



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2110 OF 2026

1. Vaishali Rahul Gondhane, Aged 42 years, Occ: Nil,
R/o C/o Bhalchandra Khanorkar, Plot no.14,
Kalmeshwar, Nagpur, Maharashtra – 441501.
2. Vaibhav Avdhut Patil, Aged 41 years, Occ: Private
job, R/o Bazaar Line, Jai Bhim Ward, at Post
Allipur, Taluka Hinganghat, Allipur, Wardha,
3. Amol Avdhut Patil, Aged 39 years, Occ: Private
job, R/o at Row House no.232-C, Bharat Town
at Yerkheda, Taluka Kamptee, District Nagpur.

PETITIONERS

VERSUS

1. Central Bank of India, through its Chief Manager/
Authorised Officer having address at Oriental Building,
LIC square, Kamptee Road, Nagpur-440001.
2. Pravin Vidhyadhar Sharma, Aged: Occ: Nil,
R/o Quarter no.66, Pancholi Police Station
Quarters, Nagpur – 440017.
3. Amol Suryabhan Pawade, Aged: Occ: Nil,
R/o Railway Quarter no.K-47, Guard Line,
Nagpur – 440012.

RESPONDENTS

Shri R.D. Dhande, counsel for the petitioners.
Shri Bhushan N. Mohata, counsel for the respondent no.1.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : APRIL 01, 2026

DATE ON WHICH JUDGMENT IS PRONOUNCED : APRIL 27, 2026

JUDGMENT

Heard. **RULE.**

2. The petitioners have filed the instant petition seeking relief to hold and declare that the initiation of proceedings by the respondent no.1- Central Bank of India (for short, 'the Bank') under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (for short, 'the SARFAESI Act') are illegal and contrary to law. The petitioners have also challenged the notice under Section 13(2) and the orders passed by the competent authorities under Section 14 of the SARFAESI Act.

3. The background facts leading to the instant petition are succinctly stated below:-

i. The petitioners are legal heirs of Smt. Sudha Avdhut Patil, who was borrower of the respondent no.1-Bank. The petitioners' mother had owned a plot bearing no.231-C, situated at Mouza Yerkheda, Taluka Kamptee, District Nagpur.

ii. In the year 2011, Smt. Sudha Avadhut Patil (hereinafter referred to as 'the Borrower') had availed a Cent home loan from the Dhanvate National College branch at Nagpur of the respondent no.1-Bank to construct a house on her plot. The respondent no.1-Bank had sanctioned the financial facility of Rs.5,50,000/- and accordingly a mortgage deed dated 11.03.2011 was executed by and between the Borrower and the respondent no.1-Bank, where in the borrower's plot was mortgaged against the said loan. The loan was disbursed to the borrower.

iii. On 08.11.2011, the borrower expired, leaving behind the petitioners as her legal heirs and the loan was outstanding at that time. The petitioner nos.2 and 3 have paid some of the installments, however, the entire loan amount was not repaid.

iv. On 29.08.2014, the respondent no.1-Bank declared the account of the borrower as non-performing asset (NPA).

v. On 08.12.2023, the respondent no.1-Bank issued notice under Section 13(2) of the SARFAESI Act to the petitioners nos.2 and 3, calling upon them to pay the entire outstanding amount along with interest, total amounting to Rs. 16,03,982/-.

vi. The respondent no.1-Bank thereafter filed application under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate, Nagpur and the same was allowed by order dated 05.10.2024. Accordingly, the respondent no.1-Bank claimed entitlement to take possession of the mortgaged property, which is plot no.231-C, admeasuring 875 square feet having residential unit proposed to be constructed, admeasuring 694 square feet, described in the schedule of property reproduced in the order dated 05.10.2024.

vii. Pursuant to this, the respondent no.1-Bank sent a letter dated 09.04.2025 to the petitioner nos.2 and 3 informing thereby that physical possession of the secured asset would be taken by it and accordingly the possession was taken by the respondent no.1-Bank on 21.05.2025.

viii. The respondent no.1-Bank published a possession notice in daily newspapers 'Loksatta' and 'Indian Express' on 27.05.2025, indicating that the possession was taken by the respondent no.1-Bank.

ix. On 02.06.2025, the respondent no.1-Bank filed a report with the police station against the petitioners complaining, thereby that they have re-entered the property by breaking open the lock.

