2024 INSC 297

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(Arising out of SLP(C) No. 8867 of 2022)

PHR INVENT EDUCATIONAL SOCIETY ...APPELLANT(S)

VERSUS

UCO BANK AND OTHERS ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. This appeal challenges the order dated 4th February 2022, passed by the Division Bench of the High Court for the State of Telangana at Hyderabad in Writ Petition No. 5275 of 2021, whereby the High Court disposed of the writ petition filed by Dr. M.V. Ramana Rao, respondent No. 3 herein (hereinafter referred to as 'the Borrower'). The High Court set aside the order dated 2nd February 2021, passed by the Debts Recovery Tribunal-II at Hyderabad (hereinafter referred to as 'DRT') and allowed Miscellaneous Application (M.A.) No. 97 of 2020 in Securitization Application (S.A.) No. 1476 of 2017 filed

by the Borrower for the restoration of the said S.A. No. 1476 of 2017 filed by him under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short). The Borrower had filed S.A. No. 1476 of 2017 against the Notice dated 2nd September 2017 issued by the UCO Bank (hereinafter referred to as the 'Respondent-Bank') for the sale of his mortgaged properties which was to be conducted by the Authorized Officer (Respondent No.2) of the Respondent-Bank in light of the default in repayment of loan by the Borrower. The DRT, in its aforementioned order dated 2nd February 2021, had dismissed the M.A. No. 97 of 2020 for the restoration of S.A. No. 1476 of 2017, which had been previously dismissed as withdrawn vide DRT vide order dated 21st September 2020. The Division Bench of the High Court, in the impugned order, while setting aside the order of DRT dated 2nd February 2021, further directed DRT to proceed with S.A. No. 1476 of 2017 in accordance with law.

3. The facts, in brief, giving rise to the present appeal are as under:

3.1 The Borrower had availed a loan from the Respondent-Bank and in order to secure the said loan, the Borrower had mortgaged four properties (hereinafter referred to as 'scheduled properties') situated at Vijayawada, Andhra Pradesh as collateral security. However, the Borrower defaulted in the repayment of the loan amount, which led the Respondent-Bank to initiate proceedings against the borrower under the SARFAESI Act.

3.2 Thereafter, the Respondent-Bank issued an Auction Sale Notice on 2nd September 2017 for auctioning off the scheduled properties and published information about the same in the Times of India and one other vernacular newspaper. According to the said Auction Sale Notice, the auction was to be conducted on 14th December 2017.

3.3 Aggrieved by the Auction Sale Notice, the Borrower preferred a securitization application being S.A. No.1476 of 2017 before DRT under Section 17 of the SARFAESI Act, thereby *inter alia* praying for setting aside of the same.

3.4 In the meanwhile, the auction was conducted on 14th December 2017 by the Respondent-Bank through Respondent No.2. The PHR Invent Educational Society, (hereinafter

referred to as the 'auction purchaser'), i.e., the appellant herein participated in the said auction and emerged as the highest bidder for a bid of Rs.5,72,22,200/-. The appellant deposited 25% of the bid amount i.e. Rs. 1,38,05,550/- including the Earnest Money Deposit of the said amount. The fact remains that the Borrower did not deposit the amount.

3.5 On the same day i.e., 14th December 2017, DRT passed an interim order in S.A. No. 1476 of 2017, thereby refusing to interfere with the sale of the scheduled properties which was to be conducted on that very day. The Borrower had also filed an interlocutory application being I.A. No. 3446 of 2017, thereby praying for stay of further proceedings qua the auction of the scheduled properties, wherein DRT directed the Respondent-Bank not to confirm the sale of the scheduled properties subject to the Borrower depositing 30% of the outstanding dues as claimed for in the Auction Sale Notice in two equal installments. The first installment of 15% amount was to be deposited within a week from the date of the said order, and the second installment of 15% amount was to be deposited within two weeks thereafter. The DRT further directed that, in the event that the Borrower failed to make the

aforesaid deposits, the interim stay would stand vacated and the Respondent-Bank would be at liberty to confirm the sale in favor of the highest bidder, although the sale itself was made subject to the final outcome in S.A. No. 1476 of 2017.

3.6 Subsequently, the appellant deposited Rs.4,29,16,650/- towards the payment of the balance auction price on 28th December 2017.

3.7 In the meanwhile, the Borrower proposed One Time Settlement ('OTS' for short) for all the outstanding loan accounts. However, the Respondent-Bank refused to accept the same and requested the Borrower to settle all the outstanding loan accounts with interest payable at the contractual rate, as applicable thereon vide letter dated 12th May 2020.

