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Judgment reserved on 30.07.2025
Judgment delivered on 06.08.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)

MATTERS UNDER ARTICLE 227 No.3953 of 2025

Vimla Kashyap and Ors ..... *petitioners*

Versus

Union of India and Ors .... *Respondents*

Counsel for Petitioner(s):	Sri Alok Saxena & Sri Paras Pradhan
Counsel for Respondent(s):	A.S.G.I., C.S.C. & Sri Abhishek Khare

CORAM: HON'BLE PANKAJ BHATIA, J.

J U D G M E N T
06.08.2025

1. Heard Sri Alok Saxena,learned Counsel for the petitioner and Sri Abhishek Khare, learned Counsel for the respondent no.3.

2. The present petition under Article 227 of the Constitution of India has been filed challenging an order dated 17.06.2025 passed by the Debts Recovery Tribunal, Lucknow whereby, the application of the petitioners for grant of interim benefits was dismissed observing that S.A. filed by the petitioners is hopelessly barred by limitation.

3. The facts in brief that emerge are that the petitioner had availed a credit facility from the assignor of respondent no.3. Subsequently, the loan amount was assigned to the respondent no.3 and the respondent no.3 initiated proceedings for realization of the dues by taking recourse to The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the SARFAESI Act).

4. The contention of the Counsel for the petitioners is that no notice under Section 13(2) and Section 13(4) of the SARFAESI Act was ever served upon the petitioners in terms of the stipulations contained in The Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the 2002 Rules"). It is argued that the petitioners came to know of the proceedings being initiated on 15.04.2025 when the information notice was affixed on the property owned by the petitioner no.1-Vimla Kashyap indicating that the physical possession of the property will be taken on or after 02.05.2025 in terms of an order dated 10.03.2025 passed by the Additional District Magistrate, Lucknow under Section 14 of the SARFAESI Act. It is claimed that the petitioners obtained a copy of the order passed by the ADM, Lucknow along with the other proceedings, which were contained in the application under Section 14, and thereafter approached the Debts Recovery Tribunal, Lucknow (in short "the DRT") by filing an application under Section 17 of the SARFAESI Act on 21.04.2025 along with an application for condonation of delay, which was registered as S.A. No.405 of 2025. The said delay condonation application was filed as an abundant caution, although, the S.A. was within the limitation from the date of the order passed under Section 14 of the SARFAESI Act. Several grounds were pleaded in the S.A. with regard to the irregularities in terms of the provisions contained in the 2002 Rules. Along with the said S.A., the petitioners had also filed an application for grant of interim relief, which was rejected vide order dated 02.05.2025.

5. It is also stated that the petitioners had approached this Court by filing a petition under Article 227 of the Constitution of India being Matters Under Article 227 No.2946 of 2025 and the order dated 02.05.2025 came to be quashed vide order dated 16.05.2025 mainly on the ground that the said rejection was without any application of mind. Considering the manner in which the applications were being disposed of, this Court had directed to send a copy of this order to the Ministry of Finance, Government of India, New Delhi for taking appropriate steps for

imparting training to the officer concerned in view of the series of orders being passed, which are bereft of any reasoning. The said judgment is on record as Annexure-10. It is stated that in compliance of the said order, the matter was heard again and vide impugned order dated 17.05.2025, the application for interim relief was once again dismissed. The said order is again under challenge. The DRT dismissed the delay condonation application holding that the possession notice dated 18.05.2023 under Section 13(4) was found to be duly served and observed that the limitation would start from the said limitation date and not from any date subsequent thereto as was pleaded by the petitioners. In regard to an order passed under Section 14 of the SARFAESI Act, the DRT also commented on the validity of the order passed under Section 14 and ultimately, held that the S.A. was hopelessly barred by limitation starting w.e.f. 18.05.2023, i.e. the day of notice under Section 13(4) of the SARFAESI Act. The DRT also made observations that the compliance of Rule 8(1) and Rule 8(2) of the 2002 Rules were made by the respondents and the error in the demand notice, did not cause any material prejudice to the applicants. The relief application was accordingly dismissed and it was directed that the matter be listed on 28.05.2025 for further proceeding.

6. Challenging the said order, the Counsel for the petitioners argues that the DRT had erred in recording on one hand that S.A. was hopelessly barred by limitation and on the other hand, has gone into the correctness of the orders passed as well as compliances done by the respondents. It is argued that the DRT had erred in holding that the S.A. is barred by limitation, inasmuch as, it is well settled that the steps prescribed under Section 14 are in furtherance of the steps prescribed under Section 13(4) and thus, the steps under Section 13(4) and Section 14 would be a continuous cause of action enabling the petitioners to challenge the proceedings by approaching the DRT under Section 17 from any of the said dates and it is incumbent upon the DRT to adjudicate the grievance on merits. It is further argued that even the steps under Section 14 are

subjected to judicial review by DRT and on the one hand, the DRT held that the S.A. is barred by limitation and on the other hand, it had reviewed the action under Section 14, which is bad in law.

