2018 to 2022 in Jammu and Kashmir. In 2022, amongst the Union Territories, Jammu and Kashmir recorded highest number of accidents (6,092), totalling even higher than Delhi which recorded a total of 5,652 accidents.

61. It is, therefore, unsurprising that the data suggest that the total number of accidents per lakh population in 2022 stands at 45.1 for Jammu and Kashmir and 125.1 for Ladakh, which is palpably higher than the

national average of 33.5. Notably, the report suggests that a significant portion of the road fatalities in Jammu and Kashmirwasattributed to accidents on the National Highways.

62. It may be argued that one relatively common and affordable means to access DRT Chandigarh is via road. However, litigants and advocates commuting to Chandigarh from Kashmir or Ladakh regions via road, would have to inevitably traverse through National Highway 44 which includes the Chenab Valley of Jammu and Kashmir, a region known for its treacherous terrain and curvy roads. The aforementioned data clearly highlight how the road safety condition in Jammu and Kashmir and Ladakh in practicality further compounds the issues faced by litigants due to long travel hours, huge distance and lack of affordable air connectivity to Chandigarh otherwise. Such an issue, being peculiar to the UTs of Jammu and Kashmir and Ladakh forms another reason as to why the presence of a DRT at Chandigarh does not make access of justice an easy proposition.

63. Regarding the third facet of access to justice, which pertains to the requirement that the process of adjudication must be speedy, this is an issue which we may address at a later stage, as it is also closely related to the other facets.

64. Regarding the fourth facet, which stipulates that the process of adjudication must be affordable to the disputants, it is evident that due to difficulties in accessing the DRT located in Chandigarh and high attendant costs, the process of adjudication in Chandigarh may prove to be unaffordable for many of the aggrieved persons. There is no doubt that if a litigant based in Jammu or Srinagar wishes to approach Chandigarh, they would need to engage either a local lawyer, whose expenses including travel and accommodation would need to be borne by him, or engage an outstation lawyer, which would also entail significant costs. Additionally, any appearance in Chandigarh cannot be a one-day affair. It may require stay for a couple or more days and that too on more than one occasion, thus significantly increasing expenses for the proceedings on different dates. Therefore, we also concur with the contention of the petitioners that the

process of adjudication in DRT located at Chandigarh will be very expensive and may not be affordable to every litigant, although some may be able to afford it.

65. In this context, it would be pertinent to recall the observations made by the Hon'ble Supreme Court in the case of **Rojer Mathew**(supra) relating to the concept of access to justice.

In the aforementioned case, while dealing with the issue of tribunalization of courts and establishment of tribunals as a substitute to traditional courts, various issues arising from the tribunalization were discussed. While we may not delve into all the complexities involved, our focus will be primarily from the perspective of access to justice and the necessity to have the DRT in the Union Territories of Jammu and Kashmir, and Ladakh.

66. In this regard, it may be apt to reproduce the observations made by the Apex Court in the aforesaid case of **Rojer Mathew** (supra) in the following paragraphs:

> *"219. While seeking a 'Judicial Impact Assessment' of all existing Tribunals, counsels for petitioners/appellant(s) have underscored the exorbitant pendency before of a number of Tribunals like the CESTAT and ITAT, which they claim affects the very objective of tribunalisation. On the other hand, they also highlight an incongruity wherein numerous Tribunals are hardly seized of any matters, and are exclusively situated in one location.*
>
> *220. As noted by this court on numerous occasions, including in Madras Bar Association (2014) (supra), although it is the prerogative of the Legislature to set up alternate avenues for dispute resolution to supplement the functioning of existing Courts, it is essential that such mechanisms are equally effective, competent and accessible. Given that jurisdiction of High Courts and District Courts is affected by the constitution of Tribunals, it is necessary that benches of the Tribunals be established across the country. However, owing to the small number of cases, many of these Tribunals do not have the critical mass of cases required for setting up of multiple benches. On the other hand, it is evident that other Tribunals are pressed for resources and personnel.*
>
> *221. This 'imbalance' in distribution of case-load and inconsistencies in nature, location and functioning of Tribunals*

> *require urgent attention. It is essential that after conducting a Judicial Impact Assessment as directed earlier, such 'niche' Tribunals be amalgamated with others dealing with similar areas of law, to ensure effective utilisation of resources and to facilitate access to justice.*
>
> *222. We accordingly direct the Union to rationalise and amalgamate the existing Tribunals depending upon their case-load and commonality of subject-matter after conducting a Judicial Impact Assessment, in line with the recommendation of the Law Commission of India in its 272nd Report. Additionally, the Union must ensure that, at the very least, circuit benches of all Tribunals are set up at the seats of all major jurisdictional High Courts."*

