2026:DHC:9120

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 08.07.2026
Judgment pronounced on: 13.10 .2026

\+ **W.P. (C) 7203/2026 & C.M. APPL. 35275/2026, C.M. APPL. 35276/2026, C.M. APPL. 35277/2026**

SHASHI R. JATIA ....Petitioner

Through: Mr. Vaibhav Gaggar, Sr. Adv. with Mr. Abhijeet Chauhan, Mr. Mayank Singhal, Advs.

versus

PRUDENT ARC & ORS. ....Respondents

Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Naveen Soni, Adv. For R1
Mr. Sidhant Kumar, Mr. Om Batra, Ms. Anwita, Advs. for R-3 & 4

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking the following prayers:

"A. Issue an appropriate writ, order or direction thereby quashing and setting aside the impugned e-Auction Notice

dated 25.04.2026 issued by Respondent No. 1 in respect of the immovable property bearing No. B-50, Gulmohar Park, Zone F-3, Masjid Moth, New Delhi – 110049;

B. Issue an appropriate writ, order or direction thereby restraining the Respondent No. 1, its agents, representatives, officers, assigns or any person acting on its behalf from taking any coercive steps or further action pursuant to or in furtherance of the impugned e-Auction Notice dated 25.04.2026;

C. Issue an appropriate writ, order or direction thereby restraining the Respondents from creating any third-party rights, title, interest, possession, or encumbrance in respect of the petitioner's one-third undivided share in the Subject Property;

D. Stay the operation of the e-auction notice dated 25.04.2026 issued by the Respondent No. 1 for the auction of the property situated at B-50, Gulmohar Park, Zone F-3, Masjid Moth, New Delhi, 110049 during the pendency of the Petitioner's Appeal No. RCA DJ No. 7 of 2025;

E. Alternately, direct the Respondent No. 2 to deposit one-third amount of the fair value of the subject property with the Hon'ble Saket District Court during the pendency of the Petitioner's Civil Suit No. CS SCJ No. 779 of 2022 and Appeal No. RCA DJ No. 7 of 2025; …"

FACTUAL BACKGROUND AS PER THE PETITION

2. The petitioner is a senior citizen who used to earlier reside in Mumbai and thereafter relocated abroad. The respondent No. 1, Prudent ARC, is an Asset Reconstruction Company (***"ARC"***) registered with the Reserve Bank of India. The respondent No. 2 is the ICICI Bank which has disbursed the loan. The respondent Nos. 3 and 4 are the sister in law and brother in law of the petitioner respectively. Petitioner's husband and respondent No. 4 are brothers.

3. The petitioner is the co-owner of a one-third undivided share in property bearing Plot No. B-50, Gulmohar Park, Zone F-3, Masjid Moth, New Delhi, admeasuring 499 square yards and comprising a basement, ground floor, first floor and second floor ("***Subject Property***"). The remaining two-third share is owned by respondent No. 3, who is the petitioner's sister-in-law. The petitioner had acquired her interest in the property pursuant to an Agreement to Sell dated 04.06.1982 and a Deed of Conveyance dated 07.12.1995. Initially, the property was jointly owned by the petitioner, respondent No. 3 and one Ms. Neeta Jatia (petitioner's third brother's wife).

4. Ms. Neeta Jatia instituted CS No. 957/2005 seeking partition of the Subject Property in respect of her one-third share. The proceedings culminated in a settlement pursuant to which respondent No. 3 agreed to acquire Ms. Jatia's one-third share. A Consent Decree dated 09.11.2005 was passed directing respondent No. 3 to pay a consideration of Rs.2,33,33,333/- to Ms. Neeta Jatia. Pursuant thereto, Ms. Neeta Jatia executed a Release Deed dated 10.02.2006 in favour of respondent No. 3. Thereafter, the petitioner and respondent No. 3 were recorded in the

municipal records as the exclusive co-owners of the Subject Property, holding one-third and two-third shares respectively.

5. At the relevant time, the petitioner was residing in Mumbai, while respondent Nos. 3 and 4 were residing at the Subject Property and were looking after the same. According to the petitioner, respondent Nos. 3 and 4 thereafter obtained loan facilities from respondent No. 2, ICICI Bank Ltd., by creating a mortgage over the Subject Property. The total principal amount of the five loan facilities was stated by the Bank to be Rs. 14.96 crores. The petitioner was shown as a co-applicant in the loan documents.

6. The petitioner states that she had neither applied for nor availed the aforesaid loan facilities and that her signatures on the loan documents had been forged. She first became aware of the loan facilities in May 2021 when a representative of the Bank's loan recovery department contacted her son at her erstwhile Mumbai residence and informed him about the outstanding amounts against the Subject Property. Upon further enquiry the loan recovery representative provided the petitioner's son with five loan account numbers being:

(i) LBDEL00002444168,
(ii) LBDEL00003454052,
(iii) LBDEL00005411830,
(iv) LBDEL00002442446, and
(v) LBDEL00002442447

7. On 31.05.2021, the petitioner addressed an email to the Bank denying having availed any such loan and sought copies of the loan agreements, sanction letters, mortgage deed and title documents.

