Digivision Electronics Ltd. Vs. Indian Bank, Rep. by Its Deputy General Manager and Indian Bank, Rep. by Its Branch Manager

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Court : Chennai

Decided On : Jul-07-2005

Reported in : IV(2005)BC502; [2005]126CompCas630(Mad); 2005(3)CTC513; (2005)3MLJ394; [2005]63SCL714(Mad)

Judge : Markandey Katju, C.J. and ;F.M. Ibrahim Kalifulla, J.

Acts : Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Sections 2 and 19(1); Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) - Sections 13(1), 13(2), 13(3A), 13(4), 13(10), 17, 17(1) and 17(2); Security Interest and Recovery of Debts Laws (Amendment) Act, 2004; ;Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004 - Rule 3; Constitution of India - Article 226

Appeal No. : W.P. Nos. 37061 and 37062 of 2002, 27001, 15546, and 35868 of 2003, 2261, 33390, 34853, 34854, 35969

Appellant : Digivision Electronics Ltd.

Respondent : Indian Bank, Rep. by Its Deputy General Manager and Indian Bank, Rep. by Its Branch Manager

Advocate for Def. : V.T. Gopalan, Senior Counsel for ;Jayesh B. Dolia, Adv., ;V.T. Gopalan, Addl. Solicitor General for ;S. Manikumar, SCGSC, ;N.V. Srinivasan, Adv. for N.V.S. Associates and ;F.B. Benjamin George, ;Murt

Advocate for Pet/Ap. : P.S. Raman, Sr. Counsel for ;M. Sukumar, Adv., ;R. Vijay Narayan, Senior Counsel for Narmada Sampath, Adv., ;A. Thiagarajan, ;S. Shyamala, ;T. Sivanantham, ;R. Ganesh Ram, ;Raghul Bajaj and ;K. Selv

Disposition : Petition dismissed

Judgement :
ORDER

Markandey Katju, C.J.

1. All the above writ petitions relate to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Securitisation Act).

2. Various questions of law have been raised in these petitions. By this common judgment we are disposing off all these writ petitions dealing with the points raised in these various petitions. Hence, this judgment will apply to all the above mentioned cases and other cases listed before us, relating to the Securitisation Act.

3. We have heard learned counsel for the parties and have noted their contentions.

4. Before dealing with these contentions we may refer to the decision of the Supreme Court in Mardia Chemicals Ltd. v. Union of India : AIR 2004 SC2371 , in which the Supreme Court dealt with the challenge to the validity of various provisions of the Securitisation Act.

5. In Mardia Chemicals Limited Case (supra) it was submitted before the Supreme Court that the Securitisation Act introduces drastic measures for the seizure and sale of properties of the borrowers or taking over of the management or possession of the secured assets. It was submitted that there was no occasion to

enact such a draconian legislation to find a short cut to realize the alleged dues without their ascertainment by an adjudicatory authority. It was submitted there is already a special enactment providing for recovery of dues by banks and financial institutions, being the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Hence, it was not necessary to enact another legislation consisting of dras tic steps and proceedings, and not providing the debtors with fair opportunity to defend themselves. The Supreme Court rejected this contention holding that 'the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would subserve the public interest (vide paragraph - 81)'.

6. The Supreme Court quoted from the Narasimham Committee report which stated:

'Banks and financial institutions at present face considerable difficulties in recovery of dues from the clients and enforcement of security charged to them due to the delay in the legal processes. A significant portion of the funds of banks and financial institutions is thus blocked in unproductive assets, the values of which keep deteriorating with the passage of time. Banks also incur substantial amounts of expenditure by way of legal charges which add to their overheads'.

7. In paragraph - 34 of its judgment the Supreme Court observed: -

'It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through courts is lengthy and time taken is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the economic progress followed by a large number of other consequent ill effects. Considering all these circumstances, the Recovery of Debts Due to Banks and Financial Institutions Act was enacted in 1993 but as the figures show it also did not bring the desired results. Though it is submitted on behalf of the petitioners that it so happened due to inaction on the part of the Governments in creating Debts Recovery Tribunals and appointing presiding officers, for a long time. Even after

leaving that margin, it is to be noted that things in the spheres concerned are desired to move faster. In the present-day global economy it may be difficult to stick to old and conventional methods of financing and recovery of dues. Hence, in our view, it cannot be said that a step taken towards securitisation of the debts and to evolve means for faster recovery of NPAs was not called for or that it was superimposition of undesired law since one legislation was already operating in the field, namely, the Recovery of Debts Due to Banks and Financial Institutions Act. It is also to be noted that the idea has not erupted abruptly to resort to such a legislation. It appears that a thought was given to the problems and the Narasimham Committee was constituted which recommended for such a legislation keeping in view the changing times and economic situation whereafter yet another Expert Committee was constituted, then alone the impugned law was enacted. Liquidity of finances and flow of money is essential for any healthy and growth-oriented economy'.