67. The necessity to ensure that the mechanism established as an alternative forum of dispute resolution should be equally effective, competent and accessible is emphasized in the aforesaid paragraphs. The observations made in paragraphs 386 and 391 of **Rojer Mathew** (supra) are also of direct relevance to us, wherein it has been held that having tribunals without Circuit Benches in at least the capitals of the States and Union Territories amounts to denial of justice to the citizens of these regions and it makes the justice delivery system very metropolis-centric. Moreover, it also deprives the Bench and Bar in smaller districts and capitals of smaller States of handling such cases, apart from making it expensive for litigants. The Paragraphs 386 and 391 of **Rojer Mathew's** case (supra) for easy reference are quoted herein below:

> *"386. Access to justice is a fundamental right. Denial of access to justice also takes place when a litigant has to spend too much money, time and effort to approach the adjudicating authority to get justice. In India where delays plague the tribunals, a client will not hurriedly approach a tribunal even if he has a genuine grievance. Amongst the many tribunals set up, the tax tribunals have been probably the most successful. In my view, one of the reasons why the tax tribunals have been successful is that the recruitment of members of these tax tribunals is normally done at a younger age and there is scope of career progression not only within the tribunal but also from the tribunals to the High Courts. This can only happen if we recruit younger and competent people rather than retired persons. Another reason for the success of the tax tribunals is that the litigant is either the revenue or an assessee, both of whom have the wherewithal to fight cases. Similarly, in administrative tribunals it is government servants mainly who are involved. Commercial tribunals also deal with the litigants who normally have sufficient finances. But now we have other tribunals like the NGT which may be approached by poor villager."*

> *"391. Having tribunals without benches in at least the capitals of States and Union Territories amounts to denial of justice to citizens of those States and Union Territories. It also makes the justice delivery system very metropolis centric. This has many adverse effects. The bench and the bar in smaller district towns and capitals of smaller States which were handling these matters in a competent manner are deprived of handling these types of cases. This also makes access to justice expensive for the litigants. It also leads to a situation where the bench and the bar in these areas would not have any experience of handling matters relating to jurisdictions transferred to tribunals which they used to handle earlier. Therefore, the local bench and bar will never develop and the entire bulk of work will be captured by those practicing in Delhi or in those State capitals where benches of the tribunals are set up. Instead of taking justice to the common man, we are forcing the common man to spend more money, spend more time and travel long distances in his quest for justice, which is his fundamental right."*

68. As opposed to the contentions of the petitioners, an aspect on which great emphasis has been laid by the counsel for the respondents, is the various provisions made for enabling virtual participation in the proceedings of the Debts Recovery Tribunal, Chandigarh.

We are, however, of the opinion that while enabling the litigants to file documents and pleadings and also to appear virtually, thus dispensing with physical appearance, may enhance access to justice, yet it cannot be a substitute for physical hearings. Virtual proceedings can never fully replace physical hearings. They cannot supplant, at best they can supplement the physical court proceedings.

69. We, thus, are of the view that virtual proceedings should ordinarily act as a supplement to physical hearings in order to enhance the effectiveness of the justice delivery system, which is ordinarily conducted in a physical mode. Virtual mode,in our view, cannot totally supplant the requirement of the physical mode, rather it can be adopted as a temporary measure to deal with situation where litigants face difficulties in appearing physically. However, it cannot be argued that virtual proceedings are equally efficacious or effective as physical hearing in ensuring access to justice.

70. It has been also noticed that while digitization of court proceedings has progressed substantially across the country and virtual hearings and proceedings are being conducted in many of the regular courts and High Courts, because of the initiative taken by the e-Committee of the Hon'ble

Supreme Court, yet, virtual proceedings still have inherent issues which are yet to be fully satisfactorily resolved to make it an effective mode of adjudication.

The Hon'ble Supreme Court in **'Sarvesh Mathur Vs. Registrar General High Court of Punjab and Haryana',2023 SCC Online SC 1293**had elaborately dealt with the concept of virtual proceedings and the components for making the judicial proceedings effective and has accordingly, issued a number of directions. These directions ,of course, mainly pertain to the court proceedings. However, in our opinion the aforesaid deliberations and directions issued in case of **Sarvesh Mathur's case** would be equally applicable in the proceedings before the DRT. It is significant to note that the Hon'ble Supreme Court has taken the view that virtual proceeding is an extension of the open court. It is, however, never contemplated that the virtual proceeding can fully replace the physical proceedings of the courts.

71. Considering the serious deficiencies and shortcomings relating to conduct of virtual court proceedings, in order to address these issues, the Hon'ble Supreme Court was pleased to issue a string of directions in the case of **Sarvesh Mathur**(supra) as follows:

> *"In this backdrop, we issue the following directions:*
>
> *(i) After a lapse of two weeks from the date of this order, no High Court shall deny access to video conferencing facilities or hearing through the hybrid mode to any member of the Bar or litigant desirous of availing of such a facility;*
>
> *(ii) All State Governments shall provide necessary funds to the High Courts to put into place the facilities requisite for that purpose within the time frame indicated above;*
>
> *(iii) The High Courts shall ensure that adequate internet facilities, including Wi-Fi facilities, with sufficient bandwidth are made available free of charge to all advocates and litigants appearing before the High Courts within the precincts of the High Court complex;*
>
> *(iv) The links available for accessing video conferencing/hybrid hearings shall be made available in the daily cause-list of each court and there shall be no requirement of making prior applications. No High Court shall impose an age requirement or any other arbitrary criteria for availing of virtual/hybrid hearings;*