x. The respondent no.1-Bank thereafter filed a fresh application under Section 14 of the SARFAESI Act for restitution of possession which was allowed by the Court by order dated 10.11.2025.

xi. On 15.12.2025, the respondent no.1-Bank issued a notice to the petitioners intimating that physical possession would be taken on 29.12.2025.

xii. On 29.12.2025, the bailiff attempted to take possession, however, he was obstructed by the wife of the petitioner no.3, who locked herself inside the property and threatened self immolation as recorded by the bailiff in its report.

xiii. The respondent no.1-Bank again filed an application before the Court of Chief Judicial Magistrate, Nagpur seeking permission to break open the locks with police protection which came to be allowed by order dated 30.01.2026.

xiv. In this background, the respondent no.1-Bank again sent a letter dated 25.02.2026, informing the petitioners that the physical possession of the secured asset would be taken on 10.03.2026.

xv. At this stage, the petitioners have filed the instant petition challenging the orders passed by the Courts on 05.10.2024, 10.11.2025 and 30.01.2026. The petitioners have also claimed for a declaration that the entire action of the respondent no.1-Bank is illegal being barred by limitation and contrary to the provisions of Rule 3 of the Security interest (Enforcement) Rules, 2002.

4. Shri R.D. Dhande, learned counsel for petitioners advanced two primary submissions. Firstly, that the proceedings initiated against the petitioners are illegal on account of failure to serve the demand notice upon the petitioner no.1, who also happens to be one of the legal

representative of the principal borrower and the demand notice which was served upon the petitioners nos.2 and 3 only, cannot be treated as a valid demand notice. He submitted that the respondent no.1-Bank was duty bound to ascertain the details of all the legal representatives of the principal borrower and was required to serve the notice upon each one of them. By relying upon the provisions of Rule 3(4) of the Security Interest Enforcement Rules, 2002 with respect to demand notice, the learned counsel for petitioners submitted that the demand notice being not served upon the petitioner no.1, the entire action based on the said demand notice is unsustainable in law.

5. Secondly, it is submitted that the entire proceedings are barred by law of limitation in view of Section 36 of the SARFAESI Act and by adverting my attention to the said provision, the learned counsel for petitioners submitted that the notice under Section 13(4) was not issued within a period of twelve years (which is the limitation period as per the Limitation Act, 1963) from the date of death of the principal borrower and as such the notice issued on 15.05.2025 was barred by limitation.

With these arguments, he submitted that the possession of the petitioner's plot admeasuring 875 square feet, with construction of about 694 square feet, is likely to be taken away by the Bank.

6. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in *PHR Invent Educational Society Versus UCO Bank & Others* [(2024) 6 SCC 579] and judgment of the Division Bench of this Court in *Phoenix Arc Pvt. Ltd. & Another Versus State of*
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Maharashtra & Others [2023(1) Mh.L.J. 678]. He submitted that the petition is maintainable in view of the apparent non-compliance with the statutory provisions by the respondent no.1-Bank thereby violating the fundamental rights of the petitioners. By relying on the judgment in ***PHR Invent Educational Society*** (supra), he submitted that the availability of alternate remedy cannot be a reason to question the maintainability of the petition. He also placed reliance on the judgment of the Punjab and Haryana High Court in ***Kotak Mahindra Bank Limited Versus District Magistrate & Others*** [2022 AIR (P&H) 169] and submitted that the definition of 'borrower' in Section 22 of the SARFAESI Act covers all the legal representatives and in absence of issuance of any notice to one of the legal representatives, the entire action stands vitiated.

7. In support of his contentions about issue of limitation, he placed reliance on the judgment of the Calcutta High Court in ***Dipankar Chakraborty versus Allahabad Bank & Others*** [2017 DGLS (Cal.) 153] and submitted that Section 36 of the SARFAESI Act bars a secured creditor from taking all or any measures under Section 13(4), unless the claim of such secured creditor is within the period of limitation prescribed under the Limitation Act, 1963.

8. Per contra, Shri Bhushan Mohota, learned counsel for the respondent no.1-Bank strenuously opposed the petition and raised preliminary objection about maintainability of the petition on two counts firstly, on account of suppression of material facts by the petitioners and secondly on account of availability of alternate remedy.

