Neutral Citation No. - AHC-LKO:27835-DB

**A.F.R.**

**Case :-** WRIT - C No. - 13556 of 2021 **Reserved**

**Petitioner :-** Ram Pal Soni And Another
**Respondent :-** State Of U.P. Thru. Prin.Secy. Finance And Ors.
**Counsel for Petitioner :-** Ambika Prasad Mishra
**Counsel for Respondent :-** C.S.C.,Anand Kumar Singh,Gyanendra Mishra

**Hon'ble Jaspreet Singh,J.**
**Hon'ble Manish Mathur,J.**

( Delivered by Hon'ble Manish Mathur,J.)

1. Heard Mr. Ambika Prasad Mishra learned learned counsel for petitioners, Mr. Dileep Kumar Tiwari learned State Counsel for opposite party No.1, Mr. Anand Kumar Singh learned counsel for opp. parties 3 and 4 and Mr. Gyanendra Mishra learned counsel for opp. party No.5. Notice to opp. party No.2 stands dispensed with.

2. This reference has been made by Hon'ble the Chief Justice vide order dated 23rd April, 2022 and subsequently to this Bench vide order dated 18th May, 2023 in pursuance of questions referred by Hon'ble Single Judge vide order dated 29th September, 2021 passed in Writ C No. 13556 of 2021.

3. The questions framed and referred by the Hon'ble Single Judge are as follows:-

> *"(A) Whether in a case where part of cause of action to maintain an application under Section 17(1) of the SARFAESI Act, arises within the limits of territorial jurisdiction of Debts Recovery Tribunal, Lucknow, the Debts Recovery Tribunal, Lucknow will have the jurisdiction, power and authority to entertain and decide such application in view of Sub section (1-A) of Section 17 of the SARFAESI Act or not ?*
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> *(B) Whether Section 3 of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993, confers exclusive jurisdiction on Debts Recovery Tribunals established thereunder vide notifications of the Central Government?*
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> *(C) Whether Section 3 of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993, can be read as conferring exclusive jurisdiction on the Tribunals established thereunder, irrespetive of Section 19 of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993 and Section 17(1A) of the SARFAESI Act, rendering Sections 19 and 17(1A) of the respective Acts as redundant or nugatory ?*
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> *(D) Whether the judgment in **Saurabh Gupta (supra)**, which lays down that the Debts Recovery Tribunal, Allahabad shall have exclusive jurisdiction to entertain and decide the applications arisen from 55 districts specified in the notification dated 05.12.2017, without noticing Section 19 of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993 and Section 17(1A) of the SARFAESI Act, as also the judgment of Hon'ble Supreme Court in case of **Sri Nasiruddin (supra)** lays down the law correctly ?*
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> *(E) Whether the judgment in **Saurabh Gupta (supra)** is contrary to the law laid down by the Hon'ble Supreme Court in the case of **Sri Nasiruddin (supra)** and is liable to be declared as not good law ? "*

4. During course of hearing, this Court vide order dated 25th January, 2024 framed two additional questions which are as follows:-

*"Question No.1:- Whether clause (a) of Section 17(1A) of the SARFAESI Act is to be read ejusdem generis with Clauses (b) and (c) or is disjunctive?*

*Question No.2:- Whether insertion of Section 17(1-A) in the SARFAESI Act would have any overriding effect over provisions of the Debts Recovery Tribunals Act? "*

5. The factual matrix of present dispute is that the respondent bank being UCO Bank granted loan facility to the petitioner from its branch situate in district Amethi, Uttar Pradesh. The loan was secured by mortgage of property situate at Amethi. Borrower who is the petitioner No.1 and the guarantor, petitioner No.2 committed default in repayment of loan whereafter a demand notice was issued by the authorized officer from the zonal office in Lucknow. Possession and sale notice were also issued from the zonal office in Lucknow whereafter the petitioners filed a securitization application bearing No. 541 of 2019 before the Debts Recovery Tribunal, Lucknow.

6. Upon service of notice upon the respondent bank, a preliminary objection was raised regarding jurisdiction of the Tribunal at Lucknow with the submission that territorial jurisdiction pertaining to district Amethi lies with the Debts Recovery Tribunal Allahabad. The aforesaid preliminary objection was rejected vide order dated 6th August, 2019 leading to filing of regular appeal No. 14 of 2020 by the respondent bank, which was allowed vide order dated 25th March, 2021 upholding the preliminary objection and transferring the proceedings of securitization application to the Tribunal at Allahabad.