(v) All the High Courts shall put into place an SOP within a period of four weeks for availing of access to hybrid/video conference hearings. In order to effectuate this, Justice Rajiv Shakdher, Hon'ble Judge of the High Court of Delhi is requested to prepare a model SOP, in conjunction with Mr. Gaurav Agrawal and Mr. K Parameshwar, based on the SOP which has been prepared by the e-Committee. Once the SOP is prepared, it shall be placed on the record of these proceedings and be circulated in advance to all the High Courts so that a uniform SOP is adopted across all the High Courts for facilitating video conference/hybrid hearings;

(vi) All the High Courts shall, on or before the next date of listing, place on the record the following details:

(a) The number of video conferencing licences which have been obtained by the High Court and the nature of the hybrid infrastructure;

(b) A court-wise tabulation of the number of video conference/hybrid hearings which have taken place since 1 April 2023; and

(c) The steps which have been taken to ensure that Wi-Fi/internet facilities are made available within every High Court to members of the Bar and litigants appearing in person in compliance with the above directions.

(vii) The Union Ministry of Electronics & Information Technology is directed to coordinate with the Department of Justice to ensure that adequate bandwidth and internet connectivity is provided to all the courts in the North-East and in Uttarakhand, Himachal Pradesh and Jammu and Kashmir so as to facilitate access to online hearings;

(viii) All High Courts shall ensure that adequate training facilities are made available to the members of the Bar and Bench so as to enable all practising advocates and Judges of each High Court to be conversant with the use of technology. Such training facilities shall be set up by all the High Courts under intimation to this Court within a period of two weeks from the date of this order; and

(ix) The Union of India shall ensure that on or before 15 November 2023, all tribunals are provided with requisite infrastructure for hybrid hearings. All Tribunals shall ensure the commencement of hybrid hearings no later than 15 November 2023. The directions governing the High Courts shall also apply to the Tribunals functioning under all the Ministries of the Union Government including CESTAT, ITAT, NCLAT, NCLT, AFT, NCDRC, NGT, SAT, CAT, DRATs and DRTs.

72. The fact that the Hon'ble Supreme Court had to issue such directions does indicate that virtual proceedings are still handicapped because of certain deficiencies for which adequate and satisfactory measures are yet to be fully adopted and provided. In fact, as also brought to our notice, the virtual proceedings being conducted in the Debts

Recovery Tribunal at Chandigarh for litigants in Jammu and Kashmir also suffer from similar issues.

73. Although e-filing has been made mandatory as per rules before the DRTs, the rules also require that documents have to be filed physically within a certain period of time as notified by the Ministry of Finance (Department of Financial Services) vide Notification dated 22.01.2020 under Section Rule 4 (2) which is reproduced as follows:

> *"4(2)….. After e-filing, the applicant shall file a hard copy of the said pleading, along with a copy of the acknowledgment for e filing within seven working days of the day of e-filing in person or by his agent or by a duly authorized legal practitioner before the Registry of the Tribunal."*

Thus, e-filing does not fully do away with the need for physical filing of documents which would require the physical presence of the litigants and/or the lawyer.

74. Additionally, it has been also pointed out to us that there is only one Member of the Tribunal dealing with the SARFAESI matters, not only arising out of UTs of Jammu and Kashmir and Ladakh but also with other districts of Punjab and Haryana and other states like Uttarakhand, as evident from the notification issued by the Union of India under Notification dated 04.10.2022. Thus, we are doubtful, whether a single Member Tribunal can properly and efficaciously deal with all the cases before the Tribunal speedily.

75. There are other difficulties attending virtual proceedings. Lack of proper internet connectivity in the UT of Jammu and Kashmir and UT of Ladakh, frequent breakdowns in the video link during virtual proceedings before the DRT, Chandigarh are not uncommon. It has been submitted that the server of the DRT was down for consecutive days thus, denying the litigants in Jammu and Kashmir proper virtual access.

76. To ensure proper and efficient functioning of virtual proceedings before the DRT at Chandigarh, there must be adequate and satisfactory provisions made at this end in the UT of Jammu & Kashmir and UT of Ladakh as well. This would enable litigants residing in the UT of Jammu

and Kashmir and UT of Ladakh to have easy access through virtual mode, which are yet to be fully and satisfactorily established.

For example, e-seva Kendras are being established in all the district courts in a phased manner to enable litigants and lawyers to file cases through e-mode, which is still a continuing process. However, in the case of DRTs, no such facility has been established in the UT of Jammu and Kashmir and UT of Ladakh instead. It is left to the individual infrastructure available to the client/litigant or the lawyer as the case may be. In other words, there is no institutional support system available in the UT of Jammu and Kashmir and UT of Ladakh for participation in virtual proceedings in DRT, Chandigarh.