9. As regards, suppression of material facts, he submitted that the petitioners have suppressed material facts with respect to their conduct, of creating hurdles in the process of recovery proceedings undertaken by the respondent no.1-Bank in accordance with the provisions of the SARFAESI Act. In this regard, he submitted that the petitioners have not disclosed in their petition the following crucial facts:-

- i. That, the possession of the property was taken by the respondent no.1-Bank on 21.05.2025.
- ii. The fact that the respondent no.1-Bank has taken possession was published in the daily newspapers 'Loksatta' and 'Indian Express' on 27.05.2025.
- iii. Thereafter, the petitioner no.3 had illegally re-entered the property by breaking open the lock.
- iv. The respondent no.1-Bank lodged a police complaint on 02.06.2025.
- v. On 29.12.2025, when the bailiff attempted to take possession, he was obstructed by the wife of the petitioner no.3, who had locked herself inside the property and had given threat of self immolation.

10. He submitted that the memorandum of petition does not contain the above mentioned facts which are relevant to demonstrate the conduct of the petitioners. He submitted that the conduct of the petitioner no.3 in breaking open the lock and re-entering the premises, even though the possession was taken by the respondent no.1-Bank by following the statutory procedure, is itself sufficient to conclude that the petitioners

have no regards to the process of law and are not entitled for any equitable or discretionary relief. He submitted that the suppression of material facts by the petitioners disentitles them to claim any relief from this Court.

11. As regards the contentions about availability of alternate remedy, he submitted that any person aggrieved by any notice or action under the provisions of SARFAESI Act has got remedy to approach to the Debts Recovery Tribunal by filing appropriate applications under the SARFAESI Act. He submitted that the petitioners have failed to avail the alternate remedy since December-2023, when the Bank has issued the first notice under Section 13(2) of the SARFAESI Act and the invocation of writ jurisdiction by showing some urgency is an abuse of process of Court.

12. Apart from the above mentioned preliminary objections, the learned counsel for respondent no.1-Bank submitted that the entire action taken by the Bank in accordance with the provisions of the SARFAESI Act is well within limitation as the account of the petitioners had turned into NPA on 29.08.2014 and the notice under Section 13(2) of the SARFAESI Act, issued on 08.12.2023, was well within limitation. He submitted that in accordance with provisions of Section 36 of the SARFAESI Act, the proceedings are initiated within the period of twelve years in accordance with provisions of the Limitation Act, 1963 and as such the objection raised by the petitioners on account of limitation is devoid of substance.

13. As regards, the demand notice, the learned counsel for the respondent no.1 submitted that the demand notice was duly served upon the petitioner nos.2 and 3, who are the legal representatives of the principal borrower and mere allegation that the demand notice was not served on the petitioner no.1, who also happened to be one of the legal representative of the original borrower, does not invalidate the demand notice. He submitted that the petitioner nos.2 and 3, never informed the respondent no.1-Bank about the petitioner no.1 being the third legal representative and as such the demand notice cannot be faulted. He also submitted that the respondent no.1-Bank cannot be expected to make an enquiry and ascertain the details of all the available legal representatives of the principal borrower and it was the duty of the legal representatives of the principal borrower to repay the loan on their own. He also submitted that the notice to the petitioner nos.2 and 3, who are the real brothers of the petitioner no.1, has to be considered as knowledge to the petitioner no.1 about the proceedings, initiated by the respondent no.1-Bank and thus the contentions in this regard are an afterthought.

14. In support of his submissions, the learned counsel for the respondent no.1-Bank placed reliance on following judgments:-

- i. ***Bharat Singh & Others Versus State of Haryana & Others*** [(1988) 4 SCC 534].
- ii. ***Biraji @ Briraji & Another Versus Surya Pratap & Others*** [(2020) 10 SCC 729].

- iii. *Prestige Lights Ltd. Versus State Bank of India* [(2007) 8 SCC 449].
- iv. *Dalip Singh Versus State of U.P. & Others* [(2010) 2 SCC 114].
- v. *Kishore Samrite Versus State of U.P. & Others* [(2013) 2 SCC 398].
- vi. *Chaitanya Arora Versus Shoban Salim Thakur* [2025 Supreme(Online)(Bom) 6374].
- vii. *M/s South Indian Bank Ltd. & Others Versus Naveen Mathew Philip & Another. Etc.* [(2024) 17 SCC 311].
- viii. *Liladhar Ladappa Kendole Versus Solapur Janata Sahakari Bank Ltd. & Others* [2021 Supreme(Bom) 412].