7. The said decision dated 25th March, 2021 passed by the Debts Recovery Appellate Tribunal, Allahabad has been challenged in the writ petition in which an Hon'ble Single Judge of this Court vide order dated 29th September, 2021 has referred the issue for consideration by Larger Bench in view of his conflict of decision with judgment of another coordinate Bench in the case of **Saurabh Gupta versus Union of India and another, 2018 (127) ALR 388**.

8. The Hon'ble Single Judge has made specific reference to Sections 13 and 17 (as amended in 2016) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ' SARFAESI Act') to arrive at a conclusion that since part cause of action in the dispute arose within territorial jurisdiction of Lucknow, the securitisation application would thus be maintainable at Lucknow as well. For this purpose, the Hon'ble Single Judge differed from judgment rendered in the case of **Saurabh Gupta (supra)** which has been rendered considering the notification dated 15th February, 2017 passed under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

9. For proper appreciation of the dispute, it would be apposite to refer to Sections 13 and 17 of the SARFAESI Act, which are as follows:-

**Section 13 of the SARFAESI Act**

*"**13. Enforcement of security interest**.--(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.*

*(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).*

*Provided that--*

*(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and*

*(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modiifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.]*

*(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.*

*(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for nonacceptance of the representation or objection to the borrower.*

*Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.*

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

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

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

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

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

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

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

*(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.*

*(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behaalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.*

*(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.*

*(5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).*

*(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.*

*(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.*

*(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-*

*(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and*

*(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.*

*(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:*

*Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):*

*Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:*

*Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the*

*secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:*

*Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:*

*Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.*

*Explanation.--For the purposes of this sub-section,-*

*(a) "record date" means the date agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding on such date;*

*(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.*

*(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.*

*(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measured specifies in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.*

*(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.*

*(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business)any of his secured assets referred to in the notice, without prior written consent of the secured creditor."*

## ***Section 17 of the SARFAESI Act***

***"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, 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.*

10. It is relevant to indicate that the present format of section 17 is in pursuance of amendment incorporated in the SARFAESI Act vide Act No. 44 of 2016 with effect from 1.9.2016 whereby sub section (1-A) of Section 17 was inserted. Prior to the aforesaid amendment, Section 17 of the SARFAESI Act read as follows:-

*"17. Right to appeal.--(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, 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 measures had been taken:*
*Provided that different fees may be prescribed for making the applications 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 sub-section (1) of section 17.*

*(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 of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may, by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the 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.*

*(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 party 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 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."*

11. For proper appreciation of provisions of aforesaid sections of the SARFAESI Act, it would be necessary to appreciate the reasons for incorporation of the amendment to Section 17 whereby Clause 1-A was inserted in the year 2016.

12. As would be evident from the provisions of Section 17 prior to its amendment, right to appeal under Section 17 was available to any person, including a borrower aggrieved by any of the measures referred to in Sub Section (4) of Section 13 of the Act taken by a secured creditor or the authorized officer. The appeal was to be preferred to the Debts Recovery Tribunal having jurisdiction in the matter. It is

relevant that the concept of jurisdiction of the Debts Recovery Tribunal was not clarified in Section 17 which led to various litigations pertaining to jurisdiction.

13. The said anomaly was thereafter sought to be remedied by insertion of clause (1-A) to Section 17 whereby the concept of jurisdiction of the Debts Recovery Tribunal before which an appeal would lie, was explained.

14. The statement of objects and reasons in the Act No. 44 of 2016 clearly indicates that such amendment have been proposed in order to facilitate expeditious disposal of recovery applications. Evidently the amendment to Section 17 was incorporated to remove any doubt with regard to jurisdiction of a particular Debts Recovery Tribunal and to stymie litigations pertaining to same. It is in such circumstances that the amendment incorporated in Section 17 is required to be examined in a way to give effect to its purpose.