77. It has also been brought to our notice that in a recent case titled **"Geeta Basur vs. Jammu & Kashmir Bank Limited"** now pending before DRT-I in Chandigarh under Case No. SA/305/2023, an order was passed by the DRT on 11.03.2024directing the counsel for the parties to appear in person because of inability to hear online. The aforesaid order reads as follows:

> *"11.03.2024*
>
> > *It is not possible to hear the matter online as there are connectivity issues. Counsel for the parties are directed to appear physically and argue the matter. To come up on 15.03.2024."*

On the next date of hearing on 15.03.2024, the following order was passed by the DRT-I, Chandigarh which is reproduced as under:

> *"15.03.2024*
>
> > *Counsel for the applicant has not appeared physically to argue the matter. To come up on 03.04.2024."*

The aforesaid orders clearly indicate that the proceedings before DRT at Chandigarh are also disrupted because of the connectivity issues because of which the DRT had insisted on the physical appearance of the counsel for the parties for arguing the matter, which, as already discussed above, is cumbersome, expensive and time consuming for the parties/their counsel.

78. Learned counsel for the petitioners also highlighted the cultural, linguistic barriers, apart from geographical and economic hurdles, that the litigants would face when approaching Debts Recovery Tribunal in Chandigarh.

These are practical difficulties which cannot be lightly brushed aside, as any litigant who wishes to approach the Debts Recovery Tribunal in Chandigarh physically would have to face these challenges. These impediments obviously will be absent if the Debts Recovery Tribunals or their Benches are established in the UT of Jammu and Kashmir and UT of Ladakh.

79. We have also considered the submissions advanced by the respondents, particularly by Mr. T.M. Shamsi and Mr. Vishal Sharma, learned DSGI, representing the Union of India in Srinagar and Jammu Wings respectively.

They have tried to impress us by asserting that all the facilities for virtual proceedings have been set up and are available at the DRTs in Chandigarh and that e-proceedings have been streamlined to enable the litigants in the UT of Jammu and Kashmir as well as in the UT of Ladakh to approach the DRT through e-mode. While these steps taken by the respondents to facilitate the litigants in the UT of Jammu and Kashmir and UT of Ladakh to have access to Debts Recovery Tribunal in Chandigarh are laudable and commendable, it cannot be said by any stretch of imagination that they constitute an efficacious remedy, as there are still unresolved problems relating to connectivity etc. as discussed above.

80. We have also considered the submission advanced by Mr. Pallav Saxena, learned counsel appearing for the J & K Bank-Respondent on virtual mode. He has painstakingly taken us through various provisions of SARFAESI Act which are primarily meant to address the problems associated with the traditional court functioning faced by the creditors/banks which are tedious,slow, cumbersome, and that the intent and purpose for enacting the SARFAESI Act was to streamline, simplify and expedite this process. It has been submitted by learned counsel Mr.

Saxena that in fact, considering the certain aspects which appeared to be unconstitutional, this enactment was challenged but the constitutionality of the same was upheld in **Mardia Chemicals Ltd. Versus Union of India, 2004(4) SCC 311.** It has been submitted that under the circumstances since there is a specific alternate redressal forum provided under the Act, it would be improper on the part of the High Court to intervene in the manner.

Mr. Pallav Saxena, learned counsel submits that many of the issues raised in this petition pertains to the actions taken by the Banks/financial institutions under Sections 13 and 14 of the Act against which alternative remedy lies with the DRT under Section 17 of the Act and in view of the various decisions of the Hon'ble Supreme Court discussed above, this Court should not invoke Article 226 of the Constitution.

It has been submitted that there cannot be any doubt about the validity of the provisions of the Act and also provisions for alternative redressal forum against the actions taken by the Bank under Sections 13 and 14 of the Act.

81. Mr. Saxena learned counsel has also submitted that this very Court on many occasions had declined to entertain the petitions and directed the petitioners to approach the DRT in Chandigarh as in case of **'Manzoor Ahmad Mir vs. UT of J&K and ors' WP(C) No. 2077/2023** etc. and, as such, this Court may take a uniform approach dealing with the challenges to the actions taken by the Banks under Sections 13 and 14 of the Act.

It is true that this Court on many instances had declined to entertain petitions under Article 226 and relegated the matters to DRT at Chandigarh. However, it is to be noted that in those cases, no specific pleas had been raised that the petitioners have been put to great inconvenience or of any difficulty in approaching the DRT at Chandigarh and that the DRT in Chandigarh does not provide easy access to justice and that the alternate remedial forum is not efficacious.

82. In this batch of petitions, however, this plea had been taken that the statutorily provided alternative forum does not provide an efficacious

remedy. Hence, this Court has decided to entertain the petitions which invariably would require examining maintainability of the petitions.

83. We are of the view that writ petitions against actions taken by the Bank under Sections 13 and 14 of the Act, by invoking the jurisdiction of this Court under Article 226 are maintainable, as we find that the alternative remedy available is not efficacious because of numerous reasons as discussed above.

