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KOTAK MAHINDRA BANK LIMITED

v.

NARENDRA JAYANTILAL TRIVEDI & ANR.

(Civil Appeal No. 4026-4027 of 2022)

B

MAY 13, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Administration of Justice – Abuse of Process of Law – Debts Due to Banks and Financial Institutions Act, 1993 – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Held: One after another, a number of proceedings were initiated by respondent No.1 by which he has delayed the proceedings initiated by the bank under the SARFAESI Act to recover the amount due and payable since 1986 and has stalled the recovery proceedings – In spite of the strong observations made by the adjudicating authority in the earlier order re-produced by the Single Judge in his judgment and the strong observations made by the Single Judge, the Division Bench was not justified in initially granting an ex-parte ad-interim relief and thereafter, to continue the same on withdrawal of the Letters Patent Appeal – Once the Division Bench did not interfere with the order passed by the Single Judge on merits, thereafter, it was not open for the Division Bench to pass an order permitting the Respondent No. 1 to withdraw the Letters Patent Appeal and also make observations that any of the observations made by the DRT as well as by Single Judge while dismissing the writ petition shall be ignored and/or shall not be taken into consideration – Allowing such a practice would tantamount to not only taking a chance before the court but would be indeed speculative and an abuse of the process of the court – Proceedings before the Court are not for taking the chance by the litigants – Impugned order passed by the Division Bench of the High Court, in so far as in terms of paragraphs 3(ii), 3(iii) and 4, is set aside – Further, the ex-parte interim order granted in the Letters Patent Appeal also stands vacated – Costs of Rs. 1,00,000/- to be deposited by respondent No.1.

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KOTAK MAHINDRA BANK LIMITED v. NARENDRA JAYANTILAL TRIVEDI & ANR. 361

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4026 of 2022. A

From the Judgment and Order dated 25.01.2022 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 75 of 2022.

With

Civil Appeal No. 4027 of 2022. B

Amar Dave, Himanshu Bhushan, Advs. for the Appellant.

Ms. Sonam Anand, Santosh Krishnan, Malak Manish Bhatt, Advs. for the Respondents. C

The Judgment of the Court was delivered by

M. R. SHAH, J.

Leave granted.

1. Feeling aggrieved and dissatisfied with impugned order dated 25.01.2022 passed by the Division Bench of the High Court of Gujarat at Ahmedabad and subsequent order dated 04.03.2022, in Letters Patent Appeal No. 75/2022, the original respondent – Bank has preferred the present appeals. D

2. The facts leading to the present appeals are as under: - E

2.1 A loan facility of Rs. 29,50,000/- was earlier extended by State Bank of India and later assigned to the appellant – Bank to a proprietorship firm of respondent No. 1 herein i.e., M/s Aromatics Intermediates and Chemicals. As a security for the said loan facility, property belonging to respondent No. 1 was mortgaged in favour of State Bank of India. In view of default by respondent No. 1 in making payments of the outstanding amounts, the bank filed a civil suit in the year 1986 for recovery of its dues and enforcement of securities. Upon enactment of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Act, 1993), the suit was transferred to the Debts Recovery Tribunal (DRT), which was numbered as Transfer Application No. 95/1995. The DRT vide order dated 03.03.2000 decreed the said application and directed respondent No. 1 and the guarantors to pay jointly and severally a sum of Rs. 44,01,159.47/- with cost. F G

2.2 Thereafter, the debts under the credit facility were assigned in favour of the appellant – bank. Pursuant to the assignment of dues, bank H