3.8 Following which, DRT passed an order dated 21st September 2020, whereby S.A. No. 1476 of 2017 was dismissed as withdrawn at the behest of the Borrower who submitted that the matter had been settled out of court. On the other hand, the Respondent-Bank filed a Memo of Non-Settlement before DRT thereby informing that no such out-of-court settlement had been reached.

3.9 Upon S.A. No. 1476 of 2017 being dismissed as withdrawn, the Respondent-Bank confirmed the sale of the scheduled properties in favor of the appellant herein. A Sale Certificate was issued by the Respondent-Bank on 2nd November 2020 and the possession of the scheduled properties was accordingly delivered to the appellant. Subsequently, on 11th November 2020, the Sale Certificate came to be registered in favor of the appellant herein.

3.10 In the meantime, the Borrower preferred M.A. No. 97 of 2020 in S.A. No. 1476 of 2017 before DRT, praying for the restoration of S.A. No. 1476 of 2017 to the file and setting aside the aforesaid order of DRT dated 21st September 2020. However, on 2nd February 2021, DRT passed an order thereby dismissing the said M.A. filed by the Borrower.

3.11 Aggrieved thereby, the Borrower filed writ petition before the High Court. The High Court, by the impugned order, disposed of the said writ petition, thereby setting aside the order of DRT, and further directing it to proceed with S.A. No. 1476 of 2017 in accordance with law. The M.A. No. 97 of 2020 in S.A. No. 1476 of 2017 was thus allowed restoring S.A. No. 1476 of 2017.

4. Being aggrieved thus, the auction purchaser has preferred the present appeal.

5. We have heard Shri R. Basant, learned Senior Counsel appearing on behalf of the appellant-auction purchaser, Shri Partha Sil, learned counsel appearing on behalf of the UCO Bank and Shri Jayant Bhushan, learned Senior Counsel appearing on behalf of the respondent No.3-Borrower.

6. Shri Basant, learned Senior Counsel appearing for the appellant-auction purchaser submitted that the High Court has grossly erred in entertaining the writ petition filed by the Borrower when an efficacious alternative remedy of statutory appeal was available to the Borrower under the SARFAESI Act. He relies on the judgments of this Court in the cases of ***United Bank of India v. Satyawati Tondon and Others***[1], ***Celir LLP v. Bafna Motors (Mumbai) Private Limited and Others***[2] and ***South Indian Bank Limited and Others v. Naveen Mathew Philip and Another***[3].

7. Shri Basant further submitted that the conduct of the Borrower also disentitled him to an equitable relief. It is

[1] **(2010) 8 SCC 110 : 2010 INSC 428**
[2] **(2024) 2 SCC 1 : 2023 INSC 838**
[3] **2023 SCC OnLine SC 435 : 2023 INSC 379**

submitted that the Borrower had filed the writ petition after the entire payment was made by the appellant-auction purchaser and a Sale Certificate was also issued in its favour. The learned Senior Counsel therefore submitted that the writ petition filed by the Borrower deserves to be dismissed and the present appeal deserves to be allowed.

8. Shri Partha Sil, learned counsel appearing on behalf of the UCO Bank, also advanced similar arguments and prayed for dismissal of the writ petition filed by the Borrower.

9. Shri Bhushan, learned Senior Counsel, appearing on behalf of the Borrower, on the contrary, submitted that non-exercising of the jurisdiction under Article 226/227 of the Constitution of India on the ground of availability of an alternative remedy is a rule of self-restraint. It is submitted that, in deserving cases, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution in order to do justice to the parties. The learned Senior Counsel relies on the judgment of this Court in the case of ***State of U.P. v. Mohammad Nooh***[4].

[4] **AIR 1958 SC 86 : 1957 INSC 81**

10. The facts in the present case are not disputed. It is not in dispute that in the auction held on 14th December 2017, the appellant-auction purchaser was the highest bidder having offered a bid for an amount of Rs.5,72,22,200/- and that the appellant-auction purchaser deposited 25% of the bid amount i.e. Rs.1,38,05,550/- immediately. It is also not in dispute that on 14th December 2017, the learned DRT, though refused to interfere with the sale but directed the Respondent-Bank not to confirm the sale of the scheduled properties subject to the Borrower depositing 30% of the outstanding dues in two equal installments within one week and two weeks thereafter respectively. The learned DRT had also directed that, in case of failure of compliance, the interim stay would stand automatically vacated and the Respondent-Bank would be entitled to confirm the sale. It is also not in dispute that the Borrower did not comply with the said order of the learned DRT. It is thus clear that, on non-deposit of the amount as directed by the learned DRT vide order dated 14th December 2017, the interim direction passed on the said date stood automatically vacated. After the aforesaid period was over, the appellant-auction purchaser deposited the balance amount of

Rs.4,29,16,650/-.

