



**PHIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 12282/2025

1. Shanker Lal Saini Son Of Jumara Ram Saini, Aged About 50 Years, Resident Of Plot No. 56 And 57, Ward 1 Foja Wali Dhani, Kotputli, Jaipur, Rajasthan- 303108.
2. Ganesh Saini Son Of Shanker Lal Saini, Aged About 29 Years, Resident Of Plot No. 56 And 57, Ward 1 Foja Wali Dhani, Kotputli Jaipur, Rajasthan- 303108.
3. Saroj Devi Wife Of Shanker Lal Saini, Aged About 47 Years, Resident Of Plot No. 56 And 57, Ward 1 Foja Wali Dhani, Kotputli Jaipur, Rajasthan- 303108.
4. Priyanka Saini Daughter Of Shri Sankar Lal Saini, Aged About 23 Years, R/o Resident Of Plot No. 56 And 57, Ward 1 Foja Wali Dhani, Kotputli Jaipur, Rajasthan- 303108.
5. Roshan Saini Son Of Shri Sankar Lal Saini, Aged About 20 Years, R/o Resident Of Plot No. 56 And 57, Ward 1 Foja Wali Dhani, Kotputli Jaipur, Rajasthan- 303108.
Presently Petitioners 1 To 5 Are Residing At Vacant Land/ Plot In Teen Shade/ Hut/ Shack/ Jhopdi Nearby Their Property, Kotputli, Jaipur, Rajasthan. 303108.
6. Roshan Lal Trading Company, Registered Office At Ward 1 Foja Wali Dhani, Kotputli Jaipur, Rajasthan- 303108 Through Its Owner Ganesh Saini Son Of Shanker Lal Saini, Resident Of Ward 1 Foja Wali Dhani, Kotputli, Jaipur, Rajasthan- 303108.
7. Jamura Ram And Sons, Registered Office At - New Sabji Mandi Kotputli, Jaipur, Rajasthan- 303108 Through Its Owner Shanker Lal Saini Son Of Jumara Ram Saini Resident Of Ward 1 Foja Wali Dhani, Kotputli, Jaipur, Rajasthan- 303108.

----Petitioners

Versus

1. Union Of India, Through The Secretary, Ministry Of Finance, Department Of Financial Services, Government Of India, North Block, New Delhi- 110001.
2. State Of Rajasthan Through The Secretary, Ministry Of Finance, Department Of Financial Services, Government Of Rajasthan, Jaipur, Rajasthan.





3. Reserve Bank Of India Through Its Governor, Rbi Central Office, Shahid Bhagat Singh Marg, Mumbai- 400001.
4. Ugro Capital Limited, Through Its Branch Manager, Branch Office- 5Th Floor, Ibc Tower, Ashok Marg, Near Vlcc School Of Beauty, Panch Batti, C Scheme, Ashok Nagar, Jaipur, Rajasthan 302001.
5. Chairman, Indian Banks Association, World Trade Centre, Mumbai.
6. Chief General Manager, Department Of Supervision, Rbi, Jaipur.
7. The Presiding Officer, Debts Recovery Tribunal, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Ravindra Saini, Adv.
Mr. Mayank Singhal

For Respondent(s) : Mr. Bharat Vyas, ASG with
Mr. C.S. Sinha, Adv.
Mr. Avinash Kumbhaj. Adv.
Mr. Peush Nag, Adv.
Mr. Sankalp Vijay, AAAG with
Mr. Priyam Agarwal, Adv.

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU
Order

Reportable
06/10/2025

1. This writ petition has been preferred by the petitioners challenging the provisions of Section 13(2) & 13(4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Act of 2002').
2. Brief facts which need to be noted for adjudication of this case are that the petitioners had been granted loan for a sum of Rs. 1,94,43,400/- and the same was disbursed to them on 22.06.2023 in lieu of the loan amount, which has credit facility for business purpose, the petitioners mortgaged their immovable





properties i.e. Plot Nos. 56 & 57, Area admeasuring 480.00 Sq. Yards, Khasra No. 354/0.50, Village Buchaheda, Tehsil Kotputli, Jaipur Rajasthan.