- A issued a demand notice upon the judgment debtor – respondent No. 1 and others under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for a sum of Rs. 27,35,85,200.62/- as on 20.06.2011, together with further interest and expenses and costs. Before any further measures under section 13(4) of the SARFAESI Act could be taken by
- B the appellant – bank, respondent No. 1 filed an application under section 17 of the SARFAESI Act before the DRT being Securitisation Application No. 94/2011. Vide order dated 06.01.2015, the Recovery Officer rejected the objections raised by respondent No. 1 and guarantors. The DRT dismissed the Securitisation Application No. 94/2011.
- C 2.3 According to the appellant, the appellant took symbolic possession of the mortgaged property under section 13(4) of the SARFAESI Act on 16.07.2015. Respondent No. 1 and guarantors again raised objections in the recovery proceedings which were rejected by the Recovery Officer vide order dated 06.01.2015. By an order dated
- D 15.07.2016, the Recovery Officer allowed the said application and reviewed/modified his earlier order dated 06.01.2015. The said order was challenged by the appellant before the DRT by way of Appeal No. 6/2016 and was pending.
- E 2.4 Thereafter, the appellant also filed an application under section 14 of the SARFAESI Act before the learned Chief Metropolitan Magistrate (CMM) being Application No. 256/2015, which came to be allowed vide order dated 16.08.2016 and allowed the bank to take physical possession of the secured assets. Aggrieved by the actions/measures under the SARFAESI Act, taken by the bank, the borrowers/guarantors again approached the DRT by way of Securitisation Application No.
- F 171/2016. Thereafter, the appellant filed a special criminal application before the High Court challenging the order passed by the learned CMM to the extent of not appointing a subordinate officer for execution of the order. The High Court disposed of the said special criminal application vide order dated 02.12.2016. Pursuant to the order passed by the High
- G Court dated 02.12.2016, learned CMM authorized the Registrar of that Court to take possession of the secured property in question. Respondent No. 1 thereafter filed an interlocutory application before the DRT in Securitisation Application No. 171/2016, which came to be rejected. Respondent No. 1 also filed a Criminal Misc. Application No. 643/2017 before the learned CMM for clarification of order dated 16.12.2016.
- H The said application came to be rejected by order dated 04.02.2017.

2.5 That thereafter, respondent No. 1 preferred a writ petition before the High Court being Special Civil Application No. 2763/2017, seeking compliance of order dated 15.07.2016 passed by the Recovery Officer (against which an appeal before the DRT was pending) as well as order dated 04.02.2017 passed by the learned CMM in Criminal Misc. Application No. 643/2017 and order dated 21.01.2017 passed by the DRT in Securitisation Application No. 171/2016. Thus, respondent No. 1 challenged three different orders passed by three different authorities passed under two different Acts. The appellant resisted the said Special Civil Application on the grounds, inter alia, that without exhausting alternative remedies available under the SARFAESI Act and Act, 1993, the writ petition under Article 226 of the Constitution of India would not be maintainable. It was also submitted that the writ petition under Article 226 of the Constitution of India against the orders passed by the DRT and the orders passed under the SARFAESI Act and Act, 1993, would not be maintainable. That vide order dated 19.04.2021 and during the pendency of the aforesaid writ petition before the High Court, the DRT dismissed the Securitisation Application No. 171/2016 with cost of Rs. 25,000/-. The learned Single Judge of the High Court subsequently dismissed the aforesaid Special Civil Application No. 2763/2017 vide detailed judgment and order dated 07.10.2021 with exemplary cost of Rs. 1,00,000/-. The learned Single Judge specifically observed that the said proceedings were only preferred by respondent No. 1 to stall the recovery proceedings under the SARFAESI Act. Learned Single Judge also noted that respondent No. 1 remained successful in not paying a single rupee for almost 21 years despite the decree passed by the DRT.

2.6 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, respondent No. 1 preferred Letters Patent Appeal before the Division Bench of the High Court. The Division Bench of the High Court by the impugned ex-parte ad-interim order dated 25.01.2022 granted an ex-parte order of stay in favour of respondent No. 1 of dispossession of the property till the next date of hearing and also stayed the payment of cost of Rs. 1,00,000/- imposed by the learned Single Judge.