84. We are of the opinion that the provisions made to enable litigants in the UT of Jammu and Kashmir and UT of Ladakh to access the Debts Recovery Tribunal located in Chandigarh through e-mode cannot supplant the requirement of physical appearance before the Tribunal. In our view, the aforementioned provisions for virtual proceedings before the Debts Recovery Tribunal in Chandigarh can, at best, supplement physical appearances and not totally supplant the requirement for physical hearing. Therefore, if no Debts Recovery Tribunal is available in the UT of Jammu and Kashmir and UT of Ladakh, it would certainly deprive the litigants in the UT of Jammu and Kashmir and UT of Ladakh of easy access to the alternative resolution mechanism provided under the Act and consequently violate their fundamental rights.

85. Learned counsel for the respondents have tried to explain that not only in the UTs of Jammu and Kashmir and Ladakh, but many other States and Union Territories also do not have Debts Recovery Tribunal. In this regard, they have relied on the notification issued on 04.10.2022. However, upon perusal of the aforementioned notification, it becomes evident that there are hardly any major States where the Debts Recovery Tribunal had not been established. The list primarily comprises small States and Union Territories, expect for the State of Uttarakh and Himachal Pradesh and the UT of Jammu and Kashmir and UT of Ladakh.

86. Though the said notification also mentions that there is no Debts Recovery Tribunal in the State of Haryana and State of Punjab, it is merely a statistical jugglery. This is because, the Debts Recovery Tribunals are located in Chandigarh, which is the common capital of both the States of

Haryana and Punjab. Therefore, the aforesaid contention is more a matter of statistical white wash rather than reflecting the actual reality. No litigant in the States of Punjab and Haryana can complain that the DRT located in their common capital Chandigarh does not provide easy access to the DRTs located in Chandigarh.

87. The submissions advanced on behalf of the petitioners that litigants in the UT of Jammu and Kashmir and UT of Ladakh have been unfairly treated and thus, have not been equally treated in accordance with the mandate of Article 14 as far as access to the Debt Recovery Tribunal is concerned, cannot be totally ignored as devoid of merit. It has been argued on behalf of the petitioners that the aforementioned Notification clearly indicates that equals have been treated unequally and unequals have been treated as equally, thus in breach of Article 14, which appears to be the case to us as well.

88. Apart from this, it may be also noted that the alternative dispute resolution mechanism provided under Section 17 of the SARFAESI Act was already in existence in the erstwhile State of Jammu and Kashmir, presently UT of Jammu and Kashmir and UT of Ladakh under Section 17-A prior to enactment of the Jammu and Kashmir Reorganization Act, 2019. Section 17-A of the SARFAESI Act before its removal stipulated that in case of a borrower residing in the erstwhile State of Jammu and Kashmir, an application under Section 17 shall be made to the Court of District Judge having jurisdiction over the borrower. However, after the enactment of the Reorganization Act, 2019, the aforesaid provision of Section 17-A has been done away with.

Further, it was provided under Section 18-B as it stood earlier that in respect of a borrower residing in the erstwhile State of Jammu and Kashmir and aggrieved by the order of the District Judge under Section 17-A, he could approach the High Court.

Sections 17-A and 18-B as these stood earlier are reproduced below:

> ***17-A. Making of application to Court of District Judge in certain cases.-*** *In the case of a borrower residing in the State of Jammu and Kashmir, the application under section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.*
>
> ***18-B. Appeal to High Court in certain cases****.- Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under Section 17-A may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge:*
>
> *Provided that no appeal shall be preferred unless the borrower has deposited, with the Jammu and Kashmir High Court, fifty per cent of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less:*
>
> *Provided further that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of the debt referred to in the first proviso.]*

89. From the above, it is evident that the forum of Debts Recovery Tribunal did exist earlier and functioned in the Jammu and Kashmir, jurisdiction of which was conferred on the respective District Courts when it was a State. It is not that the DRTs were never in existence earlier within the territories of J&K and Ladakh.

90. The DRTs at Chandigarh which had been functioning earlier had been conferred the jurisdiction in respect of matters arising out of the UTs of Jammu and Kashmir and Ladakh only after the enforcement of Reorganization Act, 2019.

91. The pain and disappointment of the litigants in the UT of Jammu and Kashmir and UT of Ladakh in depriving the domestic courts of jurisdiction under the SARFAESI Act at present are quite palpable as expressed through the voice of the counsel of the petitioners, after having experienced the conveniences and ease of judicial proceedings under familiar surroundings as available earlier when Section 17-A and Section 17-B were in the SARFAESI Act. As provided under Section 17-A, the litigants could approach the respective Courts of District Judges if they were aggrieved by any order passed under the Section 13 or 14 of the SARFAESI Act, which provision has now been withdrawn after the

enactment and enforcement of Jammu and Kashmir Reorganization Act, 2019 and now the litigants are compelled to approach the DRT located in a far off place encumbered with numerous difficulties as discussed above, denying the comfort and convenience available to litigants where DRTs are established in their own States.