15. The concept of purposive interpretation of statutory provisions has been enunciated by Hon'ble Supreme Court in the case of X versus Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another (2023) 9 SCC 433 in the following manner:-

> ***"34.*** *In Principles of Statutory Interpretation by Justice G.P. Singh, it is stated that a statute must be read in its context when attempting to interpret its purpose. [ Justice G.P. Singh, Principles of Statutory Interpretation, (Lexis Nexis, 2016), at p. 35.] Context includes reading the statute as a whole, referring to the previous state of law, the general scope of the statute, surrounding circumstances and the mischief that it was intended to remedy. [Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193 : 1977 SCC (L&S) 435; RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424] The treatise explains that:*
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> *"For ascertaining the purpose of a statute one is not restricted to the internal aid furnished by the statute itself, although the text of the statute taken as a whole is the most important material for ascertaining both the aspects of "intention". Without intending to lay down a precise and exhaustive list of external aids, Lord Somervell has stated:"The mischief against which the statute is directed and, perhaps though to an undefined extent the surrounding circumstances can be considered. Other statutes in pari materia and the state of the law at the time are admissible." These external aids are also brought in by widening the concept of "context" "as including not only other enacting provisions of the same statute, but its Preamble, the existing state of the law, other statutes in pari materia, and the mischief which the statute was intended to remedy". In the words of Chinnappa Reddy, J.:"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted."*
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> ***xxx xxxx xxxx***
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> ***36.*** *In Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, 1955 SCC OnLine SC 2 : (1955) 2 SCR 603 : AIR 1955 SC 661] , the Constitution Bench applied the mischief rule in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] in the construction of Article 286 of the Constitution. In Kehar Singh v. State (UT of Delhi) [Kehar Singh v. State (UT of Delhi), (1988) 3 SCC 609 : 1988 SCC (Cri) 711] , a three-Judge Bench of this Court held : (Kehar Singh case [Kehar Singh v. State (UT of Delhi), (1988) 3 SCC 609 : 1988 SCC (Cri) 711] , SCC pp. 717-18, paras 231 & 233)*
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> *"231. During the last several years, the "golden rule" has been given a go-by. We now look for the "intention" of the legislature or the "purpose" of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go*

*further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.*

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*233. For this purpose, we call in external and internal aids:*

*External aids are : the Statement of Objects and Reasons when the Bill was presented to Parliament, the reports of the Committee, if any, preceding the Bill, legislative history, other statutes in pari materia and legislation in other States which pertain to the same subject-matter, persons, things or relations.*

*Internal aids are : Preamble, scheme, enacting parts of the statutes, rules of languages and other provisions in the statutes."*

16. In the case of **Vivek Narain Sharma and others (Demonitasation case -5J versus Union of India (2023) 3 SCC 1** has also enunciated law pertaining to purposive interpretation of statute in the following manner:-

***" 134.*** *"Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose ["Some Reflections on the Reading of Statutes" [(1947) 47 Columbia LR 527] , Columbia LR at p. 538]." This is how Justice Frankfurter succinctly propounds the principle of purposive interpretation.*

*xxxxx xxxx xxxx*

***138.*** *Aharon Barak, the former President of the Supreme Court of Israel, whose exposition of "doctrine of proportionality" has found approval by the Constitution Bench of this Court in Modern Dental College & Research Centre [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , to which we will refer to in the forthcoming paragraphs, in his commentary on "Purposive Interpretation in Law", has summarised "the goal of interpretation in law" as under:*

*"At some point, we need to find an Archimedean foothold, external to the text, from which to answer that question. My answer is this : The goal of interpretation in law is to achieve the objective—in other words, the purpose—of law. [ D. Brink, "Legal Theory, Legal Interpretation, and Judicial Review", 17 Philosophy & Public Affairs 105, 125 (1988).] The role of a system of interpretation in law is to choose, from among the semantic options for a given text, the meaning that best achieves the purpose of the text. Each legal text—will, contract, statute, and constitution—was chosen to achieve a social objective. Achieving this objective, achieving this purpose, is the goal of interpretation. The system of interpretation is the device and the means. It is a tool through which law achieves self-realisation. In interpreting a given text, which is, after all, what interpretation in law does, a system of interpretation must guarantee that the purpose of the norm trapped in the—in our terminology, the purpose of the text—will be achieved in the best way. Hence the requirement that the system of interpretation be a rational activity. A coin toss will not do. This is also the rationale —which is at the core of my own views—for the belief that purposive interpretation is the most proper system of interpretation. This system is proper because it guarantees the achievement of the purpose of law. There is social, jurisprudential, hermeneutical, and constitutional support for my claim that the proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfils that criterion. A comparative look at the law supports it, as well. I will discuss each element of that support below."*

17. Upon appreciation of the aforesaid judgments in the present facts and circumstances, it is evident that interpretation of statutory clauses is required to be

done in a manner which advances the object and scope of the Act particularly where the provisions are ambiguous requiring such interpretation. However even in cases where statutory provisions are unambiguous, the concept of literal interpretation has to be brought into play so as not to render any statutory provision otiose.