2.7 Feeling aggrieved and dissatisfied with the ex-parte ad-interim stay granted by the Division Bench of the High Court dated 25.01.2022, the bank has preferred present appeal arising out of SLP (C) No. 2228/22. The present appeal came up for hearing before this Court on 22.02.2022 and this Court passed the following order: -

- A “Shri Amar Dave, learned Advocate appearing on behalf of the petitioner Bank has taken us to the reliefs sought/prayed in the main writ petition (pages 57-58). He has submitted that as such some of the reliefs sought in the main writ petition were the interim order passed by the DRT dated 21.01.2017. It is submitted that one another relief which was sought was to hold and declare that
- B the proceedings initiated by the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) are illegal being time barred. It is reported that the proceedings before the DRT are disposed of and the same have been dismissed. It is further submitted that
- C even the order passed by the Recovery officer dated 15.07.2016 upon which the reliance has been placed by the Division Bench of the High Court is as such the subject matter of appeal before DRT filed by the Bank. It is submitted that as held by this Court in the case of Authorized Officer, State Bank of Travancore and Anr. Vs Mathew K.C. (2018) 3 SCC 85 and the recent decision of this Court in CA Nos.257-259/2022 - Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir & Ors., the writ petition under Article 226 of the Constitution of India against the proceedings initiated under the SARFAESI Act and/or against an interim order shall not be maintainable. It is submitted that by
- D granting such an ad-interim order, the Division Bench of the High Court has virtually stalled the proceedings under the SARFAESI Act.
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Issue notice returnable on 15.03.2022.

- F Dasti, in addition, is permitted.
- In the meantime, the Division Bench of the High Court either to finally decide and dispose of the LPA and/or at least the application for interim relief to be decided on or before 09.03.2022 and the order that may be passed to be placed before this Court on the next date of hearing.”

- G 2.8 It appears that having come to know of the present appeal and order dated 22.02.2022, calculatively respondent No. 1 withdrew the aforesaid Letters Patent Appeal with liberty to file appropriate proceedings before the appropriate forum. Respondent No. 1 – original appellant also requested to continue the earlier ex-parte ad-interim order
- H dated 25.01.2022, which as such is the subject matter of the civil appeal

arising out of SLP (C) No. 2228/2022, pending before this Court. The Division Bench of the High Court vide impugned order dated 04.03.2022 (impugned order in civil appeal arising out of SLP (C) No. 4724/2022) not only permitted respondent No. 1 to withdraw the Letters Patent Appeal, it also extended the ex-parte ad- interim stay, granted earlier, up to 14th March, 2022. The Division Bench of the High Court reduced the cost imposed by the learned Single Judge from Rs. 1,00,000/- to Rs. 25,000/-. The Division Bench also passed an order that appropriate forum, which is going to examine the order dated 19.04.2016 passed by the Debts Recovery Tribunal in case No./Securitisation Application No. 171 of 2016, shall deal with the case independently and without being influenced by the observations made by learned Single Judge, vide order dated 07.10.2021 passed in Special Civil Application No. 2763 of 2017 and without being influenced by the order of cost imposed by the Appellate Bench. The earlier ex-parte ad-interim order dated 25.01.2022 passed by the Division Bench in Letters Patent Appeal No. 75/2022 and the subsequent order dated 04.03.2022 of the Division Bench passed in Letters Patent Appeal No. 75/2022, are the subject matter of the present appeals.

3. We have heard Shri Amar Dave, learned counsel appearing on behalf of appellant - bank and Ms. Sonam Anand, learned counsel appearing on behalf of respondent No. 1 in civil appeal arising out of SLP (C) No. 2228/2022. At this stage, it is required to be noted that though served, nobody has appeared on behalf of respondent No. 1 in connected SLP (C) No. 4724/2022. This Court adjourned the matter earlier so as to ascertain that respondent No. 1 appears in the subsequent SLP (C) No. 4724/2022. When we enquired from Ms. Sonam Anand, learned counsel, who is appearing on behalf of very respondent No. 1 in connected matter being SLP (C) No. 2228/2022, whether she has any instructions to appear on behalf of respondent No. 1, she has clearly stated at the bar that though she has informed respondent No. 1 about SLP (C) No. 4724/2022, she has no further instructions to appear on behalf of respondent No. 1 in the connected matter bearing SLP (C) No. 4724/2022. We do not appreciate the conduct on the part of respondent No. 1 in appearing in one matter and not appearing in the connected matter though served. It appears that in view of the subsequent order obtained by him from the Division Bench of the High Court, which is the subject matter of SLP (C) No. 4724/2022, by withdrawing the Letters Patent Appeal with liberty to file appropriate proceedings before the