92. Therefore, the expectation of the litigants in the UT of Jammu and Kashmir and UT of Ladakh to have Debts Recovery Tribunals within the UT of Jammu and Kashmir and UT of Ladakh does not appear to be unreasonable and unwarranted. It is a legitimate expectation of the litigants/public in the UTs of Jammu and Kashmir and Ladakh especially considering that these Tribunals were functioning earlier. The advantages of having Debts Recovery Tribunals in the erstwhile State of Jammu and Kashmir, which were available in the form of District Courts as empowered under Section 17(A) and 18 (B) have been deprived of now to the litigants in these two UTs.

93. Therefore, to us also, non-availability of Debts Recovery Tribunal within the UT of Jammu and Kashmir and UT of Ladakh does appear to constitute a denial of easy access to justice, which is a facet of the fundamental right guaranteed under Article 21 of the Constitution. Thus, without going in detail into all the other aspects of access to justice as elaborately discussed in the case of **Anita Kushwaha** (supra) including that the State must provide an effective adjudicatory mechanism and that the process of adjudication must be speedy, it is clearly evident that the alternative forum and mechanisms provided in the form of DRT at Chandigarh do not appear to provide reasonably accessible forum in terms of distance, time, costs and convenience. Access to adjudicatory process for litigants does not appear to affordable and efficacious for the reasons discussed above. Non fulfilment of these conditions invariably has adverse consequence on the other two facets of the concept of access to justice.

94. Under the circumstances, we have no hesitation to hold that inspite of existence of alternative redressal forum under Section 17 of the Act, which is located at Chandigarh, the same cannot be considered to be an

efficacious alternative forum, and hence the litigants would have the legitimate right to approach this Court to invoke the jurisdiction under Article 226 of the Constitution of India in matters relating to actions taken under the SARFAESI Act.

95. The next question which arises for consideration, as also contended by learned counsel for the respondents, is whether the High Court should be converted to a Tribunal for the purpose of entertaining these petitions. Tribunals, by their very nature, ordinarily exercise original jurisdiction and often deal with complicated, complex and voluminous evidences. This is a role that writ courts, in exercise of Article 226, do not typically perform. In fact, one of the principles on which the High Courts refrain from adjudicating matters is when they involve disputed questions of fact or require dealing with voluminous evidences.

96. Learned counsels for the petitioners however, have tried to impress upon the fact that as per the Rules of the High Court of Jammu & Kashmir and Ladakh, this High Court does exercise original jurisdiction and hence, it can deal with such cases. Additionally, they argue that this High Court is equally empowered to cause commissions to record evidence. However, we are of the view that merely because the High Court has original powers, it need not necessarily take over the role of a tribunal.

97. Thus, the concern of this Court is that if this Court decides to entertain the petitions challenging various actions initiated by the banks/financial institutions under the SARFAESI Act 2002, the Court may be inundated with such petitions which ordinarily would involve determination of certain disputed facts which may also involve voluminous evidence. As far as High Courts are concerned, normally such disputes are decided on the basis of affidavits filed by the contesting parties which however may not be adequate or appropriate in certain disputes where very high financial stakes are involved with voluminous documents and complicated facts, or where the parties may appear to take totally divergent and conflicting stands which may require adducing evidence. The suggestion put forth by the learned counsel for the petitioners that this

High Court can cause Commissions to ascertain such disputes though may be adopted in certain circumstances, however, is not desirable to be adopted in a routine manner which perhaps may be required to be done when disputed claims relate to monetary transactions which are the basis for invoking SARFAESI Act as in these cases.

98. In order to avoid this nature of dispute resolution, involving disputed question of facts and which may involve adducing of evidence, which invariably would arise when dealing with SARFAESI matters, the option before this Court is either to direct the Union Respondents to constitute DRTs or Benches/Circuit Benches in the UT of Jammu and Kashmir and UT of Ladakh or revive the provisions of Section 17-A by empowering the Court of District Judges as the fora which were removed Vide S.O. 1123(E) dated 18.03.2020 in respect of UT of J & K and Vide S.O. 3774(E) dated 23.10.2020 in respect of UT of Ladakh. This aspect, however would be ordinarily within the domain of the legislature. Similarly, Section 17-B could be also revived.

However, we refrain from passing any such direction for revival of the provisions of the statute which stood omitted from the statute at this stage, as the Hon'ble Supreme Court is seized of the matter and perhaps the Hon'ble Supreme Court may be in a better position to issue such appropriate directions as regards the providing of the efficacious alternative remedy in the UT of Jammu and Kashmir and UT of Ladakh in addition to the existing forum available in DRT Chandigarh. Hence, any such direction which we may be inclined to issue in this regard may be done after the disposal of the SLP pending before the Hon'ble Supreme Court and we have confined our consideration at this stage only on the issue of maintainability of the writ petitions as desired by the Hon'ble Supreme Court.