18. The concept of literal interpretation of statutory provisions has been enunciated by Hon'ble Supreme Court in the case of **Adani Gas Limited versus Union of India (2022) 5 SCC 210** in the following manner:-

> **" 75.** In *Supt. and Remembrancer of Legal Affairs* v. *Abani Maity* [*Supt. and Remembrancer of Legal Affairs* v. *Abani Maity*, (1979) 4 SCC 85 : 1979 SCC (Cri) 902] , this Court observed as follows : (SCC p. 90, para 18)
>
> *"18. Exposition ex visceribus actus is a long-recognised rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are therefore, not to be construed in isolation. For instance, the use of the word "may" would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, 'of an ineffectual angel beating its wings in a luminous void in vain'. 'If the choice is between two interpretations', said Viscount Simon, L.C. in Nokes v. Doncaster Amalgamated Collieries Ltd. [Nokes v. Doncaster Amalgamated Collieries Ltd., 1940 AC 1014 (HL)] : (AC p. 1022)*
>
> *'... the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.'"*

19. Upon applicability of the aforesaid judgments in the present facts and circumstances, it is evident that the purpose of insertion of Clause (1-A) in Section 19 of the SARFAESI Act is primarily to explain away the deficiency in the original enactment regarding jurisdiction of the Debts Recovery Tribunal which would have jurisdiction over dispute pertaining to an application/appeal being filed under Section 17(1) of the said Act.

20. It is in the aforesaid light that we now propose to answer the additional question framed as Question No.1, which is as follows:-

> "Whether clause (a) of Section 17(1-A) of the SARFAESI Act is to be read ejusdem generis with Clauses (b) and (c) or is disjunctive?"

**Answer to Question No.1:-**

21. The concept of proposition pertaining to ejusdem generis has been enunciated by Hon'ble Supreme Court in the case of **Siddeshwari Cotton Mills (P) Limited versus Union of India and others (1989) 2 SCC 458** in the following manner:-

> ***7.*** *The expression ejusdem generis — "of the same kind or nature" — signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.*
>
> In *Statutory Interpretation* Rupert Cross (p. 116) says:

> *....The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted....*

*The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:*

> *... if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary.*
>
> *[ See : Construction of Statutes by E.A. Driedger p. 95 quoted by Francis Bennion in his Statutory Construction, pp. 829 and 830]*

Francis Bennion in his *Statutory Construction* (pp. 830-31) observed:

> *For the ejusdem generis principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore the genus must be narrower than the words it is said to regulate. The nature of the genus is gathered by implication from the express words which suggest it....*
>
> *It is necessary to be able to formulate the genus; for if it cannot be formulated it does not exist. 'Unless you can find a category', said Farwell L.J., 'there is no room for the application of the ejusdem generis doctrine'."*

In *S.S. Magnhild* v. *Mclntyre Bros. & Co.* [(1920) 3 KB 321] McCardie, J. said: (KB p. 330)

> *So far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common category. By this I understand that the specified things must possess some common and dominant feature.*

In *Tribhuban Parkash Nayyar* v. *Union of India* [(1969) 3 SCC 99, 106 : AIR 1970 SC 540 : (1970) 2 SCR 732] the Court said: (SCC p. 106, para 13 : SCR p. 740)

> *.. This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous....*

In *U.P. SEB* v. *Hari Shanker* [(1978) 4 SCC 16, 30 : 1978 SCC (L&S) 481 : AIR 1979 SC 65] it was observed: (SCC p. 30, para 15 : AIR p. 73)

> *... The true scope of the rule of 'ejusdem generis' is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be 'applied with caution and not pushed too far'. ...*

*8. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus.*

*In the present case the expressions "bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing' which precede the expression "or any other process" contemplate processes which impart a change of a lasting character to the fabric by either the addition of some chemical into the fabric or otherwise. "Any other process" in the section must share one or the other of these incidents. The expression "any other process" is used in the context of what constitutes manufacture in its extended meaning and the expression "unprocessed" in the exempting notification draws its meaning from that context. The principle of construction considered appropriate by the Tribunal in this case appears to us to be unsupportable in the context in which the expression "or any other process" has to be understood."*