8. In view of the above, the Supreme Court upheld the validity of the Securitisation Act, except Section 17(2).

9.However, the Supreme Court held that Section 17(2) of the Securitisation Act which requires a pre-deposit of 75% of the amount of demand notice before an appeal can be entertained by a Tribunal is unreasonable, arbitrary and violative of Article 14 of the Constitution of India (vide paragraph - 64). While striking down Section 17(2) the Supreme Court upheld the constitutional validity of the other provisions of the Securitisation Act (vide paragraph - 81).

10. Thus, the validity of the Act has been upheld by the Supreme Court and the challenge to the same cannot now be entertained by this Court, and the same is rejected. We shall therefore deal only with those issues raised before us which are not concerned with the constitutional validity of the Securitisation Act.

11. In many of these writ petitions challenge has been made to the notice issued under Section 13(2) of the Securitisation Act. Section 13(2) of the Securitisation Act states:-

'(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 installment 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)'.

12. In paragraphs 45 to 47 of the judgment in Mardia Chemicals Limited Case (supra) the Supreme Court observed:-

'45. In the background we have indicated above, we may consider as to what forums or remedies are available to the borrower to ventilate his grievance. The purpose of serving a notice upon the borrower under sub-section (2) of Section 13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under sub-section (4) of Section 13 in case of non-compliance with notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under sub-section (4) of Section 13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or points raised in reply to the notice served upon them before proceeding to take measures under sub-section (4) of Section 13. Such reasons, overruling the objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfillment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would certainly provide guidance to the secured debtors in general in conducting the affairs in a manner that they may not be found defaulting and being made liable for the unsavoury steps contained under sub-section (4) of Section 13. At the same

time, more importantly, we must make it clear unequivocally that communication of the reasons for not accepting the objections taken by the secured borrower may not be taken to give occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh steps of taking over the management/business of viz., secured assets without intervention of the court. Such a person in respect of whom steps under Section 13(4) of the Act are likely to be taken cannot be denied the right to know the reason of nonacceptance and of his objections. It is true, as per the provisions under the Act, he may not be entitled to challenge the reasons communicated or the likely action of the secured creditor at that point of time unless his right to approach the Debts Recovery Tribunal as provided under Section 17 of the Act matures on any measure having been taken under sub-section (4) of Section 13 of the Act.

46. We are holding that it is necessary to communicate the reasons for not accepting the objections raised by the borrower in reply to the notice under Section 13(2) of the Act, more particularly for the reason that normally in the event of non-compliance with notice, the party giving notice approaches the court to seek redressal but in the present case, in view of Section 13(1) of the Act the creditor is empowered to enforce the security himself without intervention of the court. Therefore, it goes with logic and reason that he may be checked to communicate the reason for not accepting the objections, if raised and before he takes the measures like taking over possession of the secured assets, etc.

47. This will also be in keeping with the concept of right to know and lender's liability of fairness to keep the borrower informed particularly of the developments immediately before taking measures under sub-section (4) of Section 13 of the Act. It will also cater to the cause of transparency and not secrecy and shall be conducive in building an atmosphere of confidence and healthy commercial practice. Such a duty, in the circumstances of the case and the provisions, is inherent under Section 13(2) of the Act.'

13. A perusal of the above passage in Mardia Chemicals Limited Case (supra) shows that when an objection is made by the borrower to the notice under Section 13(2) the secured creditor has to apply his mind to the said objection and give reasons if the objection is overruled, and such reasons have to be communicated to the borrower by the secured creditor. Thus, the borrower can raise all objections, legal and factual, which he is advised, in reply to the notice under Section 13(2) of the Securitisation Act, and the objections of the borrower must be considered by the secured creditor and if the same are rejected, the reasons must be communicated to the borrower.

14. In fact, this has now been expressly provided by sub-section 3A of Section 13 which reads as follows:-

'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 one week 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 17-A.'

15. The above amendment by inserting Clause 3-A in Section 13 was made by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 w.e.f.11.11.2004, but the position was the same even before this amendment in view of the observations made by the Supreme Court in Mardia Chemicals Limited Case (supra). Hence, this amendment only clarifies the law.

