IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 165 of 2024

M/s. Paritran Medical College and Hospital, through its Secretary, Sri Shivdutt Sharma, S/o Sri Jwala Prasad Singh (Trustee), R/o Amardham Lane, Castair Town, Bawan Bigha, P.O., P.S. & District- Deoghar, Jharkhand, PIN-834112

.. ... **Petitioner**

Versus

1. Punjab National Bank, Head Office Plot No. 4, Sector 10, Dwarka, P.O. & P.S.- Dwarka, New Delhi through its Chairman-cum-Managing Director.
2. Asst. General Manager, Punjab National Bank, Main Road, P.O. Main Road, P.S. Kotwali, Ranchi.
3. Union Bank of India, Union Bank Bavan, 239, Vidhan Bhavan Marg, Nariman Point, P.O. & P.S.- Nariman Point, Mumbai, Maharashtra through its Chairman.
4. Asst. General Manager, Union Bank of India, Doranda Branch, P.O. & P.S. Doranda, Ranchi.
5. Oriental Bank of Commerce, (now merged with Punjab National Bank) Head Office Harsha Bhavan, E-Block, Connaught Place, P.O. & P.S. Connaught Place, New Delhi, through its Chairman.
6. Asst. General Manager, Oriental Bank of Commerce, Ranchi University Campus Bank, P.O. Ranchi University, P.S. Kotwali, Ranchi.
7. Recovery Officer, Debts Recovery Tribunal, Ranchi, Kutchery Chowk, P.O. Main Road, P.S. Kotwali, Ranchi, Jharkhand.
8. Baba Baidyanath Medical Trust through its Chairman at Head Office, DD-5, Dhawandeep Building, Jantar Mantar Road, New Delhi, P.O. & P.S. Jantar Mantar, New Delhi-110001 ... ... **Respondents**

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

For the Petitioner	:	Mr. Rajiv Ranjan, Sr. Advocate Mr. Ashok Kumar Yadav, Advocate
For the Resp. No. 1 to 6	:	Mr. P.A.S. Pati, Advocate
For the Resp. No. 8	:	Mr. Ajit Kumar, Sr. Advocate Mr. Amit Sinha, Advocate Mr. Shubham Mayank, Advocate

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Order No.07/Dated, the 13th February, 2024

Heard Mr. Rajiv Ranjan, learned Senior Counsel for the petitioner and Mr. P.A.S. Pati, learned counsel appearing for the respondent nos. 1 to 6 as well as Mr. Ajit Kumar, learned Senior Counsel appearing for the respondent no. 8.

2. This writ application has been preferred by the petitioner for the following reliefs:

A) *For issuance of appropriate writ(s) or order(s) in the nature of Certiorari for quashing of Order dated 08.11.2023 and 20.12.2023 (Annexure-21) passed in R.P. Case No. 236 of 2015 by the Respondent no. 7 being perverse and contrary to the provisions of 2nd schedule of Income Tax Act, 1961 in as much as immovable as well as movable properties of the Petitioner attached vide order dated 13.04.2016 & 27.10.2016 have been sold by public auction through e-auction on 20.12.2023 to a sole single bidder at a through away price for Rs. 60.10 Cr. only as against the market value of Rs. 156 Cr. and circle rate of Rs. 108 Cr. without conducting any valuation of the said properties/ assets in complete defiance of its own Order dated 08.03.2021 and Order dated 28.09.2022, and as such the entire action of the Respondents in selling the property is illegal, arbitrary and without jurisdiction.*

B) *For issuance of appropriate writ(s) or order(s) in the nature of Certiorari for quashing of Order dated 19.12.2023 (Annexure-21) passed in R.P. Case No. 236 of 2015 by the Recovery Officer, DRT, Ranchi pursuant to which settlement offer of Rs. 60 Cr. and above along with DD of Rs. 1.00 Cr. in the form of objection to the e-auction sale notice dated 08.11.2023 passed in R.P. Case No. 236 of 2015 been rejected without taking into consideration of the fact that no valuation of the properties in question was conducted for fixing the Reserve Price in compliance of Order dated 28.09.2022 passed R.P. Case No. 236 of 2015 and any decision on the direction to consider the compromise offer of Rs. 60 Crores made by the Petitioner.*

C) *For issuance of an appropriate writ(s), direction(s) for a direction upon the Respondents Bank to accept the amount above 15% of the bid amount for redeeming the properties which has been auction sold on 20.12.2023 in compliance of order dated 08.11.2023 passed in R.P. Case No. 236 of 2015 by the Respondent No. 7 in as much as Petitioners right to property under Article 300-A of the Constitution of India has been seriously infringed upon by Respondent No. 7 as the auction sale has been conducted by fixing Reserve Price of Rs. 60 Cr. based on the valuation done by the Bank*

in an unfair and unreasonable manner in arriving at the minimum price of the property for its sale and further that the proceedings has been conducted without following the procedure prescribed under the law which is totally perverse and unknown to procedure established under law.