22. Similarly in the case of **Amar Chandra Chakraborti versus The Collector of Excise, Government of Tripura and others (1972) 2 SCC 442**, the aforesaid concept has been explained in the following manner:-

> *"9. Before dealing with the contention relating to Article 19 we consider it proper to dispose of the argument founded on the ejusdem generis rule and Article 14 of the Constitution. It was contended by Shri Sen that the only way in which Section 43 can be saved from the challenge of arbitrariness is to construe the expression "any cause other than" in Section 43(1) ejusdem generis with the causes specified in clauses (a) to (g) of Section 42(1). We do not agree with this submission. The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent. In the present case it is not easy to construe the various clauses of Section 42 as constituting one category or class. But that apart, the very language of the two sections and the objects intended respectively to be achieved by them also negative any intention of the legislature to attract the rule of ejusdem generis. "*

23. It is thus evident that the concept of ejusdem generis is applicable where the preceding words in a statutory provision seek to control and limit the meaning of subsequent words and must represent a genus or a family which admits of a number of species . If there is only one species, it would not supply the idea of genus. Furthermore, the genus must be narrower than the words it said to regulate and the specified things which precede the general words can be placed under some common category. The rule also makes an attempt to reconcile an incompatibility between specific and general words so that all the words and statute are given effect to and that no words are presumed to be superfluous.

24. Upon applicability of aforesaid judgments in the present facts and circumstances, it is evident that the provisions of Clause (1-A) of Section 17 indicates three clauses pertaining to local limits of the Debts Recovery Tribunal within whose jurisdiction an application/appeal can be filed under Section 17(1) of the SARFAESI Act. The three clauses indicated in the aforesaid provision are :-

(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.

25. If we apply the concept of ejusdem generis, it is evident that none of the three clauses indicate any common genus or similarity where the preceeding words would indicate a limitation on the subsequent words of a provision. On the contrary, it is evident that all the three clauses of clause (1-A) of Section 17 of the Act operate in different and separate fields and therefore are clearly disjunctive. Although the three clauses may appear to be overlapping in nature but in the considered opinion of this Court, actually indicate the place where a representation/appeal can be filed.

26. If examined from the aforesaid concept, it is thus evident that all the three clauses in Clause (1-A) of Section 17 of the Act operate in different spheres with a meaning attached differently to all the three clauses without any overlapping.

27. Considering the aforesaid facts and the law enunciated thereupon, it is evident that clause (a) of Section 17(1-A) of the SARFAESI Act is disjunctive from clauses (b) and (c) of the aforesaid section.

28. Question No.1 is answered accordingly.

29. Additional question framed as Question No.2 is as follows:-

"Whether insertion of Section 17(1-A) in the SARFAESI Act would have any overriding effect over provisions of the Debts Recovery Tribunals Act? "

**Answer to Question No.2:-**

30. The aforesaid question is clearly answered in view of section 35 of the SARFAESI Act which provides that the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

31. Considering the non obstante clause contained in Section 35 of the SARFAESI Act, we have no hesitation in answering the question No.2 to the effect that the SARFAESI Act would have overriding effect over the Debt Recoveries Tribunals Act.

32. Question No.2 is answered accordingly.

33. We now examine and answer the questions referred by the Hon'ble Single Judge as follows:-

34. Question No. (A) is as follows:-

"Whether in a case where part of cause of action to maintain an application under Section 17(1) of the SARFAESI Act, arises within the limits of territorial jurisdiction of Debts Recovery Tribunal, Lucknow, the Debts Recovery Tribunal, Lucknow will have the jurisdiction, power and authority to entertain and decide such application in view of Sub section (1-A) of Section 17 of the SARFAESI Act or not ?"

**Answer to Question No. (A) :-**

35. Since we have already held in answer to question No.1 herein above that all the three clauses of section 17(1-A) of the SARFAESI Act are disjunctive and are therefore required to be examined separately, we have to examine the concept of 'cause of action' as indicated in Section 17(1-A) (a) of the SARFAESI Act.