- A appropriate forum and obtaining observations that the observations made by the learned Single Judge in order dated 07.10.2021 passed in Special Civil Application No. 2763/2017 may not be considered by the appropriate forum before whom the proceedings to be initiated which is also the subject matter of subsequent SLP, deliberately respondent No. 1 has chosen not to appear in the subsequent SLP (C) No. 4724/2022.

- B
4. At the outset, it is required to be noted that the proceedings before the High Court initiated by respondent No. 1 in the year 2017 by way of Special Civil Application No. 2763/2017, as such was nothing but an abuse of court process and only with a view to delay the proceedings under the SARFAESI Act, initiated by the appellant – bank,
- C to recover the amount due and payable since 1986. From the material available on record, it is noted that one after another, a number of proceedings were initiated by respondent No. 1. Thus, it can be said that all efforts were made by respondent No. 1 – original appellant to delay the proceedings under the SARFAESI Act, initiated by the bank, to
- D recover the amount due and payable since the year 1986.

4.1 In the year 2017, despite the statutory remedies available under the SARFAESI Act, respondent No. 1 filed a writ petition before the learned Single Judge of the High Court and prayed for the following reliefs: -

- E “B) Your Lordships may be pleased to issue writ of mandamus and be pleased to direct the respondent bank not to proceed under the SARFAESI ACT further till they comply with the order passed by the Recovery officer dated 15-7-2016 in R.P No 360 at Annexure-K to this petition.
- F C) Your Lordships may be pleased to issue a Writ of certiorari or any other appropriate writ, order or direction quashing and setting-aside the order dated 04-02-2017 passed by the Hon’ble Chief Metropolitan Magistrate, Ahmedabad as annexed hereinabove as Annexure-A to this petition;
- G D) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting-aside the order dated 21-1-2017 passed by the Hon’ble Debt Recovery Tribunal, Ahmedabad as annexed hereinabove as Annexure-B to this petition.

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E) Be pleased to declare that the order passed dated 21- 1-2017 by the Hon'ble Debt Recovery Tribunal is defective being erroneous, without findings, without reasons and non considering the points of arguments and averments averred in the Interim Application annexed hereinabove as Annexure-O to this petition and the arguments canvassed.

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F) Your Lordships may be pleased to issue writ of mandamus and be pleased to hold and declare that the said proceedings of the respondent bank under the SARFEASI ACT are time barred.

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G) Your Lordships may be pleased to issue writ of mandamus and be pleased to hold and declare pending admission, hearing and final disposal of this petition be pleased to stay the effect, operation and implementation of impugned order dated 16-12-2016 passed by Hon'ble Chief Metropolitan Magistrate, Ahmedabad.

C

H) Pending admission, hearing and final disposal of this petition be pleased to direct the respondents to maintain status quo qua residential property bearing No. 212- 2013, Azad Society, Ambawadi, Ahmedabad bearing total 378 Sq. Mtrs. of plot which is in physical possession of the petitioner.

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I) Ex-parte Ad-interim relief in terms of para 9 (H).

J) Costs of this petition are awarded.

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K) Any other relief, order or direction which may be just, fit, proper and equitable in the facts and circumstances of the petition.”