16. In a sense the notice under Section 13(2) of the Securitisation Act is really a show-cause notice, and ordinarily this Court does not interfere with show-cause notices, vide Special Director v. Mohd. Ghulam Ghouse : 2004(164)ELT141(SC) , Ulagappa v. Divisional Commissioner, Mysore (2001) 10 SCC 639 Executive Engineer, Bihar State Housing Board v. Ramesh K.Singh & Others : AIR 1996

SC691 . The notice under Section 13(2) of the Securitisation Act really does not give any rise to a cause of action because by itself the notice does not affect any right or liability of the borrower. Hence, challenge to the notice under Section 13(2) of the Securitisation Act is premature, since it is possible that the secured creditor may be satisfied with the reply of the borrower to the aforesaid notice and may drop the proceedings. Hence, all the writ petitions challenging notice under Section 13(2) of the Securitisation Act are dismissed on the ground that the writ petitions are premature, and the petitioners have an alternative remedy of raising all the points which they are raising in these writ petitions in their reply to the notice under Section 13(2) of the Securitisation Act. As already stated above, the secured creditor must decide the objection of the borrower to the notice under Section 13(2) of the Securitisation Act by a reasoned order, and if the objection is rejected the rejection order must be communicated to the borrower.

17. Learned counsels in some of the writ petitions have strongly relied on the 1st proviso to Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the '1993 Act'). That proviso, introduced by an amendment w.e.f. 11.11.2004, states:-

'Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act'.

18. The above proviso was inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 with effect from 11.11.2004.

19. Learned counsel submitted that if an application of a bank or financial institution is pending before the Debts Recovery Tribunal then action cannot be taken under the Securitisation Act without first getting permission from the Debts Recovery Tribunal to withdraw the application pending before it.

20. In the case of the petitioner in W.P.No.13056 of 2005 the Indian Bank had filed an application before the Debts Recovery Tribunal in the year 2002 and the notice under Section 13(2) of the Securitisation Act was issued on 15.02.2005. As regards the petitioners in W.P.No.37153 and 37154 of 2004 the application before the Debts Recovery Tribunal was filed in the year 1998 and the notice under Section 13(2) of the Securitisation Act was issued on 05.05.2004. Thus, as regards W.P.No.13056 of 2005 notice under Section 13(2) was issued subsequent to 11.11.2004 whereas in the case of W.P.Nos.37153 and 37154 of 2004 it was issued prior to 11.11.2004.

21. It may be noted that the first proviso to Section 19(1) of the 1 993 Act ends with the words 'if no such action had been taken earlier under that Act'. In our opinion, the words 'that Act' in the above phrase refer to the Securitisation Act.

22. In our opinion if the words 'if no such action had taken earlier under the Act' were not present in the proviso to Section 19(1) then the legal position would have been that whether the notice under Section 13(2) of the Securitisation Act had been issued either before or after 11.11.2004, it would have made no difference, and in either case no action could be taken under the Securitisation Act unless permission was taken from the Debt Recovery Tribunal for withdrawal of an application pending before it. However, we cannot ignore the words 'if no such action had been taken earlier under the Act' which occur in the proviso to Section 19(1).

23. It is a well settled principle of interpretation that the Court can neither add nor delete words from a statute. As observed by the Supreme Court in Aswini Kumar Ghose v. Arabinda Bose : [1953]4SCR1 per Patanjali Shastry, C.J. :-

'It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute'.

24. In Rao Shiv Bahadur Singh v. State of U.P. : 1954 CriLJ1480 the Supreme Court observed:

'It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application'.

25. Similarly, in J.K.Cotton Spinning & Weaving Mills Co. Ltd. V s. State of U.P. : and in Shri Mohammad Alikhan v. The Commissioner of Wealth Tax AIR 1997 SC 1165 the Supreme Court observed:-

'In the interpretation of statutes, the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect'.

26. The Legislature is deemed not to waste its words or to say anything in vain, vide Quebec Railway, Light, Heat & Power Co. v. Vandry AIR 1920 PC 181. A construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons, vide Ghanshyamdas v. Regional Assistant Commissioner, Sales Tax : [1964]51ITR557(SC) , State of U.P. v. Radhey Shyam : [1989]1SCR92 , etc.

27. The notice under Section 13(2) of the Securitisation Act is a statutory notice. Hence, in our opinion, issuance of such a notice is an action taken under the Securitisation Act.

28. There is a difference between a statutory notice and a nonstatutory notice. In the case of a non-statutory notice it could not be said that it was an action taken under the Securitisation Act, but in the case of a statutory notice under Section 13(2) it is certainly a step for recovery under the Securitisation Act, and is hence action taken under the Act. Hence, in our opinion, if notice under Section 13(2) had been issued prior to 11.11.2004, there is no requirement to take permission from the Debts Recovery Tribunal for withdrawal of an application pending before it. It is only where notice under Section 13(2) is sought to be issued subsequent to 11.11.2004 that permission for withdrawal of an application pending before the Debts Recovery Tribunal is necessary, and no action can be taken under the Securitisation Act before grant of such permission by the Tribunal.