36. The concept of cause of action has been enunciated by Hon'ble Supreme Court in the case of **Y. Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another, (2004) 8 SCC 100** in the following manner:-

*" 14. It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.*

*15. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the*

*infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".*

*16. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.*

*17. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf."*

37. Similarly in the case of **Swamy Atmananda and others Vs. Sri Ramakrishna Tapovanam and others, (2005) 10 SCC 51**, the Hon'ble Supreme Court has held as follows:

*"23. Osborn's Concise Law Dictionary defines 'cause of action' as the fact or combination of facts which give rise to a right or action. In Black's Law Dictionary it has been stated that the expression cause of action is the fact or facts which give a person a right to judicial relief. In Stroud's Judicial Dictionary a cause of action is stated to be the entire set of facts that give rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment.*

*24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."*

38. In the case of **Alchemist Ltd. and another Vs. State Bank of Sikkim and others, (2007) 11 SCC 335**, Hon'ble Supreme Court has explained the aforesaid concept as follows:-

*"20. It may be stated that the expression 'cause of action' has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.*

*21. The classic definition of the expression "cause of action" is found in Cooke v Gill. Wherein Lord Brett observed:*

*" 'Cause of action' means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court".*

*22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed."*

39. In the case of **A.B.C. Laminart Pvt. Ltd. & Anr. versus A.P. Agencies, (1989) 2 SCC 163** following has been held:-

*"12. A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement*

> *of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff".*

40. Upon examination of the aforesaid law as propounded by Hon'ble Supreme Court, it is therefore evident that the term 'cause of action' consists of a bundle of facts which give cause to enforce or redressal of a lis or a grievance before any court of law or authority. It is some act done by an authority or person with which another person feels aggrieved since in the absence of such an act, no cause of action would arise.

41. As has been held by the Hon'ble Single Judge, in a restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. All material facts on which a right to sue is based would therefore come within the scope of cause of action, which is not dependent merely upon the character or the relief prayed for.

42. In Alchemist (supra), the Hon'ble Supreme Court referred to its previous judgment in the case of **State of Rajasthan Vs. Swaika Properties, (1985) 3 SCC 217**, in which it was held that mere service of notice on the petitioner at Calcutta under the Rajasthan Urban Improvement Act, 1959 could not give rise to a cause of action, unless such notice was 'an integral part of the cause of action'. It is not limited to the actual infringement of the right sued on, but includes all the material facts on which it is founded. The test is whether a particular fact is of substance and can be said to be material, integral or essential part of the lis between the parties, if it is, it forms a part of cause of action.

43. Upon applicability of the aforesaid concept of the term 'cause of action', it is evident in the present case that the demand and sale notice under Section 13 read with Rule 8(6) of the Security Interest (Enforcement) Rules 2002 was issued on 3rd May, 2019 from the zonal office at Lucknow for public e-auction of the property. The e-auction of the property was held on 28th June, 2019 by the zonal authority, again situate at Lucknow.

44. The provisions of Section 13 of the SARFAESI Act clearly envisages providing a notice under Section 13(2) by the secured creditor to the borrower in respect of a debt which is classified as a non performing asset in order to enable such borrower to discharge in full his liabilities to the secured creditor, failing which the secured creditor has been made entitled to exercise all or any of the rights provided under sub section (4).

45. Section 13(4) of the SARFAESI Act provides for actions or action which can be taken by the secured creditor in case the borrower fails to discharge his liability in

full within period specified in sub section (2). Such action under Section 13(4) is thereafter challengeable under Section 17 of the SARFAESI Act.

46. It is thus quite evident that the notice under Section 13(2) of the SARFAESI Act must precede any action taken by the secured creditor under Section 13(4) of the aforesaid Act. In this view of the matter, it is evident that notice under Section 13(2) of the Act forms a chain with the action that can be taken by the secured creditor under Section 13(4) of the Act and would thus constitute a continuing cause of action either for the borrower or for the secured creditor.

47. Examining the present dispute in terms of aforesaid, it is evident that since notice for e-auction was issued by the authorized officer at Lucknow whereafter e-auction was actually conducted in terms of Section 13(4) of the Act by the very same officer at Lucknow, this Court is of the considered opinion that aforesaid will definitely constitute a part cause of action at Lucknow in terms of Section 17 (1-A) of the SARFAESI Act.

48. The Debts Recovery Appellate Tribunal, Allahabad in its judgment dated 25th March, 2021 has unfortunately failed to examine the scope of Section 17 (1-A) (a) pertaining to part cause of action in the light of aforesaid. The appellate tribunal clearly fell in error by examining only clauses (b) and (c) of Section 17(1-A) of the Act while ignoring the concept of part cause of action.

49. In paragraph 7 of the judgment, the appellate tribunal has held as follows:-

> " 7. .....The issuance of notice cannot be treated as cause of action and rather it is an effect, which comes into force for initiation of recovery proceedings. Thus, the issue of notice is result of non payment of the dues."