After the detailed judgment and order and after having taken note of the subsequent order passed during the pendency of the writ petition before the learned Single Judge of the High Court and having taken note of the subsequent order passed by the DRT/appropriate authority dismissing the securitisation application with cost of Rs. 25,000/-, the learned Single Judge by the detailed judgement and order dismissed the writ petition with exemplary cost of Rs. 1,00,000/-.

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4.2 In fact, while dismissing the securitisation application, the DRT made observations in paragraphs 31 to 33, which read as under: -

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“31. It is worthwhile to mention here that the bank filed the Recovery Proceedings in the year 1986 and now we are in the year 2021. The bank made part recoveries through process of

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- A law by sale of hypothecated assets and one property situated in Vatva. The amount recovered is merger amount, as compared to total recoverable dues. On the date of issuance of Demand Notice, bank claimed Rs.27,35,85,200.62 Ps, whereas amount recovered was approximately Rs.9,33,031.20 Ps.
- B The Applicants made every effort to hinder the process of covery of public money. The bank has mentioned details of three assets as securities in the Demand Notice, but has proceeded against one property only. To my opinion, if bank has given details of all the securities, although some of the securities had been sold earlier by the bank through process of Court and has given the credit of
- C so recovered amount in the account of borrower in its ultimate demand made under the Demand Notice, the reference of already sold securities would not render Demand Notice defective. So on that account also, I find no merits in the Securitisation Application.
- D 32. It is high time to curb such type of litigants, who for their benefit, give or furnish part information and conceal part information to the detriment of secured creditor and with a view to mislead the Courts. The Applicants who had filed earlier SARFAESI Act, 2002, were required to disclose all such facts regarding death of Smt. Kokilaben N. Trivedi and all other facts regarding sale of
- E two secured assets at first available opportunity that is in the objections filed against the Demand Notice and in the earlier filed Securitisation Application, but the Applicants concealed factum of death of Smt. Kokilaben N. Trivedi for about 15 years. Non-disclosure of vital and material information and concealment of such information and case as set-up regarding recoveries made
- F by the bank during pendency of Civil Suit by the Applicants, at the time of arguments reveals that the Applicants have not come to this Tribunal with clean hands. The initial pleadings as well as subsequent conduct during pendency of proceedings of the litigant must be fair enough to enable the justice delivery system/Courts to adjudicate matters in a judicious manner. The approach of
- G Applicants reveals that the Applicants deliberately acted in a manner to jeopardise fair adjudication of matter. Once the Applicants have not come to this Tribunal with clean hands, they are not entitled to any reliefs on merits. We can rely on the judgment of Hon'ble Supreme court in the case of V. Chandrasekaran v.
- H

Administrative Officer reported in 2012(4) R.C.R.(Civil) 588, which is fully applicable to present case. The Applicants for their such conduct are liable to pay cost. A

33. Keeping in view, all such facts and circumstances, Securitisation Application is dismissed with cost of Rs.25,000/-, apart from the right of the bank to recover all expenses incurred to defend the litigation filed by the Applicants to question validity of Securitisation Process. Cost is to be deposited with National Defence Fund in the Account No. 11084239799 State Bank of India at New Delhi Main Branch (00691) and file a purshis in compliance of orders of this Tribunal within 7 days. The Respondent Bank may proceed further in accordance with law.” B C

That thereafter the learned Single Judge dismissed the aforesaid writ petition bearing Special Civil Application No. 2763/2017 by observing in paragraph 24 as under: -

“24. From the narration of the facts made by the DRT it is clear that the petitioner has only one goal and agenda as not to pay any single rupee after the decree passed by the DRT in the year 2000. The petitioner has remained successful for almost 21 years for not paying any amount of the outstanding dues as per the decree passed by the DRT which has achieved finality. In such circumstances, without advertng to the further facts and taking into consideration the finding of the DRT which is not under challenge and which has achieved finality, the petition is dismissed with cost of Rs. 1 lakh. The amount of cost to be deposited with the Gujarat State Legal Services Authority within a period of four weeks from the date of receipt of this order.” D E F