7. The Counsel for the respondent no.3 justifies the order stating that a finding has been recorded with regard to the serve of notice under Section 13(4) of the SARFAESI Act and thus, there is no error in the impugned order warranting interference. He further argues that the remedy of appeal is open to the petitioners under Section 18 of the SARFAESI Act.

8. Considering the submissions made at the bar and recorded hereinabove, *ex-facie,* the observations made by the DRT that the S.A. was hopelessly barred by limitation is utterly erroneous as the starting point of limitation has been considered by the DRT to be the service of notice under Section 13(4) and not the knowledge derived by the petitioners as pleaded by them, from the date when the order under Section 14 was affixed.

9. To decide the said controversy, it is essential to note that after the enactment of the SARFAESI Act, the issue with regard to the steps permitted to be taken under the The Recovery of Debts and Bankruptcy Act as well as the SARFAESI Act came up for consideration before the Hon'ble Supreme Court in the case of ***Mardia Chemicals Ltd. and others vs Union of India and others: (2004) 4 SCC 311,*** wherein the Hon'ble Supreme Court after noticing the scheme of the Act recorded as under:

> *"**48**. The next safeguard available to a secured borrower within the framework of the Act is to approach the Debts Recovery Tribunal under Section 17 of the Act. Such a right accrues only after measures are taken under sub-section (4) of Section 13 of the Act.*
>
> ***59.** We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought*

before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393] where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p. 397, para 15)

> *"There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."*

***62**. As indicated earlier, the position of the appeal under Section 17 of the Act is like that of a suit in the court of the first instance under the Code of Civil Procedure. No doubt, in suits also it is permissible, in given facts and circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the relevant provisions under the law. There is no such provision under the Act.*

***80**. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to*

approach the Debts Recovery Tribunal. The abovenoted provisions are for the purpose of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows:

> ***1**. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days' notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/ knowledge of the borrower without giving rise to any right to approach the Debts Recovery Tribunal under Section 17 of the Act, at that stage.*
>
> ***2**. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debts Recovery Tribunal.*
>
> ***3**. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.*
>
> ***4**. In view of the discussion already held in this behalf, we find that the requirement of deposit of 75% of the amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against*

> *all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.*
>
> ***5**. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."*

10. Subsequently, in the light of the directions given in *Mardia Chemicals (Supra)*, the amendments were introduced in the SARFAESI Act. The Hon'ble Supreme Court while delivering the judgment in the case of ***Hindon Forge Private Limited and another vs The State of Uttar Pradesh and another: (2019) 2 SCC 198*** once again analysed the scheme of the provisions contained in the SARFAESI Act and noticing the judgment of the Honble Supreme Court in the case of *Mardia Chemicals (Supra)* and the amendments that were carried out. The relevant paragraphs of *Hindon Forge Private Limited (Supra)* are as under:

> *"**23**. The judgment in Mardia Chemicals [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] had made it clear in para 80 that all measures having been taken under Section 13(4), and before the date of auction-sale, it would be open for the borrower to file a petition under Section 17 of the Act. This paragraph appears to have been missed by the Full Bench in the impugned judgment [NCML Industries Ltd. v. Debts Recovery Tribunal, 2018 SCC OnLine All 176 : AIR 2018 All 131] .*
>
> ***24**. A reading of Section 13 would make it clear that where a default in repayment of a secured debt or any instalment thereof is made by a borrower, the secured creditor may require the borrower, by notice in writing, to discharge in full his liabilities to the secured creditor within 60 days from the date of notice. It is only when the borrower fails to do so that the secured creditor may have recourse to the provisions contained in Section 13(4) of the Act. Section 13(3-A) was*

inserted by the 2004 Amendment Act, pursuant to Mardia Chemicals [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] , making it clear that if on receipt of the notice under Section 13(2), the borrower makes a representation or raises an objection, the secured creditor is to consider such representation or objection and give reasons for non-acceptance. The proviso to Section 13(3-A) makes it clear that this would not confer upon the borrower any right to prefer an application to the Debts Recovery Tribunal under Section 17 as at this stage no action has yet been taken under Section 13(4).