50. The appellate tribunal has thereafter placed reliance on judgment rendered in the case of;

(a) Ramsay Exim and Technology Private Limited and others versus ICICI Bank Limited and another, 2019 SCC Online Cal 2315

(b) Amish Jain & others versus ICICI Bank Limited, 2018 SCC Online Del 8947

51. In the case of Ramsay Exim and Technology Private Limited (supra), the Calcutta High Court held as follows:-

> *" 26. A perusal of Section 19(1) of the DRT Act, in conjunction with Section 17(1A) of the SARFAESI Act, indicates that the primary consideration for ascertaining the jurisdiction of the tribunal is not restricted to the situs of the secured asset but is primarily based on the debt itself, be it with regard to the place where the cause of action, wholly or in part, arises or the branch or any other office of a bank or financial institution where it is maintaining an account in which the debt claimed is outstanding for the time being or (in the DRT Act) the defendant resides or works.*
>
> *27. The only additional feature in subsection (1A) of Section 17 of the SARFAESI Act is clause (b) thereof, which confers jurisdiction additionally on the Debts Recovery Tribunal where the secured asset is located.*
>
> *28. However, clauses (a), (b) and (c) of subsection (1A) are disjunctive and it is the option of the applicant in an application under Section 17 of the SARFAESI Act to choose any of the forums.*

*29. In such view of the matter, the location of the asset cannot be the sole determinant of the jurisdiction of the tribunal."*

52. It is thus evident that the appellate tribunal misappreciated the judgment in the case of Ramsay Exim and Technology Private Limited (supra) which on the contrary has clearly held that location of the asset can not be the sole determinant of jurisdiction of the Tribunal and that clauses (a) (b) and (c) of sub section (1-A) of Section 17 of the SARFAESI Act are disjunctive in nature.

53. So far as reliance placed by appellate tribunal in the case of Amish Jain (supra) is concerned, it is evident that the same is also misplaced since the aforesaid judgment was rendered on 13th September, 2012 whereas Sub Section (1-A) was inserted in Section 17 by virtue of the Act No.44 of 2016 with effect from Ist September, 2016. The said judgment was thus inapplicable in the facts and circumstances of the case.

54. In view of aforesaid, it is held that since notices under Section 13 were issued by the authorized authority situate at Lucknow from where the e-auction was also conducted, part cause of action in terms of Section 17(1-A)(a) was evidently at Lucknow where the securitisation application was thus maintainable.

55. Question No.(A) stands answered accordingly in the affirmative.

56. Question Nos. (B) and (C) are as follows:-

"(B) Whether Section 3 of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993, confers exclusive jurisdiction on Debts Recovery Tribunals established thereunder vide notifications of the Central Government?

(C) Whether Section 3 of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993, can be read as conferring exclusive jurisdiction on the Tribunals established thereunder, irrespetive of Section 19 of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993 and Section 17(1A) of the SARFAESI Act, rendering Sections 19 and 17(1A) of the respective Acts as redundant or nugatory ?"

**Answer to Question Nos. (B) & (C)**:-

57. In the light of answer rendered by this Court to question No.2 which was additionally framed and in the light of Section 35 of the SARFAESI Act, it is evident that provisions of the SARFAESI Act will supersede the provisions of Section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 and any notification issued thereunder, particularly dated 5th December, 2017 would also be subject to provisions of the SARFAESI Act.

58. Question No. B and C stands answered accordingly.

59. Question Nos. (D) and (E) are as follows:-

"(D) Whether the judgment in Saurabh Gupta (supra), which lays down that the Debts Recovery Tribunal, Allahabad shall have exclusive jurisdiction to entertain and decide the applications arisen from 55 districts specified in the notification dated 05.12.2017, without noticing Section 19 of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993 and Section 17(1A) of the SARFAESI Act, as also the judgment of Hon'ble Supreme Court in case of Sri Nasiruddin (supra) lays down the law correctly ?"

"(E) Whether the judgment in Saurabh Gupta (supra) is contrary to the law laid down by the Hon'ble Supreme Court in the case of Sri Nasiruddin (supra) and is liable to be declared as not good law ?"