3. The petitioners admittedly were unable to repay the loan and the installments were also not paid, resulting in proceedings being initiated by the respondents after declaring their loan account as a Non Performing Asset (NPA) under the Act of 2002. It has come on record that the petitioners filed an application under Section 17(1) of the Act of 2002 challenging the demand notice and possession notice issued by the respondent-Bank, however, the same was dismissed.

4. Challenging the same, they preferred the writ petition before this Court in **Jamuna Ram And Sons & Ors. Vs. Ugro Capital Limited & Anr.:** S.B. Civil Writ Petition No. 4377/2025 decided on 25.04.2025 against the illegal taking over of the possession. The same was declared to be not maintainable, as the remedy of filing of an appeal/application was available to them in terms of Section 17 of the Act of 2002. The application under Section 17 of the Act of 2002, as noticed above has already been dismissed. The petitioners have not preferred any further appeal before the learned Appellate Tribunal and have now, challenged the provisions of Section 13(2) & 13(4) of the Act of 2002.

5. Learned counsel for the petitioners submits that this is the only property that the petitioners owned and they are residing in it and, therefore, the same should not be taken away, nor should they be dispossessed of the same. Learned counsel for the petitioners further submits that as provided under Section 60 of the Code of Civil Procedure, 1908 (hereinafter referred to as the





'CPC') and also under Section 31 of the Act of 2002, the petitioners should be granted protection and they should not be dispossessed from the property where they are residing, as they do not have any other place to live and that they have a right to shelter under Article 21 of the Constitution of India.

6. Learned counsel for the petitioners has relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***In Re: Directions in the matter of demolition of structures: 2024 INSC 866*** which discussed the right to shelter.

7. Learned counsels for the respondents on advance notice have pointed out that so far as the validity of Sections 13(2) & 13(4) of the Act of 2002 are concerned, the same has already been examined in detail by the Apex Court in ***Mardia Chemicals Ltd. & Ors. Vs. Union of India & Ors.: (2004) 4 SCC 311*** and, therefore, this Court would have no occasion to again re-examine the said provisions after the same has already been upheld by the Apex Court. Learned counsel for the respondents also submits that the petitioners, with open eyes, had taken a loan for business purpose at that stage and mortgaged the concerned property in lieu of the loan, knowing fully well that this was the only house where they were residing. Even if they may suffer loss in business, the warrant Authorities cannot be deprived of their rightful claim to the loan amount which they have advanced to the petitioners.

8. We have considered the submissions and perused the provisions of law.

9. It would be apposite to quote Section 31 of the Act of 2002.

"31. Provisions of this Act not to apply in certain cases.—
The provisions of this Act shall not apply to—





(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958)

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);

(g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)]or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land

(j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon."

10. On perusal of the aforesaid sections, it is apparent that the benefit has been granted under the Act of 2002, prohibiting taking possession of properties, which fall within the first proviso to Sub-Section (1) of Section 60 of the CPC. Further, benefit has been given by not applying SARFAESI provisions to the security interest created in agricultural land. However, so far as the residential houses given in mortgage are concerned, they would not fall within the provisions of Section 31 of Act of 2002. Learned counsel therefore, submits that the benefit given under Section 60 of CPC should be applied in case of the petitioners.

11. We are also of the opinion that if the businessman, knowing fully well of having only singular property in his name, seeks an amount for advancement of his business, he is taking risk and in the event of non payment of the loan, the property would have to be put to auction for the purpose of repayment of the said amount. The dispossession from the said property is, therefore, natural and no relief should be given to such persons. The claim of the petitioners cannot be said to be similar to the benefit





advanced to persons in terms of Sub-Section 1 of Section 60 of the CPC which reads as under:-

“60. Property liable to attachment and sale in execution of decree.—(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings [with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment] belonging to an agriculturist or a labourer of a domestic servant and occupied by him ;

(d) books of account ;

(e) a mere right to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to pensioners of the Government [or of a local authority or of any other employer], or payable out of any service family pension fund notified in the Official Gazette by [the Central Government or the State Government] in this behalf, and political pensions;

(h) the wages of labourers and domestic servants, whether payable in money or in kind;

(i) salary to the extent of [the first [one thousand rupees]] and two third of the remainder] [in execution of any decree other than a decree for maintenance]

[Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.]