***26**. Section 19, which is strongly relied upon by Shri Ranjit Kumar, also makes it clear that compensation is receivable under Section 19 only when possession of secured assets is not in accordance with the provision of this Act and Rules made thereunder [That this is the general scheme of the Act is also clear from Section 17(2) which states that the Debts Recovery Tribunal, when an application is filed before it, shall consider whether any of the measures referred to in Section 13(4) taken by the secured creditor are in accordance with the provisions of the Act and the Rules made thereunder.]. The scheme of Section 13(4) read with Rule 8(1) therefore makes it clear that the delivery of a possession notice together with affixation on the property and publication is one mode of taking "possession" under Section 13(4). This being the case, it is clear that Section 13(6) kicks in as soon as this is done as the expression used in Section 13(6) is "after taking possession". Also, it is clear that Rules 8(5) to 8(8) also kick in as soon as "possession" is taken under Rules 8(1) and 8(2). The statutory scheme, therefore, in the present case, is that once possession is taken under Rules 8(1) and 8(2) read with Section 13(4)(a), Section 17 gets attracted, as this is one of the measures referred to in Section 13(4) that has been taken by the secured creditor under Chapter III.*

***30**. Yet another argument was made by the learned counsel for the respondents that Section 17(3) would require restoration of possession of secured assets to the borrower, which can only happen if actual physical possession is taken over. Section 17(3) is a provision which arms the Debts Recovery Tribunal*

to give certain reliefs when applications are made before it by the borrower. One of the reliefs that can be given is restoration of possession. Other reliefs can also be given under the omnibus Section 17(3)(c). Merely because one of the reliefs given is that of restoration of possession does not lead to the sequitur that only actual physical possession is therefore contemplated by Section 13(4), since other directions that may be considered appropriate and necessary may also be given for wrongful recourse taken by the secured creditor to Section 13(4). This argument again has no legs to stand on.

***31**. Another argument made by the learned Senior Counsel for the respondents is that if we were to accept the construction of Section 13(4) argued by the appellants, the object of the Act would be defeated. As has been pointed out hereinabove in the Statement of Objects and Reasons of the original enactment, Paras 2(i) and 2(j) make it clear that the rights of the secured creditor are to be exercised by officers authorised in this behalf in accordance with the Rules made by the Central Government. Further, an appeal against the action of any bank or financial institution is provided to the Debts Recovery Tribunal concerned. It can thus be seen that though the rights of a secured creditor may be exercised by such creditor outside the court process, yet such rights must be in conformity with the Act. If not in conformity with the Act, such action is liable to be interfered with by the Debts Recovery Tribunal in an application made by the debtor/borrower. Thus, it can be seen that the object of the original enactment also includes secured creditors acting in conformity with the provisions of the Act to realise the secured debt which, if not done, gives recourse to the borrower to get relief from the Debts Recovery Tribunal. Equally, as has been seen hereinabove, the Statement of Objects and Reasons of the 2004 Amendment Act also make it clear that not only do reasons have to be given for not accepting objections of the borrower under Section 13(3-A), but that applications may be made before the Debts Recovery Tribunal without making the onerous pre-deposit of 75% which was struck down by this Court in Mardia Chemicals [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] . The object of the Act, therefore, is also to enable the borrower to approach a quasi-judicial*

forum in case the secured creditor, while taking any of the measures under Section 13(4), does not follow the provisions of the Act in so doing. Take for example a case in which a secured creditor takes possession under Rules 8(1) and 8(2) before the 60 days' period prescribed under Section 13(2) is over. The borrower does not have to wait until actual physical possession is taken [this may never happen as after possession is taken under Rules 8(1) and 8(2), the secured creditor may go ahead and sell the asset]. The object of providing a remedy against the wrongful action of a secured creditor to a borrower will be stultified if the borrower has to wait until a sale notice is issued, or worse still, until a sale actually takes place. It is clear, therefore, that one of the objects of the Act, as carried out by Rules 8(1) and 8(2) must also be subserved, namely, to provide the borrower with instant recourse to a quasi-judicial body in case of wrongful action taken by the secured creditor."

11. It is interesting to note that these issues were extensively considered by the High Court of Gujarat in ***Special Civil Application No.15765 of 2019 (Manglesh Champaklal Gandhi vs Aditya Birla Finance Ltd.)***, wherein the Gujarat High Court had framed two issues for decision in para 8 and while answering the question no.2 after analysing the judgment of the Hon'ble Supreme Court held as under:

*"**20.3** From reading the paras quoted hereinabove, it is clear that on reading the provisions of Section 13(4) with Rule 8, the Court held that once possession notice is given under Rule 8(1) and Rule 8(2) by the secured creditor to the borrower, the borrower cannot deal with the secured asset at all and all further steps to realize the same are to be taken by the secured creditor under the 2002 Rules. The Court further held that the scheme of Section 13(4) read with Rule 8(1) therefore makes it clear that the delivery of a possession notice together with the affixation on the property and publication is one of the modes of taking possession. The statutory scheme therefore is that once possession is taken under Rule 8(1) and 8(2) read with Section 13(4)(a), Section 17 gets attracted, as this is one of the measures referred to in Section 13(4) that has been taken by the secured creditor*

under Chapter III. The Supreme Court considering the object of the act held that is also to enable the borrower to approach a quasi-judicial forum in case the secured creditor, while taking any of the measures under Section 13(4), does not follow the provisions of the Act in doing so. Therefore, if the judgement of Mardia Chemicals (supra) and Hindon Forge (supra) are read together what emerges is that a borrower's right to approach the Tribunal under Section 17 of the Act gets attracted the moment possession notice under Rules 8(1) and 8(2) of the 2002 Rules are issued. The other question that is also decided is that as per Mardia Chemicals (supra) he can approach the Tribunal before the date of auction sale.