29. Learned counsel for the respondents submitted that even where notice under Section 13(2) is issued after 11.11.2004 action under the Securitisation Act can be taken without getting permission from the Debt Recovery Tribunal to withdraw an application pending before it, because there is no express bar to such action. We do not agree. If we accept such an interpretation it will make the proviso to Section 19(1) meaningless and purposeless. Hence, it has to be held that it is a necessary implication of the proviso that where notice under Section 13(2) of the Securitisation Act is sought to be issued after 11.11 .2004 permission of the Tribunal is required for withdrawing an application pending before it, and without such permission no action can be taken under the Securitisation Act.

30. However, as regards unsecured assets, in view of Section 13(10) of the Securitisation Act the application before the Debts Recovery Tribunal can continue or a fresh application can be filed in respect of such unsecured assets before the Tribunal. This is because the Securitisation Act deals only with secured assets whereas in view of Section 2(g) of the 1993 Act which defines 'debt' to include a liability, whether secured or unsecured, even unsecured debts can be recovered by the Tribunal under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

31. The next submission of some of the learned counsel in these writ petitions is the challenge to the fee prescribed for making an application under Section 17 of the Securitisation Act.

32. Section 17(1) of the Securitisation Act states:- '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 authorized 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 application by the borrower and the person other than the borrower'.

33. Thus, Section 17(1) itself contemplates a fee which can be charged for filing an application under Section 17. Such fee can be the fee as prescribed under the

rules.

34. Rule 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order. 2004 states:-

'3.Fee for filing an appeal to Debts Recovery Tribunal -

The fee for filing of an appeal to the Debts Recovery Tribunal under sub-section (1) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 shall be mutatis mutandis as provided for filing of an application to the Debts Recovery Tribunal under Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993'.

35. Learned counsel for some of the petitioners submitted that the borrower cannot file an application before the Debts Recovery Tribunal and only the bank can file it. Hence they submitted that the fees prescribed under Rule 3 as quoted above is unworkable and/or arbitrary. We do not agree. It may be noted that Rule 3 uses the words ' mutatis mutandis' which means 'with the necessary changes'. Hence, there is no force in the submission of the learned counsel for the petitioner.

36. Moreover, Section 18-A of the Securitisation Act states:- '18-A Validation of Fees levied - Any fee levied and collected for preferring, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if amendments made to Sections 17 and 18 of this Act by Sections 11 and 12 of the said Act were in force at all material times'.

37. Learned counsel for the petitioners then submitted that the fixation of ad valorem fee is arbitrary. We cannot agree with this submission either. Ad valorem fee is not unknown to the legal system in India. The court fee can either be fixed court fee or ad valorem court fee. We are informed that the court fee for filing an application under Section 17 is Rs.12,000/- for the dispute of Rs.10,00,000/-, and for every additional lakh an additional fee of Rs.1000/- is fixed and the maximum ceiling is Rs.1,50,000/-. We do not find this arbitrary.

38. It was submitted that the fixation of ad valorem court fee for applications under Section 17 violates the judgment of the Supreme Court in Mardia Chemicals Limited Case, (supra). We do not agree. The Supreme Court has only held that the requirement to deposit 75% of the demand was unreasonable and oppressive. The court fee (mentioned above) is far less than 75% of the demand, and hence cannot be said to be arbitrary or oppressive.

39. We thus find no merit in the challenge to the fixation of fee under Section 17 of the Securitisation Act.

40. In some writ petitions action had been taken by the secured creditor under Section 13(4) of the Securitisation Act. In this connection, Section 17 of the Securitisation Act provides for a remedy before the Debt Recovery Tribunal having jurisdiction in the matter. Hence, in cases where action has been taken under Section 13(4) of the Securitisation Act there is an alternative remedy to approach the Debts Recovery Tribunal under Section 17 of the Securitisation Act and the writ petitions challenging the action under Section 13(4) of the Securitisation Act are dismissed on the ground of alternative remedy. However, on the special facts of the case and considering the fact that a large number of petitions on this point had been entertained by this Court we permit the filing of the application under Section 17 with the requisite prescribed fee within one month from today, and if that is done, the application will be entertained by the Tribunal without raising any objection as to limitation and shall be decided on merits expeditiously thereafter.