However, for the reasons discussed above, we would hold that this Court would have jurisdiction to entertain petitions under Article 226 of the Constitution of India to consider challenges to various actions initiated by the financial institutions/banks under the SARFAESI Act, in spite of

availability of alternative redressal forum at the DRT located in Chandigarh, as we consider this alternative forum to be inefficacious to the litigants in the UTs of J&K and Ladakh.

99. We will be making a passing reference to the PIL, being WP(C) (PIL) No. 4/2022, titled, "S. Jaswinder Singh vs. UOI &Ors." also pending before this Court and tagged along with these petitions, where a prayer has been made for directing the respondents to create Debt Recovery Tribunals in the UT of Jammu and Kashmir and UT of Ladakh to ensure access to justice and also for quashing Notification dated 10/9/2021 issued under S.O. No.4145 (E) by which the DRT at Chandigarh has been conferred the jurisdiction to deal matters relating to SARFAESI Act arising out of the UTs of Jammu & Kashmir, and Ladakh. These reliefs, as discussed above, can be considered at a later stage.

100. Ld. Counsel for the contesting parties have made submissions on certain aspects, which in our view touch upon the merit of the case, and hence, we have not given our opinion on these, except on the issue of maintainability of the petitions.

101. Under the circumstances, we are of the opinion that ordinarily while we should not entertain petitions challenging actions of the banks or financial institutions under the SARFAESI Act, such applications may not be unsuited merely on the ground of availability of alternative remedy.

If this Court finds that in certain cases, indulgence of this Court is necessary, the Court may do so in appropriate cases by invoking jurisdiction under Article 226 of the Constitution of India.

102. Before we part with this order, we would like to highlight a very important facet of access to the justice which has huge constitutional implications *vis-a-viz* the fundamental right to access to justice of the litigants. If any litigant is aggrieved by any order passed by the DRT at Chandigarh which is appealable, the aggrieved person can approach only the appellate forum which at present case is located in Delhi. If the litigant is still aggrieved by an order that may be passed by the DRT at Chandigarh

which is not appealable, in view of the observations made by Supreme Court in '**L. Chandra Kumar Versus Union of India and ors.' (1997) 3 Supreme Court Cases 261,** the aggrieved persons may have to approach the Punjab and Haryana High Court only. The Supreme Court in **L. Chandra Kumar** (supra), made the following observations as regards the territorial jurisdiction of the concerned High Court:

> "99. *In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."*

103. Thus, in such an event, the litigant who is already burdened financially and with other difficulties in appearing before the DRT at Chandigarh, will not get any respite, rather he will be doubly burdened, inasmuch as, his redressal forum will be in Punjab and Haryana High Court or Delhi High Court as the case may be, and not before this Court entailing more difficulties in knocking the doors of different unfamiliar High Courts rather than our High Court, which is a familiar forum.

104. This peculiar situation which will arise is that in respect of orders passed by the DRT, Chandigarh, which may not be appealable, the litigants

will have to approach the Punjab and Haryana High Court, in spite of the fact that the entire cause of action arose within in the Union Territory of Jammu &Kashmir or Union Territory of Ladakh, and even though, it is provided under Article 226(2) of the Constitution of India that the litigant would have right to approach to the High Court under whose jurisdiction the litigant resides or part of cause of action arises.

In the present situation arising out of the location of the DRT at Chandigarh, the litigants cannot invoke the jurisdiction of this Court in view of the decision in **L. Chandera Kumar** (supra).

We are also mindful of the fact such an issue of immense constitutional importance has been referred to a larger Bench of the Hon'ble Supreme Court in an order passed in **Union of India vs. Sanjiv Chaturvedi &Ors.,2023 5 SCC 706.**

It may be appropriate to quote a few relevant paragraphs from the aforesaid judgment in **Sanjiv Chaturvedi**(supra) to deal with such issues as also arisen in the present batch of petitions.

> '23. *It is further submitted that if such an interpretation is taken to its logical conclusion, then it would result in undue hardship and inconvenience to the employees of the central government itself who are posted across the country. For example, if an application were to be filed by an aggrieved employee before the Ernakulam Bench of the Central Administrative Tribunal, and an order for its transfer to another Bench were to be passed by the Principal Bench at Delhi, the aggrieved would be forced to travel all the way from Ernakulam to Delhi to challenge the Transfer Order and contest the case. As already submitted above, this would defeat the very purpose of inserting Article 226(2) into the Constitution with the specific intent of providing a cheap, effective and efficacious remedy in law at the doorstep of the aggrieved person.*
>
> *25. Regard being had to the important issue raised by Shri Shyam Divan, learned Senior Advocate appearing on behalf of respondent No. 1 and the submissions made by Shri Tushar Mehta, learned Solicitor General and having gone through the judgment(s) and order(s) passed by this Court in* ***L. Chandra Kumar*** *and* ***Alapan Bandyopadhyay*** *and that the issue involved is with respect to the territorial jurisdiction of the High Courts and the effect of introduction of Article 226(2) of the Constitution of India and the statement of the Law Minister while introducing Article 226(2) of the Constitution referred to hereinabove and that the issue involved affects a large number of employees and is of public importance, we think it appropriate that the matter involving the issue of territorial*

jurisdiction of the concerned High Court to decide a challenge to an order passed by the Chairman, CAT, Principal Bench, New Delhi should be considered by a larger Bench.'

