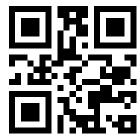

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8798 OF 2025

Mohd. Mozahiddin Azada and Anr. …Petitioners
Versus
Union Of India
Through Secretary Ministry of Finance
and Ors. …Respondents

ALONGWITH
WRIT PETITION NO. 8803 OF 2025

Mohd. Mozahiddin Azada and Ors. …Petitioners
Versus
Union Of India
Through Secretary Ministry of Finance
and Ors. …Respondents

ALONGWITH
WRIT PETITION NO. 8802 OF 2025

Nursaba Tahidul Hassan Azada and Ors. …Petitioners
Versus
Union Of India
Through Secretary Ministry of Finance
and Ors. …Respondents

Mr. Omkar Nagwekar for the Petitioners.
Mr. Murugaseelan Perumal a/w Ms. Shweta Kannan for Respondent Nos. 3 and 4.
Mr. D.P. Singh for Respondent No.1 – Union of India.

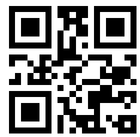
CORAM: MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

DATE: 1st APRIL 2026

P.C.

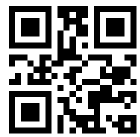
1. Heard Learned Counsel for the parties.

2. These three Writ Petitions came up for consideration before a



Division Bench of this Court (Coram : M.S. Karnik and N.R. Borkar, JJ) on 1st July 2025. Despite availability of alternative remedy for the Petitioners to approach the Debt Recovery Tribunal (***"the DRT"***) under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (***"the SARFAESI Act"***), the Division Bench of this Court showed indulgence to the Petitioners on the basis that they claimed to have approached the Respondent – Bank for One Time Settlement (***"OTS"***). It was also stated on behalf of the Petitioners that they were willing to offer OTS to the Respondent – Bank and that they would be ready to surrender possession of two properties. As regards the third property, it was claimed that classes for UPSC were being conducted in the premises and since the examinations were due, this Court may consider granting some relief. Having recorded the said contentions of the Petitioners with regard to the third property, the Division Bench of this Court directed that the Respondent – Bank should not dispossess the Petitioners till the next date of listing. It is crucial to note that in Paragraph No. 6 of the said order it was recorded that the Petitioner who was present in the Court had stated that a payment schedule would be submitted by the next date within which the outstanding amount would be repaid to the Respondent – Bank.

3. The returnable date was 24th July 2025, by which time the payment schedule was to be submitted. On the said date further time was sought on behalf of the Petitioners to approach the Respondent – Bank for settlement



and accordingly the proceedings were adjourned to 5th August 2025 and the ad-interim order was continued.

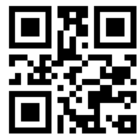
4. Thereafter, the Petition was listed on various dates before this Court but it could not be taken up for consideration due to paucity of time. It is an admitted position that even till date the Petitioners, including the Petitioner who was present in Court on 1st July 2025, failed to approach the Respondent – Bank with payment schedule for re-payment of the outstanding amount.

5. It is at the behest of the Respondent – Bank that these Writ Petitions have been circulated today.

6. It appears that there has been a change of Advocates for the Petitioners in the meanwhile and the Learned Counsel for the Petitioners appearing today is again seeking time to give the payment schedule and/or propose an OTS to the Respondent – Bank.

7. We find that the Learned Counsel for the Respondent – Bank is justified in contending that the Petitioners have misused the indulgence shown by this Court in its order dated 1st July 2025. They have taken no steps to give payment of schedule and to make good their offer, which was accepted by this Court while showing indulgence and restraining the Respondent – Bank from taking possession of the third property.

8. As per settled law laid down by the Supreme Court in the case of ***Bijnor Urban Cooperative Bank Limited, Bijnor and Others vs. Meenal***



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Agarwal and Others[1]***,*** the writ Court cannot exercise jurisdiction to insist upon the secured creditor/bank to accept OTS that may be proposed by defaulting borrowers. Therefore, there is no question of this Court entertaining such a request on the part of the Petitioners.

9. It is also to be noted that the Petitioners have been enjoying ad-interim order granted by this Court on 1st July 2025, on a solemn undertaking given by one of the Petitioners who was present in the Court that a payment schedule would be submitted by the next date of listing, under which the outstanding amount would be paid to the Respondent – Bank. On the returnable date further time was sought and till date no such payment schedule has been submitted by the Petitioners. We are of the opinion that no further indulgence can be shown to the said Petitioners by this writ Court.

10. Even otherwise, Writ Petitions ought not to be entertained in the face of statutory remedy available under the provisions of SARFAESI Act. As a matter of fact, the Supreme Court has repeatedly held that when such a statutory remedy under the provisions of the SARFAESI Act is available to aggrieved persons, the High Court ought not to entertain such Writ Petitions. In the case of ***United Bank of India vs. Satyawati Tondon and Others***[2], the Supreme Court in this context held as follows :

> *42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section*

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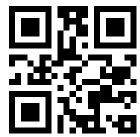
1 (2023) 2 Supreme Court Cases 805

2 (2010) 8 Supreme Court Cases 110

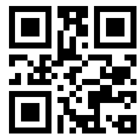


14, then she could have availed remedy by filing an application under Section 17(1). The expression `any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Section 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

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

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

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



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11. Recently the Supreme Court reiterated the said position of law in the case of ***CELIR LLP vs. Bafna Motors (Mumbai) Private Limited and Others***[3]. In fact, the Supreme Court, having taken note of the position of law, was constrained to observe in the said judgment as follows :

> *101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon, it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act.*

12. In the light of the said position of law, we are no longer inclined to keep these Writ Petitions pending in this Court, particularly taking into consideration the conduct of the Petitioners.

13. In view of the above, the Writ Petitions are dismissed. The ad-interim order dated 1st July 2025 is vacated.

14. Needless to say, the order passed by this Court dismissing these Writ Petitions will not come in the way of the Petitioners exhausting the alternative remedy strictly in accordance with law.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

3 (2024) 2 Supreme Court Cases 1