4.3 Against the detailed judgment and order dated 07.10.2021 passed by the learned Single Judge in writ petition bearing Special Civil Application No. 2763/2017 dismissing the writ petition with cost of Rs. 1,00,000/-, respondent No. 1 preferred the Letters Patent Appeal before the Division Bench. Despite the strong observations made by the learned Single Judge recorded in detailed judgment and order dated 07.10.2021 in Special Civil Application No. 2763/2017, the Division Bench entertained the Letters Patent Appeal. The Division Bench not only entertained the said Letters Patent Appeal but also granted ex-parte ad-interim relief, granting stay against the dispossession of the property i.e., not to take G H

A possession of the property in question as well as stay against imposing cost of Rs. 1,00,000/-. The ex-parte ad-interim order dated 25.01.2022 is the subject matter before this Court by way of SLP (C) No. 2228/2022. The same is extracted as under for immediate reference:

B [“1. Heard learned Senior Advocate Mr. Yatin Oza with learned advocate Ms. Minisha Sharma for the appellant and perused the order dated 15/07/2016 passed by the Recovery Officer, by which, objections raised by the appellant were considered and had passed the following order:

C (1) The objections Exh.D/60 filed by CD No.2 and 3 are allowed as per above objections.

(2) CH Bank is directed to submit details of recoveries in the accounts of CDs including this account with clear bifurcation of entire amount recovered by them vis-a-vis its appropriation duly supported with statement of accounts.

D (3) CH Bank is also directed to take steps to ascertain and join/ bring legal heirs of deceased CDs on record.

E (4) CH Bank has to quantify the dues afresh after deducting entire recoveries and giving affect of the same on the dates of recoveries and take steps to get the fresh demand notice issued accordingly.

2. The said decision is appealed by the bank before the Debts Recovery Tribunal, which is pending for hearing.

F 3. We have also gone through the order impugned in the petition.

Issue Notice making it returnable on 23/02/2022.

CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2022:

G Notice returnable on 23/02/2022. Till the next date of hearing, there would be stay against the dispossession of the property i.e. not to take possession of the property in question as well as stay against imposing cost of Rs.1,00,000/- to the present appellant – original petitioner. Direct service is permitted.”]

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4.4 While issuing the notice in the present Civil Appeal arising out of SLP (C) No. 2228/2022, this Court passed a detailed order which is as under: -

“Shri Amar Dave, learned Advocate appearing on behalf of the petitioner Bank has taken us to the reliefs sought/prayed in the main writ petition (pages 57-58). He has submitted that as such some of the reliefs sought in the main writ petition were the interim order passed by the DRT dated 21.01.2017. It is submitted that one another relief which was sought was to hold and declare that the proceedings initiated by the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) are illegal being time barred. It is reported that the proceedings before the DRT are disposed of and the same have been dismissed. It is further submitted that even the order passed by the Recovery officer dated 15.07.2016 upon which the reliance has been placed by the Division Bench of the High Court is as such the subject matter of appeal before DRT filed by the Bank. It is submitted that as held by this Court in the case of Authorized Officer, State Bank of Travancore and Anr. Vs Mathew K.C. (2018) 3 SCC 85 and the recent decision of this Court in CA Nos.257-259/2022 - Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir & Ors., the writ petition under Article 226 of the Constitution of India against the proceedings initiated under the SARFAESI Act and/or against an interim order shall not be maintainable. It is submitted that by granting such an ad-interim order, the Division Bench of the High Court has virtually stalled the proceedings under the SARFAESI Act.

Issue notice returnable on 15.03.2022.

Dasti, in addition, is permitted.

In the meantime, the Division Bench of the High Court either to finally decide and dispose of the LPA and/or at least the application for interim relief to be decided on or before 09.03.2022 and the order that may be passed to be placed before this Court on the next date of hearing.”

Respondent No. 1 appeared through his advocate Shri Santosh Krishnan, who filed the vakalatnama on 08.02.2022.