D) *For issuance of appropriate writ(s) or order(s) or any other appropriate writ, order or direction the nature of writ of declaration, declaring that the respondent authorities have no power and jurisdiction to sale the immovable and movable properties in contravention of the Second Schedule of the Income Tax Act, 1961 which is required to followed while conducting e-auction sale and the this Hon'ble Court can interfere with auction of mortgaged property by Bank if the price is below market rates as it involves violation of constitutional right to property and under such circumstances Petitioner has right to redeem the property by making an offer higher than the bid amount.*

E) *Pass an appropriate interim order by directing Respondent No. 7 not to confirm sale or issue any sale certificate and deliver the possession to the successful bidder pursuant to e-auction sale conducted on 20.12.2023 in terms of order dated 08.11.2023 passed in R.P. Case No. 236 of 2015 in favour of the intending auction purchase during the pendency of the instant writ petition.*

F) *Pass such other order(s), direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case.*

3. The matter was heard on 24.01.2024, wherein the following order was passed.

"*Learned senior counsel appearing for the petitioner is permitted to implead the auction purchaser as party respondent no. 8.*

It has been submitted by Mr. Rajiv Ranjan, learned senior counsel appearing for the petitioner while referring to the various orders passed by the Debt Recovery Tribunal as well as the valuation report that it is surprising that the valuation of the land has considerably come down in a period of three years and the value of the property has been earmarked at Rs.60 crores. It has further been

submitted that the possession of the property has not yet been taken over by the auction purchaser.

Mr. P.A.S. Pati, learned counsel appearing for the respondent Nos. 1 to 6, has submitted that the possession has been handed over to the auction purchaser at around 3 P.M. today. He has also submitted that the petitioner has an alternative remedy of preferring an appeal.

In the circumstances, noted above, let this case be listed on 30.1.2024 at 4 P.M.

Until further orders, status quo as on today shall be maintained."

4. An Interlocutory Application has been preferred on behalf of the respondent no. 8 in I.A. No. 954 of 2024, wherein a preliminary objection has been raised with respect to the maintainability of the writ application.

5. Mr. Ajit Kumar, learned Senior Counsel appearing for the respondent no. 8 and Mr. P.A.S. Pati, learned counsel appearing for the respondent nos. 1 to 6 have addressed this Court with respect to maintainability of the writ application and which has been replied to by Mr. Rajiv Ranjan, learned Senior Counsel appearing for the petitioner.

6. Since in view of the prayer of the petitioner the merits of the case have to be considered but on account of the preliminary objection raised by the learned counsel appearing for the respondent nos. 1 to 6 and respondent no. 8 it is apt that such objection be considered at the outset as the outcome of the writ application is dependent on the issue of its maintainability.

7. Mr. Ajit Kumar, learned Senior Counsel appearing on behalf of the respondent no. 8 has submitted that the petitioner has an alternative remedy of preferring an appeal in terms of Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 as also under Rule 60 and 61 of the II Schedule of the Income Tax Act, 1961. It has been submitted that the petitioner has invoked the writ jurisdiction of this Court primarily on account of the fact that Rule 61 of the II Schedule of Income Tax Act, 1961 and Section 30A of the Recovery of Debts and Bankruptcy Act, 1993 requires pre-deposit of an amount which

the petitioner is intending to avoid by pursuing his remedy under writ jurisdiction. Learned Senior Counsel has submitted that since the case relates to Recovery of the Debts the plenary power under Article 226 of the Constitution of India would act as a bar on account of the alternative remedy available to the petitioner.

8. Mr. P.A.S. Pati, learned counsel appearing for the respondent nos. 1 to 6 has adopted the submission advanced by Mr. Ajit Kumar, learned Senior Counsel appearing for the respondent no. 8 and has referred to various pronouncements of the Hon'ble Supreme Court in support of such contention.