11. It appears that, during the pendency of the proceedings before the learned DRT, the Borrower submitted an OTS proposal to the Respondent-Bank on 29th March 2019, thereby offering to settle the accounts for an amount of Rs.3,75,00,000/-. It further appears that the Borrower also deposited 10% upfront amount i.e. Rs.37,50,000/-. On 12th May 2020, the Respondent-Bank, in reply to the OTS application, asked the Borrower to settle all the four loan accounts with interest at the contractual rate.

12. On 20th August 2020, the Borrower filed an application being I.A. No. 1691 of 2020 in the proceedings pending before DRT requesting for advancing the date of hearing stating that there was urgency in the matter and also that the appellant-auction purchaser had withdrawn from the auction. Thereafter, vide order dated 21st September 2020, the said S.A. No. 1476 of 2017 came to be withdrawn on a statement made by the counsel for the Borrower that the matter had been settled out of court. It is also relevant to mention that on 5th October 2020, the Respondent-Bank had filed a memo before DRT informing that there was no settlement.

13. After the disposal of the S.A. No. 1476 of 2017 as withdrawn, the Respondent-Bank confirmed the sale in favour of the appellant-auction purchaser on 2nd November 2020. Thereafter, on 4th November 2020, the Borrower filed a miscellaneous application being M.A. No. 97 of 2010 for restoration of the said S.A. No. 1476 of 2017 on the ground that the said S.A. No. 1476 of 2017 had been withdrawn because the Chief Manager and AGM of the Respondent-Bank had orally told the Borrower that unless the S.A. No. 1476 of 2017 was withdrawn, they could not process the OTS proposal. It is further relevant to note that on 11th November 2020, the Sale Certificate was registered. Vide order dated 2nd February 2021, DRT dismissed the said M.A. No. 97 of 2010. Thereafter, the writ petition being No. 5275 of 2021 came to be filed by the Borrower on 25th February 2021 before the High Court. Vide the impugned order, the High Court set aside the order passed by DRT and directed it to proceed with S.A. No. 1476 of 2017.

14. The law with regard to entertaining a petition under Article 226 of the Constitution in case of availability of alternative remedy is well settled. In the case of ***Satyawati***

Tondon (supra), this Court observed thus:

> "**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, the 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.
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> **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.
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> **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."

15. It could thus be seen that, this Court has clearly held 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. It has been held 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. The Court clearly observed that, 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. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the Courts cannot be oblivious of the rules of self-imposed

restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution.

16. The view taken by this Court has been followed in the case of ***Agarwal Tracom Private Limited v. Punjab National Bank and Others***[5].

17. In the case of ***Authorized Officer, State Bank of Travancore and Another v. Mathew K.C.***[6], this Court was considering an appeal against an interim order passed by the High Court in a writ petition under Article 226 of the Constitution staying further proceedings at the stage of Section 13(4) of the SARFAESI Act. After considering various judgments rendered by this Court, the Court observed thus:

> "**16.** The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be

[5] **(2018) 1 SCC 626 : 2017 INSC 1146**
[6] **(2018) 3 SCC 85 : 2018 INSC 71**

sought of the interim order cannot be considered sufficient justification to have declined interference."

18. The same position was again reiterated by this Court in the case of ***Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir and Others***[7].

19. Again, in the case of ***Varimadugu OBI Reddy v. B. Sreenivasulu and Others***[8]**,** after referring to earlier judgments, this Court observed thus:

> **"34.** The order of the Tribunal dated 1-8-2019 was an appealable order under Section 18 of the SARFAESI Act, 2002 and in the ordinary course of business, the borrowers/person aggrieved was supposed to avail the statutory remedy of appeal which the law provides under Section 18 of the SARFAESI Act, 2002. In the absence of efficacious alternative remedy being availed, there was no reasonable justification tendered by the respondent borrowers in approaching the High Court and filing writ application assailing order of the Tribunal dated 1-8-2019 under its jurisdiction under Article 226 of the Constitution without exhausting the statutory right of appeal available at its command."

20. It could thus be seen that this Court has strongly deprecated the practice of entertaining writ petitions in such matters.

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[7] **(2022) 5 SCC 345 : 2022 INSC 44**
[8] **(2023) 2 SCC 168 : 2022 INSC 1205**

21. Recently, in the case of ***Celir LLP*** (supra), after surveying various judgments of this Court, the Court observed thus:

> "**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* [*United Bank of India* v. *Satyawati Tondon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] , 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."

22. It can thus be seen that it is more than a settled legal position of law that in such matters, the High Court should not entertain a petition under Article 226 of the Constitution particularly when an alternative statutory remedy is available.

