

LEGAL UPDATES

SC: SC VACATES EX-PARTE INTERIM STAY OF KARNATAKA HC IN WRIT AGAINST SARFAESI ACTIONS OF ARC

SC's division bench of Justice M.R.Shah and Justice B.V, Nagarathna set aside Karnataka HC's interim order whereby HC ordered Phoenix ARC ("ARC/Appellant") to retain the status quo vis-a-vis scheduled physical handover of the secured property of the respective borrowers/respondents. The borrowers' loan accounts were declared NPA in 2013 and the appellant communicated its intention to take physical possession of the mortgaged assets against which the borrowers' writ petitions were pending before HC purporting the said communication to be a notice u/s 13(4) of SARFAESI Act("the Act"). The HC vide an ex parte interim order, directed to maintain status quo w.r.t. possession of secured properties on the condition that borrowers deposit Rs. 1 Cr. only, against the total due amount of INR 117 Cr. The HC further extended the ex parte interim stay on further payment of INR 1 crore to the Appellant. The apex court ruled that the contested HC decision substantially affected the securities of the ARC to recover the sum owed and payable. The appellant contested that writ petitions are not maintainable against communication purported as 13(4) actions. The appellant submitted that alternatively, even when the said communications are treated as 13(4) actions, then also writ jurisdictions are barred as a better alternate remedy is available under sec. 17 of the Act, hence, HC shouldn't have allowed an interim stay or further extended the stay. The apex court observed that the Appellant proposed to take action under the SARFAESI Act to recover the outstanding amount as a secured creditor, therefore, the Appellant cannot be said to be performing public functions which are normally expected to be conducted by the State. Further, the court applied the law laid down in a plethora of its pronouncements whereby it was held that filing a writ petition before HC contesting the SARFAESI Actions is an abuse of process, thus affirming the Appellant's submissions of alternate measures available. The court further condoned the HC's directions to extend the status quo on the condition of partial payments of INR 1 Cr on three occasions against the total outstanding of approx. INR 117 Cr. SC finally held that the interim stay was continuing since 2015 and the Appellant was unjustifiably deprived of its right to proceed under

SARFAESI Act. Thus, the Apex court dismissed the pending writ petitions before HC and vacated the ad-interim orders. The court further awarded a total cost of INR 2 Lakh in favour of ARC.