By pointing out the legal position as laid down by the Hon'ble Supreme Court in *Bharat Singh & Others and Biraji @ Briraji & Another* (supra), he submitted that the petitioners were required to insert necessary pleadings of facts in the memorandum of petition and were duty bound to state on affidavit, all the relevant facts.

15. By relying on judgments in *Prestige Lights Ltd., Dalip Singh, Kishore Samrite* and *Chaitanya Arora* (supra), he submitted that a person who suppressed material facts is not entitled for the discretionary and equitable relief under writ jurisdiction of this Court. He invited attention to the observations that the very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts and the Court will have to consider the conduct of a party who does not disclose full facts or suppresses relevant material or is guilty of misleading the Court.

By relying on the judgments in *M/s South Indian Bank Ltd. & Others* and *Liladhar Ladappa Kendole* (supra), he submitted that the instant writ petition by the borrowers without filing proceedings before the Debts Recovery Tribunal is an abuse of process of the Court and in the wake of an alternate efficacious remedy available to the borrowers, this petition is liable to be dismissed.

16. To controvert the contentions of the respondent no.1 about suppression of material facts, Shri R.D. Dhande, learned counsel for petitioners tried to refute them by stating that the petitioners have not suppressed any material fact since they have annexed the bunch of documents as annexures to the petition which include all the relevant facts with respect to the entire proceedings. He submitted that although there is no narration of each of the events in the memorandum of petition, however, in view of the fact that the petitioners have filed all the available documents, they cannot be alleged to have suppressed any material fact. Refuting this argument, Shri Bhushan Mohota, learned counsel for respondent no.1 submitted that the non-disclosure of facts on affidavit in the memorandum of petition is sufficient to infer that the petitioners have suppressed material facts.

17. In the background of above mentioned submissions, rival contentions fall for my consideration.

18. While dealing with the controversy involved in the petition, it has to be noted that the facts about advancement of loan by the respondent

no.1-Bank to the principal borrower and the action taken by the Bank under provisions of the SARFAESI Act are not disputed. All these facts are demonstrated on the basis of documents available on record and even the parties have advanced their arguments mainly on the legal issues about entitlement of the respondent no.1-Bank to continue with the proceedings under the SARFAESI Act.

19. In view of the strenuous arguments submitted by both the counsels on the issue of suppression of material facts and entitlement of the petitioners to seek relief under the writ jurisdiction, the contentions in this regard need to be dealt with primarily.

A perusal of the memorandum of petition as filed by the petitioners discloses that the petitioners have not disclosed candidly the facts about the breaking open of the lock by the petitioner no.3 and re-entering the premises after the possession was taken by the Bank on 21.05.2025. The petitioners have also not disclosed the fact about lodging of a police complaint by the respondent no.1-Bank on 02.06.2025. Further, the petitioners have not stated in the petition the fact that on 29.12.2025, when the bailiff attempted to take possession, he was obstructed by the wife of the petitioner no.3, who locked herself inside the property and threatened self immolation. Pertinent to note, these facts are relevant to demonstrate the conduct of the parties during the proceedings under the SARFAESI Act, for recovery of the loan initiated by the respondent no.1-Bank. The contentions of the petitioners that although these facts are not mentioned in the memorandum of petition, since the relevant documents

are filed along with the bunch of documents on record, the same amounts to disclosure of facts, need to be tested.

20. In this regard, it is fruitful to refer to the elucidation of law as made by the Hon'ble Supreme Court in *Bhaskar Laxman Jadhav & Others Versus Karmaveer Kakasaheb Wagh Education Society & Others* [(2013) 11 SCC 531]. While dealing with the identical contentions about suppression of facts and attempt to justify it on the ground that the relevant documents were produced on record, the Hon'ble Supreme Court has categorically observed that mere mention of the documents in the memorandum of petition is not enough disclosure. It has been observed that it is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the Court and further that it is not for a litigant to decide what fact is material for adjudicating a case and what is not material. The pertinent observations are made by the Hon'ble Supreme Court that it is not for the Court to look into every word of the pleadings, documents and annexures to fish out a fact and it is for the litigant to come up-front and clean with all material facts and it is for the Court to decide the relevance of any fact for arriving at a decision. The position of law is reiterated about the well settled principle that a person who does not come to the Court with clean hands is not entitled to be heard on merits of his grievance and such a person is not entitled to relief under Articles 32, 226 and 136 of the Constitution of India.