***21**. In my opinion therefore the submission of Mr Pandya that the borrower can challenge the action of the Bank within 45 days from the last step of the process i.e. sale notice which is obviously before the date of auction sale is a proposition that deserves to be accepted. The case of the petitioner before the Tribunal was that there was complete noncompliance of the mandatory provisions of the Rules and therefore the Tribunal has observed that although the petitioners have failed to approach the Tribunal within 45 days but the glaring mistake in the process of the respondent bank since the initiation is so vital flagrant and glaring that the Tribunal set aside the entire process and directed that the Bank can proceed further afresh and restrained the Bank further on the auction."*

12. It is also essential to notice that the Hon'ble Supreme Court in the case of ***Kanaiyalal Lalchand Sachdev and others vs State of Maharashtra and others: (2011) 2 SCC 782***, conclusively held that the action under Section 14 is an action after the stage of Section 13(4) and the same would fall within the ambit of Section 14(1) of the SARFAESI Act.

*"**22**. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or*

any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT."

13. This Court had also considered the issue earlier while deciding the ***Matter Under Article 227 No.4401 of 2025 (Naveen Kumar Dwivedi vs DRT)*** and held as under:

"7. In the light of the said, contention of learned counsel for the petitioner is that the dismissal of the S.A. on the limitation is wholly unjustified as the petitioner had also challenged the action of the respondent in proposing to sell the properties through publication dated 09.04.2025 which itself was a separate cause of action and thus, the S.A. filed on 06.05.2025 was within the limitation from the date of publication i.e. 09.04.2025. Merely because no action was taken for sell as proposed in the publication dated 09.04.2025, the S.A. could not be termed as beyond limitation particularly when an amendment application was filed challenging the subsequent publication by the petitioner.

***8**. Considering the judgment in the case of M/s. Alpine Pharmaceuticals Pvt. Ltd. (supra), it is clear that all the actions prescribed under Section 13(4) give a separate cause of action to the person aggrieved to approach the DRT by filing the S.A. As the petitioner had approached the DRT challenging the publication dated 09.04.2025 and the proposed auction on 16.05.2025, the said S.A. was within the limitation; merely because Section 14 order was not challenged within the time prescribed, the DRT could not have rejected the application challenging the subsequent publication proposing an auction as being beyond limitation.*

***9**. As the order of the DRT is ex-facie contrary to the law as explained in the case of M/s. Alpine Pharmaceuticals Pvt. Ltd. (supra), the objections of the respondent that the petitioner be relegated to remedy of appeal, merits rejection and is accordingly rejected."*

14. In view of the said judgments quoted hereinabove, it clear that Section 14 is continuance of the proceedings under Section 13(4) of the

SARFAESI Act and would give a cause of action to file an S.A. before the DRT. All the steps contemplated under Section 13(4), give a cause of action to the borrower of the person aggrieved to approach the DRT by filing a petition under Section 17 and are a continuous cause of action. The limitation has to be calculated from the date of the last action against which the person aggrieved had approached the DRT under Section 17.

15. In view thereof, *ex-facie,* the finding of the DRT that the S.A. were hopelessly barred by limitation merits rejection and is accordingly rejected. The order impugned of the DRT, impugned herein, further merits interference as on the one hand the DRT had observed that the S.A. was hopelessly barred by limitation and on the other hand, had proceeded to make an observations with regard to the action of the respondents against which, the petitioners were aggrieved and had to be adjudicated only after the delay was condoned and the S.A. was to be decided on merits.

16. For all the reasons recorded above, the order impugned dated 17.06.2025 cannot be sustained and is quashed. The writ petition stands ***allowed***.

17. The matter is remanded to the DRT concerned to pass order afresh after considering the grievance of the petitioners afresh and in accordance with law.

18. Till disposal of the interim application filed in S.A., the parties shall maintain status quo with regard to the title and possession of the property in question.

19. The DRT will endeavour to decide the interim application in S.A. with all expedition preferably within a period of one month from the date of production of a certified copy of this order.

August 6, 2025 **[Pankaj Bhatia, J.]**
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