9. Mr. Rajiv Ranjan, learned Senior Counsel for the petitioner has submitted that property worth Rs. 156 crores have been sought to be sold for a song and there has been a gross violation of the rules and procedures governing such sale which would be apparent from the various documents brought on record by the writ-petitioner. It has been submitted that the Recovery Officer has not acted as per his own order which would further fortify the fact that there has been an infraction of the rules governing such sale. Learned Senior Counsel has also submitted that the valuation of the property has not been properly done and the property is being sold at less than 50% of the actual amount. Mr. Rajiv Ranjan, learned Senior Counsel for the petitioner has also submitted that the action on the part of the respondents is a malice in law and a malice on facts. He has offered to deposit an amount of Rs. 70 crores for reconsideration of the issue in hand. Reference has been made to the case of "*Godrej Sara Lee Ltd. versus Excise and Taxation Officer-cum-Assessing Authority and Others*" reported in 2023 SCC OnLine SC 95 with respect to the maintainability of the writ application considering the exceptional nature of the case.

10. Mr. P.A.S. Pati, learned counsel appearing for the respondent nos. 1 to 6 has submitted that deposit of Rs. 70 crores as offered by the learned Senior Counsel for the petitioner would not suffice as such suggestion is not the redemption amount.

11. It appears that after the interim order was passed on 24.01.2024 certain allegations have been levelled by the petitioner against the respondent-Bank of forcible entry into the premises with anti-social element for which a complaint was made to the Deputy Commissioner, Deoghar, wherein the Circle Officer was directed to enquire into the matter and submit a report regarding the forcible possession taken by the Advocate-Commissioner with the help of anti-social element and this has led to filing of an interlocutory application being I.A. No. 1006 of 2024 by the petitioner for initiating a contempt proceeding against the respondents for wilful disobedience of the order dated 24.01.2024 passed in this writ application. Though there seems to be an imbroglio between the petitioner and the respondents with respect to the premises in question but without entering into the merits of the case and the allegations and counter allegations levelled by both the sides the maintainability matter as noted above is, therefore, being considered at the very initial stage.

12. Since it has been submitted by Mr. Ajit Kumar, learned Senior Counsel appearing for the respondent no. 8 and Mr. P.A.S. Pati, learned counsel appearing for the respondent nos. 1 to 6 that the petitioner has alternative remedies available to it, reference is, therefore, being made to the said provisions which have been banked upon by the learned counsels for the respondents.

13. The II Schedule of the Income Tax Act, 1961, envisages the procedure for recovery of tax and Rule 60 and 61 reads as follows:

> ***60.*** *Application to set aside sale of immovable property on deposit.-*
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> > ***(1)*** *Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing-*
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> > > ***(a)*** *[* * *] the amount specified in the proclamation of sale*

as that for the recovery of which the sale was ordered, with interest thereon at the rate of [one and one-fourth per cent. for every month or part of a month] calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) *for payment to the purchaser, as penalty, a sum equal to five per cent. of the purchase money, but not less than one rupee.*

(2) *Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.*

61. *Application to set aside sale of immovable property on ground of non-service of notice or irregularity.- Where immovable property has been sold in execution of a certificate, [such Income-tax Officer as may be authorised by the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:*

Provided that-

(a) *no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and*

(b) *an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.*

14. Rule 61 is categorical to the effect that in execution of the certificate if any sale has been done the defaulter

may at any time within 30 days from the date of sale apply to the Tax Recovery Officer to set aside the sale of the immovable property and one of the grounds which has been harped upon by the learned Senior Counsel for the petitioner is of material irregularity in publishing or conducting the sale. The application to be made by the defaulter before the Recovery Officer is subject to certain restrictions which has been enumerated at sub-Rule (b) of Rule 61 to the effect that such application shall not be considered unless the applicant/defaulter deposits the amount recoverable from him in the execution of the certificate. So far as Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 is concerned, the same reads as follows:

> ***"30. Appeal against the order of Recovery Officer- (1)*** *Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.*
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> ***(2)*** *On receipt of an Appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Section 25 to 28 (both inclusive).*

The appeal to be preferred under Section 30 is also subject to the provisions of Section 30A which is quoted hereinunder:

> ***30A. Deposit of amount of debt due for filing appeal against orders of Recovery Officer-*** *Where an appeal is preferred against any order of the Recovery Officer, under Section 30, by any person whom the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal fifty per cent of the amount of debt due as determined by the Tribunal".***

15. Section 30A, therefore, visualises that if an appeal is preferred against an order of the Recovery Officer before the Tribunal the same shall not be entertained unless such person has deposited before the Tribunal 50 per cent of the amount of debt due as determined by the Tribunal.