(ia) one-third of the salary in execution of any decree for maintenance;





(j) the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, [1925], (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(ka) all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

(kb) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(kc) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

[(1) any allowance forming part of the emoluments of any [servant of the Government]] or of any servant of a railway company or local authority which the [appropriate Government] may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant for allowance made to [any such servant] while under suspension;]

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by [any Indian law] to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment-debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue."

12. With regard to the argument on right to shelter, Article 21 of the Constitution of India states that "*No person shall be deprived of his life or personal liberty except according to procedure established by law*". Regarding the discussion about right to shelter by the Hon'ble Supreme Court **In Re: Directions in the matter of demolition of structures(supra)** in the context of Article 21 of the Constitution of India, a reading of the said article makes it evident that such a right is not absolute but subject to "*procedure established by law*", which in this case would be the Act of 2002. Furthermore, this was also recognised within the said judgement itself wherein the Hon'ble Supreme Court observed that:





"Having a house or a roof over one's head gives satisfaction to any person. It gives a sense of dignity and a sense of belonging. If this is to be taken away, then the authority must be satisfied that this is the only option available."

13. It is also prudent to mention that the Hon'ble Supreme Court in **Maneka Gandhi v. Union of India** (1978) 1 SCC 248 observed that:

"The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary."

14. While examining the said provisions of the Act of 2002 in **Madria Chemicals Ltd.** (supra), the Hon'ble Supreme Court also observed that:

"The procedure should also be fair, reasonable and valid, though it may vary looking to the different situations needed to be tackled and object sought to be achieved."

15. Having examined the relevant provisions and precedents on this matter, we cannot conclude such action under the Act of 2002 to be 'unfair, unjust or unreasonable' and hence, is not violative of the right to shelter under Article 21 of the Constitution of India.

16. We do not find any benefit can be granted to the petitioners under Sub-Section (1) of Section 60 of the CPC. Hence, regarding the challenge to the provisions of Section 13(2) & 13(4) of the Act of 2002 is concerned, we may appropriately quote following paras of the judgment in **Mardia Chemicals Ltd. & Ors. Vs. Union of India & Ors. (supra)** which reads as under:-

80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to approach the Debts Recovery Tribunal. The abovenoted provisions are for the purpose of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows:

1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days' notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the





information/knowledge of the borrower without giving rise to any right to approach the Debts Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debts Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held in this behalf, we find that the requirement of deposit of 75% of the amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court.

81. In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debts Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would subserve the public interest.

82. We, therefore, subject to what is provided in para 80 above, uphold the validity of the Act and its provisions except that of sub-section (2) of Section 17 of the Act, which is declared ultra vires Article 14 of the Constitution of India.

83. Before we part with the case, we would like to observe that where a secured creditor has taken action under Section 13(4) of the Act, in such cases it would be open to borrowers to file appeals under Section 17 of the Act within the limitation as prescribed therefore, to be counted with effect from today."

17. Thus, all the provisions of the Act of 2002 have been upheld except to the extent of Sub-Section (2) of Section 17 of Act of 2002 by the Hon'ble Supreme Court.

18. This Court would, therefore, not accept any challenge subsequently relating to the same provisions, hence, the present Civil Writ Petition, being misconceived is accordingly, dismissed.





19. All pending application(s) also stand disposed of.

(BALJINDER SINGH SANDHU),J

(SANJEEV PRAKASH SHARMA),ACJ

HEENA/MAHIMA/32