105. All these difficulties and constitutional issues which will arise if the litigants from the UT of Jammu &Kashmir and Ladakh are compelled to appear before the DRT, Chandigarh, can be resolved, if DRT(s) are established or revived in the UT of Jammu &Kashmir and UT of Ladakh.

106. Therefore, we are firmly of the view, that these cumbersome, inconvenient and expensive proceedings at DRT at Chandigarh can be avoided if DRTs are established or such Benches/Circuit Benches are established in the UT of Jammu &Kashmir and UT of Ladakh. Till such a Fora or Benches are established, in our view, the litigants can invoke the writ jurisdiction of this Court under Article 226 of Constitution of India.

107. There is yet another aspect which is very peculiar to the proceedings under the SARFAESI Act. By the very nature of the proceedings, the aggrieved parties are usually the borrowers who had defaulted in repaying the loan, because of which either the secured properties are attached, sold/auctioned or they themselves have been rendered financially crippled. In other words, the borrowers/debtors who are already financially hard pressed are deprived of the possession of the secured assets. Thus, under any action initiated under Section 13 of the SARFAESI Act the threat of dispossession is real and sometimes eminent and by this time, in most of the cases, the borrowers are financially crippled and sometimes they are reduced to penury. It may also happen that sometimes the secured assets are residential buildings and the debtors can be thrown out of their home and hearth to the streets. In such an event, where the borrowers who have already been put to serious financial disadvantages, will be additionally burdened with extra expenses which would be required to be incurred if they have to physically approach a forum which is located in at a distant place. This would act to the great prejudice of the borrowers and cause serious hardships. Thus, from the perspective of a litigant borrower, who has been already financially hard pressed and sometimes with the possibility of being thrown on the streets,

compelling him to approach a Forum located at a distance which is expensive, certainly can amount to denial of easy access to the justice.

108. We are mindful of the fact that SARFAESI Act is a stringent piece of legislation enacted to protect the interest of the creditors and for better management of the economy of the nation where a large number of borrowers default in making timely payment, rendering the accounts and assets non-performing which has a cascading effect on the economy of the country. These stringent provisions have been made for the benefit of financial institutions/secured creditors to have easy access to the secured assets of the borrowers for speedy liquidation of debts. While such a public policy cannot be doubted and the vires of this Act has been already upheld by the Apex Court, it does not necessarily mean that the genuine bonafide interest of the borrowers should be ignored or sacrificed. In fact, there may be occasions where the financial institutions/Banks may not have proceeded strictly in accordance with provisions of SARFAESI Act which may lead to challenges by the borrowers/guarantors or the aggrieved persons. Under the circumstances, because of the stringent provisions of the Act, it is incumbent upon the authorities to provide equally efficacious redressal forum which is readily, easily and regularly available which will provide relief in a speedy and convenient manner, so that the borrowers and such aggrieved parties can promptly, without undue difficulties, challenge those acts which would have the effect of dispossessing their properties. However, if the redressal forum is not effective, efficacious and readily available, sometimes grave injustice can be caused to the borrowers and debtors, in which event, this High Court can step into prevent injustice by invoking extraordinary jurisdiction under Article 226.

109. Unless the adjudicating forum is readily, easily and regularly available, it can prejudicially affect their right to easy access to justice which appears to be in the position in the present cases where a large number of petitioners have approached this Court alleging irregular/malafide/illegal acts on the part of the Banks/financial institutions by violating provisions of the SARFEASI Act.

110. Though the grounds of challenge made by the debtors ultimately may be found to be without merit, yet if such challenges are genuine and valid and if no effective redressal mechanism is readily, regularly and easily available, it can cause grave prejudices and injustices to such borrowers/debtors. Therefore, providing a redressal forum which is easily, readily and regularly available to the borrowers/aggrieved persons is *sine qua non* for effective and just implementation of SARFAESI Act.

111. To conclude, for the reasons discussed hereinabove, we hold that these writ petitions are maintainable. However, since we have only decided on the preliminary issue as the issue of maintainability of these petitions, we will have required to decide on the merit of each case as to whether our intervention under Article 226 of the Constitution would be necessary for which we will take up these writ petitions individually and consider the pleas taken therein separately.

112. Accordingly, we direct that all these writ petitions to be listed again after a month during which time, the Respondents shall file their respective affidavits, if not already filed, and an endeavour will be made to dispose of these writ petition individually as expeditiously as possible, considering the fact that the interim orders passed by this Court will have huge financial implications as the Banks may feel that they have been denied speedy recovery of the secured debts.

113. List all these writ petitions again on 22.05.2024.

(WASIM SADIQ NARGAL)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR (Virtual Mode)
12.04.2024

Whether the order is reportable? Yes