23. The only reasoning that could be seen from the impugned order given by the learned Division Bench of the High Court is as under:

> "**11.** It is true that under Section 18 of the SARFAESI Act, petitioner has the alternative remedy against the impugned order by filing appeal before the appellate Tribunal. However, having regard to the fact that the writ petition is pending before this Court for quite some time and also considering the fact that if the impugned order is allowed to stand, petitioner would be left without a remedy to ventilate his grievance, we

deem it fit and proper not to non-suit the petitioner on the ground of not availing the alternative remedy.

12. Section 17 of the SARFAESI Act provides that any person including a borrower who is aggrieved by the action of secured creditor under Section 13 (4) of the SARFAESI Act may file an application thereunder. Supreme Court has held time and again that the Tribunal exercises wide jurisdiction under Section 17 of the SARFAESI Act, even to the extent of setting aside an auction sale. In the instant case, we are consciously not referring to the merit of the case. All that we are concerned is whether for whatever reason a person who is aggrieved in law should be left remediless. In the instant case, petitioner had invoked his remedy by filing securitization application under sub-section (1) of Section 17 of the SARFAESI Act. The application was pending for three years before the Tribunal. From the docket order dated 21.09.2020, we find that a junior counsel appearing on behalf of the petitioner had reported that the matter was settled out of Court and therefore, leave was sought for withdrawing the securitization application which was accordingly granted.

13. When the settlement did not materialize, petitioner went back to the Tribunal for revival of the securitization application which was however dismissed on the ground that version of the petition did not deserve acceptance.

14. On thorough consideration of the matter we are of the view that dismissal of the miscellaneous application of the petitioner by the Tribunal dies not appear to be justified.

15. Though subsequent developments may have a bearing on the grant of ultimate relief to a litigant but the same by itself cannot denude the adjudicating authority of its power to adjudicate the grievance raised by the aggrieved person which it otherwise possess."

24. It can thus clearly be seen that though it was specifically contended on behalf of the appellant herein that the writ petition was not maintainable on account of availability of alternative remedy, the High Court has interfered with the writ petition only on the ground that the matter was pending for sometime before it and if the petition was not entertained, the Borrower would be left remediless. We however find that the High Court has failed to take into consideration the conduct of the Borrower. It is further to be noted that, though the High Court had been specifically informed that, on account of subsequent developments, that is confirmation of sale and registration thereof, the position had reached an irreversible stage, the High Court has failed to take into consideration those aspects of the matter.

25. This Court, in the case of ***Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others***[9], has observed thus:

> "**30.** In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some

[9] **(2008) 9 SCC 299 : 2008 INSC 925**

> authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.
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> **31.** In the present case, the auction having been confirmed on 30-7-2003 by the Court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case."

26. In our view, the High Court ought to have taken into consideration that the confirmed auction sale could have been interfered with only when there was a fraud or collusion. The present case was not a case of fraud or collusion. The effect of the order of the High Court would be again reopening the issues which have achieved finality.

27. It is further to be noted that this Court, in the case of ***Dwarika Prasad v. State of Uttar Pradesh and Others***[10], has clearly held that the right of redemption stands extinguished on the execution of the registered sale deed. In the present case, the sale was confirmed on 2nd November 2020 and registered on 11th November 2020.

[10] **(2018) 5 SCC 491 : 2018 INSC 210**

28. Insofar as the contention of the Borrower and its reliance on the judgment of this Court in the case of ***Mohammad Nooh*** (supra) is concerned, no doubt that non-exercise of jurisdiction under Article 226 of the Constitution on the ground of availability of an alternative remedy is a rule of self-restraint. There cannot be any doubt with that proposition. In this respect, it will be relevant to refer to the following observations of this Court in the case of ***Commissioner of Income Tax and Others v. Chhabil Dass Agarwal***[11]:

> "**15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* [AIR 1964 SC 1419] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd.* v. *State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

[11] **(2014) 1 SCC 603**

29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.

30. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

31. Undisputedly, the present case would not come under any of the exceptions as carved out by this Court in the case of ***Chhabil Dass Agarwal*** (supra).

32. We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.

33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of ***Satyawati Tondon*** (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

> "**55.** It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

34. In the result, we pass the following order:

(i) The appeal is allowed;

(ii) The impugned order dated 4th February 2022 passed by the High Court in Writ Petition No. 5275 of 2021 is quashed and set aside; and

(iii) Writ Petition No. 5275 of 2021 is dismissed with costs quantified at Rs.1,00,000/- imposed upon the Borrower.

35. Pending application(s), if any, shall stand disposed of.

.....J.
[B.R. GAVAI]

.....J.
[RAJESH BINDAL]

.....J.
[SANDEEP MEHTA]

NEW DELHI;
APRIL 10, 2024.