It is beneficial to reproduce the relevant paragraphs from the said judgment being paragraphs 42, 43, 44, 46 and 47:-

“42. While dealing with the conduct of the parties, we may also notice the submission of the learned counsel for Respondent 1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2-5-2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. The learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2-5-2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. **It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court.** True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

46. More recently, in *Ramjas Foundation v. Union of India* the case law on the subject was discussed. It was held that if a litigant does not come to the court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p.51, para 21)

“21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. **The object underlying the principle is that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.**”

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof."

21. While considering the enunciation of law as made by the Hon'ble Supreme Court in the abovementioned judgment and applying it to the case in hand, it has to be noted that the petitioners in the instant case have not disclosed certain vital and relevant facts which throw light on the conduct of the parties. The facts that the respondent no.1-Bank had earlier taken possession by following due process of law on 21.05.2025 and despite that the petitioner no.3 had illegally re-entered the property by breaking open the lock is a material fact which ought to have been disclosed by the petitioners, on affidavit in the petition. The lodging of police complaint by the Bank on 02.06.2025 is also a relevant fact which ought to have been disclosed by the petitioners. Also, on 29.12.2025, when on the second time the possession was sought to be taken, the bailiff was obstructed by the wife of the petitioner no.3, who locked herself inside the property and threatened self immolation, is a relevant fact about conduct of the parties which ought to have been disclosed by the petitioners on affidavit in the petition. The contentions of the counsel for petitioners that the documents about these facts are annexed and therefore there is no suppression of

facts, is not at all an acceptable argument in view of the position of law, as laid down by the Hon'ble Supreme Court in the above referred judgment. After giving anxious consideration to all the relevant documents and contentions in this regard, I am of the firm opinion that the petitioners have suppressed the material facts and are not therefore entitled for any relief under writ jurisdiction. The petition filed by the petitioners deserve to be dismissed on this count alone.

22. It is imperative for the parties to a litigation to make a true and candid disclosure of all the material facts in the pleadings or in the affidavits filed in the writ petitions by way of memorandum of petition or affidavit-in-reply. The parties are duty bound to ascertain which are the relevant facts necessary for deciding the lis in between them and shorn of unnecessary details, disclose them. It is thereafter for the Court to consider those facts and draw conclusions. Pertinent to note, in every matter, the conduct of parties assumes lot of significance. As such, the parties must make a true disclosure about actual events, may be with their own justifications for the acts in question, however, in absence of true and complete disclosure of facts, the Court would be ill-equipped and at a disadvantage to appreciate the real dispute. The disclosure of relevant facts has to be on affidavit and mere reference to some document which refers to the said facts would not suffice, simply because it will not be a disclosure on affidavit about the contents of the document depriving the other side an opportunity to rebut the precise contentions. Non-disclosure of relevant facts on affidavit and an attempt to obtain some orders on the

basis of incomplete disclosure of facts would amount to abuse of process of the Courts. In litigations of loan recovery, the disclosure of all the relevant facts by both the parties is all the more imperative and non-disclosure will attract severe consequences. In the case in hand, the petitioners have not disclosed the relevant facts as referred above, which disentitles them to claim relief.

23. Apart from this, if the contentions of the petitioners about legality of the proceedings being barred by limitation are considered, it has to be seen that undisputedly the account of the petitioners had turned NPA (Non Performing Asset) on 29.08.2014 and the first notice under Section 13(2) of the SARFAESI Act, was sent by the respondent no.1-Bank on 08.12.2023 and therefore the entire proceedings based on the said notice cannot be treated to be barred by limitation. The proceedings initiated by the bank are not hit by Section 36 of the SARFAESI Act on account of the issue of limitation.