**Answer to Question Nos. (D) & (E):-**

60. With regard to judgment rendered by another learned Single Judge of this Court in the case of Saurabh Gupta (supra), it is evident that the said judgment has been rendered solely on the basis of notification dated 15th February, 2017 issued in pursuance of Section 3 of the Recovery of Debts Due to Banks and and Financial Institutions Act, 1993. The aforesaid notification conferred jurisdiction of 12 districts of Uttar Pradesh with the Debts Recovery Tribunal at Lucknow and 55 districts of Uttar Pradesh upon the Debts Recovery Tribunal at Allahabad.

61. Unfortunately the learned Single Judge has taken the aforesaid notification dated 15th February, 2016 to be the only determining factor while completely ignoring the provisions of Sections 13 and 17 (as amended in 2016) of the SARFAESI Act.

62. It is also evident that judgment has been rendered on an admission made by the learned Additional Solicitor General of India that it is within the sole domain of the Central Government to notify territorial jurisdictions of the Debts Recovery Tribunal under Section 3 of the Act of 1993 and therefore the aforesaid tribunals can exercise jurisdiction only in terms of notification dated 15th February, 2017. It is on this premise that the learned Single Judge has held that it is only Debts Recovery Tribunal at Allahabad which can exercise jurisdiction pertaining to the 55 districts of State of Uttar Pradesh including district of Shahjahanpur whereas the jurisdiction of tribunal at Lucknow is restricted to the 12 districts notified in the notification dated 15th February, 2017.

63. Hon'ble Supreme Court in the case of **State of Madhya Pradesh versus Narmada Bachao Andolan (2011) 7 SCC 639** has expounded the concept of per inquirium in the following manner.

> *"65. "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.*
> *67. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."*

64. Upon examination of the judgment rendered in the case of Saurabh Gupta(supra), it is evident that the following aspects have clearly escaped attention:-

> " (i) that Section 17 (1-A) of the Securitization and Reconstruction of Financial Assets and Enforcment of Security Interest Act, 2002, which specifically provides that an application under Section 17 (1) of the Act, 2002, shall be filed before the D.R.T. within local limits of whose jurisdiction, inter alia, (a) the cause of action wholly or in part arises, escaped consideration,
> (ii) Section 19(1) of the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993, which also provides that, where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction:- (a) the branch or any other office of the bank or financial institution is

maintaining an account in which debt claimed is outstanding, for the time being; or (aa) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or (c) the cause of action, wholly or in part, arises:, also escaped consideration."

65. In view of aforesaid, it is held that judgment rendered by the learned Single Judge in the case of Saurabh Gupta (supra) being per incuriam, does not lay down good law and is hereby overruled.

66. Questions No.(D) and (E) are answered accordingly.

67. In view of aforesaid, additionally framed Question No.1 and its answer is as follows:-

**Question No.1**:- *"Whether clause (a) of Section 17(1A) of the SARFAESI Act is to be read ejusdem generis with Clauses (b) and (c) or is disjunctive? "*

**Answer to Question No.1**:- Clause (a) of Section 17(1-A) of the SARFAESI Act is disjunctive from clauses (b) & (c) of Section 17 (1-A) of the SARFAESI Act and is to be read separately.

68. Additionally Framed Question No.2 and its answer is as follows:-

**Question No.2**:-*"Whether insertion of Section 17(1-A) in the SARFAESI Act would have any overriding effect over provisions of the Debts Recovery Tribunals Act?"*

**Answer to Question No.2**:- The insertion of Section 17(1-A) of the SARFAESI Act would have an overriding effect over provisions of the Recovery of Debts Due to Banks and Financial Institutions Act 1993.

69. **The questions referred to are answered as follows**:-

(A) Notice issued under Section 13 of the SARFAESI Act would constitute part cause of action as per Section 17 (1-A) of the SARFAESI Act due to which the Debts Recovery Tribunal at Lucknow would also have jurisdiction to entertain the securitisation application filed by the borrowers.

(B) and (C):- Section 3 of the Recoveries of Debts due to Banks and Financial Institutions Act 1993 does not confer exclusive jurisdiction vide notifications issued by the Central Governments thereunder and such notifications would be subject to Section 17 (1-A) of the SARFAESI Act.

(D) and (E) :- The judgment rendered in the case of Saurabh Gupta versus Union of India, 2018 (127) ALR 388 does not lay down good law and is therefore overruled.

70. The reference is answered accordingly.

71. Office is directed to place the record of writ petition before Hon'ble Single Judge for further orders.

**Order Date**:-05.04.2024
prabhat

**(Manish Mathur,J.)** **(Jaspreet Singh,J.)**