41. Some of the learned counsel have stated that applications under Section 17 of the Securitisation Act were filed, but without paying the prescribed court fees. The said court fees can be paid within one month from today, and if that is done the appeal will be treated as maintainable. Some learned counsel stated that the application under Section 17 of the Securitisation Act was returned for not paying the prescribed court fees or for some other reason. They can be represented within one month, and if that is done, the same will be treated as within limitation.

42. Some of the learned counsel submitted that the Court should direct one time settlement or fixing of installments or rescheduling the loan. In Tamil Nadu Industrial Investment Corporation v. Millenium Business Solutions Pvt. Ltd. :

AIR2005 Mad232 it has been held that this Court cannot pass any such order in writ jurisdiction, since directing one time settlement or granting installments is really rescheduling the loan, which can only be done by the bank or financial institution which granted the loan. This Court under Article 226 of the Constitution cannot reschedule a loan. A writ is issued when there is violation of law or error of law apparent on the face of the record, and not for rescheduling loans. The Court must exercise restraint in such matters, and not depart from well settled legal principles.

43. In view of the above, all these writ petitions are dismissed and interim orders earlier granted are vacated.

44. Before parting with these cases, we may mention that there is no equity in favour of the petitioners. The petitioners have borrowed money, and hence they have to return the same with interest. An honourable man repays his debts instead of raising all kinds of technical objections when the time comes for repayment.

45. Banks and financial institutions are badly affected by nonrecovery of dues. After availing the facility of financial assistance quite often the borrowers hardly show interest in repayment of the loans which keep on accumulating, as a result of which it becomes difficult for the financial institutions to give financial assistance to deserving parties due to heavy blockade of money stuck in with erring borrowers.

46. Writ is a discretionary remedy, and hence this Court under Article 226 is not bound to interfere even if there is a technical violation of law, vide R.Nanjappan v. The District Collector, Coimbatore, 20 05 WLR 47, Chandra Singh v. State of Rajasthan : AIR 2003 SC2889 , The Managing Director, Tamil Nadu State Transport Corporation (Madurai Division - IV) Ltd., Dindigul v. P.Ellappan : (2005)IILLJ300Mad , Ramniklal N.Bhutta and Another v. State of Maharashtra : AIR 1997 SC1236 , etc. To obtain a writ the petitioner must not only show that the law is in his favour, he must also show that equity is in his favour. In these cases even assuming that there is some technical violation of law, there is no equity in the petitioners' favour. Hence, we are not inclined to exercise our discretion under Article 226 in these cases in favour of the petitioners who have borrowed money and do not wish to repay the same. We have been informed by Mr. v. T.Gopalan,

learned Senior Counsel for some of the banks that about Rs.1,34,000 Crores of bank loans are outstanding in India and have not been repaid. In many cases, there have been interim orders of various Courts which have stayed the recoveries. Many of such interim orders were wholly unjustified, and passed only by adopting an over liberal approach. Unless repayment of the loan is done the bank or financial institution cannot grant a fresh loan, and hence new industries cannot be set up. Thus, by staying such recoveries incalculable harm has been done, and will continue to be done, to the economy, because persons who are genuinely in need of loans for setting up new industries cannot get such loans because the borrowers have not repaid them. This Court should certainly not countenance such grave malpractices.

47. We may thus summarise our conclusions as follows:-

1) Challenge to the constitutional validity of the provisions of the Securitisation Act is rejected in view of the decision of the Supreme Court in Mardia Chemicals Limited v. Union of India : AIR 2004 SC2371 .

2) Where the challenge is to the notice under Section 13(2) of the Securitisation Act, this challenge is rejected on the ground of alternative remedy of filing a reply to the said notice which will be considered by the secured creditor and decided by a reasoned order.

3) Where the challenge is to the action under Section 13(4) of the Securitisation Act, this challenge is also rejected on the ground of alternative remedy of filing application under Section 17 of the Securitisation Act.

4) Challenge to the fee for filing application under Section 17 is also rejected.

5) The application under Section 17 in relation to a loan regarding which a writ petition is being disposed off by this judgment, will be held to be within limitation if filed within one month from the date of this judgment. The Court fee can also be paid within this period and re-presentation of returned applications can also be made within one month from the date of this judgment, and if that is done the application will be treated as within limitation.

6) As regards objections under Section 22 of the Sick Industrial Companies Act or other statutory provisions, they can also be taken in reply to the notice under Section 13(2) or in the application under Section 17, but they will not be directly entertained by this Court without availing of these alternative remedies, provided notice under Section 13(2) was issued to the petitioner.

48. In the result, all the writ petitions are dismissed, and all the connected miscellaneous petitions are closed. Interim orders are vacated.