- A 4.5 Despite the pendency of the present Civil Appeal arising out of SLP (C) No. 2228/2022 and it appears that with a view to make the present SLP (C) No. 2228/2022 having infructuous, in a calculative move, respondent No. 1 withdrew the Letters Patent Appeal before the Division Bench, with liberty to file appropriate proceedings before the appropriate forum. The Division Bench also extended the ad-interim relief, granted
- B earlier vide order dated 25.01.2022, till 14.03.2022, despite the fact that the SLP against the ex-parte ad-interim order dated 25.01.2022 was pending before this Court and this Court was seized of the matter. Unfortunately, and without properly appreciating the consequences and even without taking into consideration the strong observations made by
- C the learned Single Judge while dismissing writ petition bearing SCA No. 2763/2017, the Division Bench of the High Court has not only permitted respondent No. 1 – original appellant to withdraw the Letters Patent Appeal, but has also extended the ex-parte ad-interim relief, granted earlier, upto 14.03.2022 and even reduced the cost to Rs. 25,000/- from Rs. 1,00,000/-. The Division Bench has also observed in paragraph 4
- D that the appropriate forum which is going to examine order dated 19.04.2016 passed by the Debt Recovery Tribunal-1, Ahmedabad in Case No. S.A. 171 of 2016, shall deal with the case independently and without being influenced by the observations made by learned Single Judge, vide order dated 07.10.2021 passed in Special Civil Application
- E No. 2763 of 2017 and without being influenced by the order of cost imposed by this Appellate Bench. For immediate reference the relevant portion of the aforesaid impugned order dated 04.03.2022 is extracted as under:
- [“3.Having considered the submissions made by the learned advocates for the respective parties, we pass the following
- F order:
- [i] The appellant is permitted to withdraw present appeal with a liberty to file appropriate proceedings before the appropriate forum.
- [ii] Till the next date of hearing, interim relief, if any, granted and which is in existence, is extended upto 14.03.2022.
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- [iii] As far as the cost imposed by the learned Single Judge is concerned, the same is reduced to Rs.25,000/- (Rupees Twenty Five Thousand Only) and the same shall be paid to respondent No. 1 by RTGS on or before 11.03.2022.
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4. It is needless to say that the appropriate forum, which is going to examine the order dated 19.04.2016 passed by the Debt Recovery Tribunal – 1, Ahmedabad in Case No.S.A.171 of 2016, shall deal with the case independently without being influenced by the observations made by learned Single Judge, vide order dated 07.10.2021 passed in Special Civil Application No. 2763 of 2017 and without being influenced by the order of cost imposed by this Appellate Bench. A B
5. In view of the order passed in Letters Patent Appeal, present civil application does not survive. Accordingly, the same stands disposed of.”] C

4.6 First of all, we deprecate the conduct on the part of respondent No. 1 in withdrawing the Letters Patent Appeal despite the fact that this Court was seized of matter in which the ex-parte ad-interim order dated 25.01.2022 passed by the Division Bench was under challenge and in which respondent No. 1 was appearing before this Court. He ought not to have withdrawn the Letters Patent Appeal and made the proceedings before this Court infructuous. As observed hereinabove, such act of withdrawal of the Letters Patent Appeal on the part of respondent No. 1 – original appellant and thereby making the proceedings before this Court infructuous so as to avoid adjudication on the correctness of the impugned order after order dated 22.02.2022 was passed by this Court is wholly deplorable. D E

4.7 Even otherwise, in the facts and circumstances of the case a number of proceedings were initiated by respondent No. 1 by which he has delayed the proceedings initiated by the bank under the SARFAESI Act, and has stalled the recovery proceedings. In spite of the strong observations made by the adjudicating authority in the earlier order re-produced by the learned Single Judge in his judgment and the strong observations made by the learned Single Judge, the Division Bench was not justified in initially granting an ex-parte ad-interim relief and thereafter, to continue the same on withdrawal of the Letters Patent Appeal. F G