24. The arguments of the petitioners in this regard that the demand notice is illegal because it was sent to only two of the legal representatives, cannot also be accepted *firstly*, because the petitioner no.1 is not a third person, rather she is the real sister of petitioner nos.2 and 3 who were served with the demand notice and apparently she got knowledge through them as she has not stated any other source of knowledge; and *secondly* because it was the duty of the two legal representatives to inform to the Bank about the name of the third legal representative, i.e. the petitioner no.1 and the Bank cannot be expected to make an enquiry for ascertaining

the names of all legal representatives and their addresses for serving the demand notice. In my view, the submissions of the learned counsel for petitioners that it was the duty of the bank to make an enquiry and ascertain the whereabouts of all the legal representatives and then to serve the demand notice on all of them, is absolutely untenable. Pertinent to note, after the death of the principal borrower, the petitioner nos.2 and 3 have repaid some of the installments and as such, it is clear that the legal representatives had the knowledge about their liability to pay the outstanding loan of the Bank. In any case, the demand notice having been served upon the two legal representatives of the original borrower cannot be rendered illegal only on that count. Further, it has to be noted that this is not the petition filed only by the petitioner no.1, rather the instant petition is filed by all the three legal representatives and it is clear that the petitioner no.1 could get the knowledge about the notice and the proceedings through the petitioners nos.2 and 3, who are her real brothers. In view of the above, the petitioner no.1 being one of the legal heirs of the principal borrower, cannot take any advantage of Rule 3(4) of the Security Interest (Enforcement) Rules, 2002 to contend that the entire proceedings are vitiated. The petitioner no.1 has clearly got knowledge from the petitioner nos.2 and 3 on the basis of which the instant petition is filed and therefore the reliance placed on Rule 3(4) of the Rules of 2002 is misplaced.

25. The position of law laid down by the Hon'ble Supreme Court in various judgments relied upon by the counsel for petitioners is not

disputed. However, none of those judgments are of assistance since they do not lay down the propositions as put forth by the petitioner. Apart from this, those judgments have referred to the settled legal position in the facts of the particular cases.

26. Pertinent to note, the petitioners have failed to put forth any justification for not availing the alternate remedy, by approaching the Debts Recovery Tribunal by challenging the notices issued by the respondent no.1-Bank under the SARFAESI Act. The contentions in this regard that the demand notice itself is illegal being not served upon one of the legal representatives cannot be accepted in view of the aforesaid reasons. The petitioners have failed to demonstrate any violation of their fundamental rights and as such their justification for not availing the alternate remedy is not acceptable.

27. On giving anxious consideration to the entire fact situation, it appears that the petitioners have realised that the Bank is entitled to recover the outstanding loan amount and they want to avoid repayment. It has to be noted that after the death of their mother, who was the principal borrower, the petitioner nos.2 and 3 have made repayment of the loan by paying some of the installments, however, thereafter they stopped repaying the loan installments. As such, the petitioners cannot claim that they were unaware about the liability to make the repayment of the dues of the Bank and they were also unaware about the proceedings initiated by the Bank by sending the notice under Section 13(2) of the SARFAESI Act and the subsequent action. Despite this, the petitioners have not

approached the competent Court/Tribunal by challenging the notice or action initiated by the respondent no.1-Bank under the SARFAESI Act. It thus appears that after having realised that the respondent no.1-Bank is taking all the necessary steps for recovering its loan, the petitioner nos.2 and 3 have brought forward the petitioner no.1 by making a lame attempt to raise certain technical issues. The petitioners have not at all expressed readiness to repay the loan despite knowing the fact that the huge amount of loan is not repaid by them to the respondent no.1-Bank. Under these circumstances, the filing of the instant petition by suppressing material facts, warrants imposition of costs upon the petitioners.

28. In view of the above mentioned factual and legal aspects, I am of the considered opinion that the petitioners have failed to demonstrate any illegality with the impugned orders. The petitioners have failed to make out any case for seeking discretionary and equitable relief under the writ jurisdiction of this Court. For the reasons recorded above, including the conduct of the petitioners in suppression of the material facts, the instant petition is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand) to be paid by the petitioners to the respondent no.1-Bank within a period of four weeks from today. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

At this stage, the learned counsel for the petitioners makes a request for continuation of interim relief, for enabling the petitioners to approach the Hon'ble Supreme Court.

Considering the fact that the interim relief was operating during the pendency of the petition, by which the physical possession of the petitioners' dwelling house was protected, it is directed that the interim relief shall operate only for a period of four weeks from today.

(PRAFULLA S. KHUBALKAR, J.)

APTE