16. The aforesaid provisions according to the learned counsel appearing for the respondent nos. 1 to 6 as well as Mr. Ajit Kumar, learned Senior Counsel for the respondent no. 8 have been deliberately eschewed by the petitioner on account of the stringent condition which required deposit of an amount as enumerated in the said provisions and, therefore, this Writ Court does not have the jurisdiction to entertain the writ application.

17. Mr. Rajiv Ranjan, learned Senior Counsel for the petitioner has referred to the case of "*Godrej Sara Lee Ltd. versus Excise and Taxation Officer-cum-Assessing Authority and Others*" (supra), wherein the alternative remedy available to a person vis-à-vis Article 226 of the Constitution of India has been considered and, it has been held as follows:

> ***"4.*** *Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before*

the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an

*exceptional case has been made out for such entertainment would not be proper.***"**

18. In the case of "*Varimadugu Obi Reddy versus B. Sreenivasulu and Others*" reported in (2023) 2 SCC 168, it has been held as follows:

> ***"36.*** *In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the Sarfaesi Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the 2002 Act.***"**

19. Similarly in the case of "*South Indian Bank Ltd. and Others versus Naveen Mathew Philip and Another*" reported in (2023) SCC OnLine SC 435, it has been held as follows:

> ***"13.*** *In view of the fair stand taken by the learned Senior Counsel appearing for the Appellants, we do not wish to interfere with the impugned orders passed. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute. We are also constrained to take judicial notice of the fact that certain High Courts continue to interfere in such matters, leading to a regular supply of cases before this Court. One such High Court is that of Punjab & Haryana.***"**

20. Reference has also been made by the learned counsel appearing for the respondents to the case of "*United Bank*

of India versus Satyawati Tondon and Others" reported in (2010) 8 SCC 110 and the paragraphs referred to is quoted hereinunder:

> ***"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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> ***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.***"**

21. In "*Varimadugu Obi Reddy versus B. Sreenivasulu and Others*" (supra), it has been taken note of that a circuitous route appears to have been adopted to avoid the condition of pre-deposit as contemplated in Section 18 of the SARFAESI Act, 2002.

22. Similar is the case herein where in spite of having alternative remedies available to the petitioner in view of Rule 61 of the II Schedule of the Income Tax Act, 1961 and/or Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 the petitioner

has chosen this forum and the intention of the writ-petitioner can be clearly deciphered as sub-Rule (b) of Rule 61 of the II Schedule of the Income Tax Act, 1961 and Section 30A of the Recovery of Debts and Bankruptcy Act, 1993 clearly depicts pre-deposit of an amount either before the Recovery Officer or before the Tribunal. Though learned Senior Counsel for the petitioner has put much reliance in the case of "*Godrej Sara Lee Ltd. versus Excise and Taxation Officer-cum-Assessing Authority and Others*" (supra), while submitting that in exceptional cases which according to the learned Senior Counsel for the petitioner is the present one there is no necessity of availing the alternative remedy under the statute but on considering the factual aspects of the case and the intent of the petitioner it cannot by any stretch of imagination said to be an exceptional case. When a statute provides an alternative remedy, the petitioner cannot be permitted to circumvent such remedy and approach this Court under Article 226 of the Constitution of India only in order to avoid the pre-deposit which is the hallmark of Rule 61 of the II Schedule of the Income Tax Act, 1961 and/or Section 30 of the Recovery of Debts and Bankruptcy Act, 1993. The entire scenario depicted by the learned counsel for the petitioner and the counsels appearing for the respective respondents does not leave an iota of doubt that the present writ application is not maintainable.

23. In view of the discussions made hereinabove the Interlocutory Application preferred by the respondent no. 8 being I.A. No. 954 of 2024 is allowed and consequently the writ application is dismissed as being not maintainable.

24. Pending I.As., if any, are closed.

(Rongon Mukhopadhyay, J.)

Alok/-