4.8 Even the observations made by the Division Bench that the appropriate forum, which is going to examine the order dated 19.04.2016 passed by the DRT-1, Ahmedabad in Case No. S.A. 171 of 2016, shall H

- A deal with the case independently and without being influenced by the observations made by learned Single Judge, vide order dated 07.10.2021 passed in Special Civil Application No. 2763 of 2017 and without being influenced by the order of cost imposed is also unsustainable. Such observations made while permitting withdrawal of the Letters Patent Appeal amounts to virtually allowing the appeal and setting aside the orders of the DRT as well as the learned Single Judge. Once having enjoyed the fruits of interim orders for approximately four years and in between initiating a number of other proceedings (even during the pendency of the writ petition) and thereafter, having invited the order in writ petition on merits and when the learned Single Judge dismissed the writ petition with cost, the Division Bench ought not to have passed an order nullifying the strong observations made by the learned Single Judge while dismissing the writ petition. In fact, the Division Bench also did not consider the order of the learned Single Judge on merits but has granted relief even while permitting withdrawal of the appeal. Such conduct on the part of the litigant to once enjoy the fruits of the litigation for number of years, invite the order on merits, which is against him and in the appeal initially after obtaining the ex-parte ad-interim relief and thereafter, having realised that the same would not be sustained, withdrawing the appeal and requesting that observations made by the learned Single Judge while dismissing the writ petition may not be considered, cannot be accepted and such conduct reprehensible.

- 4.9 Once the Division Bench did not interfere with the order passed by the learned Single Judge on merits, thereafter, it was not open for the Division Bench to pass an order permitting the appellant – respondent No. 1 to withdraw the Letters Patent Appeal and also make observations that any of the observations made by the DRT as well as by learned Single Judge while dismissing the writ petition shall be ignored and/or shall not be taken into consideration was beyond the ken of the Division Bench. Allowing such a practice would tantamount to not only taking a chance before the court but would be indeed speculative and an abuse of the process of the court. The proceedings before the Court are not for taking the chance by the litigants.

We fail to understand as to on what basis the Division Bench of the High Court permitted withdrawal of the Letters Patent Appeal on the one hand while simultaneously granting relief to the appellant.

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5. Under the circumstances, the impugned order dated 04.03.2022 passed by the Division Bench of the High Court, in so far as paragraphs 3(i), 3(ii), 3(iii) and 4, is unsustainable. A

6. In view of the above and for the reasons stated above, the Civil Appeal arising out of SLP (C) No. 2228/2022 is disposed of as having become infructuous. The impugned order dated 04.03.2022 passed by the Division Bench of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 75/2022 in so far as in terms of paragraphs 3(ii), 3(iii) and in paragraph 4 which read as under, is hereby quashed and set aside:- B

3[ii] Till the next date of hearing, interim relief, if any, granted and which is in existence, is extended upto 14.03.2022. C

3[iii] As far as the cost imposed by the learned Single Judge is concerned, the same is reduced to Rs.25,000/- (Rupees Twenty Five Thousand Only) and the same shall be paid to respondent No. 1 by RTGS on or before 11.03.2022.

4. It is needless to say that the appropriate forum, which is going to examine the order dated 19.04.2016 passed by the Debt Recovery Tribunal-1, Ahmedabad in Case No. S.A. 171 of 2016, shall deal with the case independently without being influenced by the observations made by learned Single Judge, vide order dated 07.10.2021 passed in Special Civil Application No. 2763 of 2017 and without being influenced by the order of cost imposed by this Appellate Bench. D E

Further the ex-parte interim order granted in the Letters Patent Appeal also stands vacated.

The present Civil Appeals arising out of SLP (C) No. 2228/2022 and SLP (C) No. 4724/2022, are allowed/disposed of to the aforesaid extent with cost, which is quantified at Rs. 1,00,000/- to be deposited by respondent No. 1 with the Gujarat High Court Legal Services Committee, within a period of four weeks' from today. F