8. The Bank informed the petitioner that the five loan accounts had been availed by respondent No. 4 and that the petitioner had been shown as a

co-applicant. The Bank further informed her that an amount of Rs.12,35,54,534/- remained outstanding as on that date. The petitioner thereafter addressed further communications to the Bank and respondent No. 4, reiterating that she had not executed any loan or mortgage documents and sought the complete loan documentation.

9. On 19.06.2021, the petitioner's representative obtained certain loan documents from the Bank. The petitioner states that the documents contained signatures purporting to be hers, which were forged. She thereafter obtained a private forensic examination of four of the documents. A forensic report dated 25.06.2021 opined that the signatures appearing on those documents were forged and fabricated. Additionally the petitioner had not received a single penny of the loan disbursed by respondent No. 2.

10. In view of the allegations of forgery and fraud, the petitioner lodged a complaint dated 31.08.2021 before the Economic Offences Wing (***"EOW"***), New Delhi. Following a preliminary enquiry, FIR No. 17/2022 dated 28.01.2022 was registered against respondent Nos. 3 and 4 and unknown officials of respondent No. 2 for offences under Sections 406, 420, 468, 471 read with Section 120-B of the Indian Penal Code, 1860.

11. During the pendency of the investigation, the petitioner received a demand notice dated 18.06.2022 issued by respondent No. 2 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (***"SARFAESI Act"***), demanding payment of Rs.12.46 crores and stating that proceedings under Section 13(4) would follow in case of non-payment.

12. The petitioner thereafter instituted CS SCJ No. 779/2022 before the learned Senior Civil Judge, Saket Courts, seeking, inter alia, injunction against respondent Nos. 3 and 4 from dealing with or creating third-party rights in the Subject Property and against respondent No. 2 from taking action pursuant to the demand notice dated 18.06.2022. Respondent No. 2 moved an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, read with Section 34 of the SARFAESI Act, contending that the suit was barred by the SARFAESI Act. The application was allowed by order dated 09.06.2023.

13. Aggrieved by the said order, the petitioner preferred a civil appeal. The appeal, initially numbered RCA SCJ No. 14/2023 and subsequently numbered RCA DJ No. 7/2025, came to be transferred to the Court of the learned District Judge, South District, Saket Courts, and remains pending adjudication.

14. During the pendency of the civil proceedings, respondent No. 2 informed the Court on 21.10.2024 that the loan accounts concerning the Subject Property had been assigned to respondent No. 1, Prudent ARC, pursuant to an Assignment Deed dated 25.09.2024.

15. In the meantime, respondent Nos. 3 and 4 instituted W.P.(Crl.) No. 3711/2024 before this Court seeking quashing of FIR No. 17/2022. In those proceedings, the EOW filed a status report dated 13.12.2024. The status report recorded that the FSL examination of the loan documents had found the signatures of the petitioner herein appearing on loan facility documents to be forged.

16. The petitioner filed her reply to respondent No. 1's application for substitution on 04.03.2025, relying, inter alia, upon the aforesaid status report of the EOW and opposing the substitution.

17. While the civil appeal and respondent No. 1's application for substitution were pending, respondent No. 1 issued the impugned e-Auction Notice dated 25.04.2026 proposing to sell the Subject Property by e-auction on 29.05.2026. The petitioner, asserting that the proposed sale would affect her one-third undivided share in the Subject Property and prejudice the proceedings pending before the Saket District Court, has approached this Court by way of the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

18. Mr. Vaibhav Gaggar, learned senior counsel for the petitioner, states that, the respondent Nos. 1 and 2 cannot frustrate the subject matter of the proceedings which are *sub judice* before the Trial Court.

19. It is stated that the very foundation of the impugned e-Auction Notice is under challenge in the civil proceedings pending before the learned Saket Courts, wherein the validity of the alleged loan transactions and the mortgage is in question. Respondent No. 1 was aware of the said proceedings, having itself sought substitution therein pursuant to the assignment of the loan accounts. It is, therefore, contended that the respondents ought not to be permitted to proceed with the auction so as to create third-party rights in respect of property which is the subject matter of pending adjudication.

20. It is further submitted that the dispute goes to the root of the alleged security interest, as the petitioner asserts that the loans and mortgage were created through fraud and forgery. The EOW has registered an FIR

concerning the transactions and the FSL examination has found the petitioner's signatures on the loan documents to be forged. According to the petitioner, she had neither applied for the loans nor created any mortgage over her one-third share in the Subject Property.

21. Learned counsel submits that SARFAESI proceedings can be invoked only against a validly created security interest. Since the alleged mortgage over the petitioner's share is founded upon forged documents, respondent No. 1 cannot acquire or enforce any better right merely by virtue of the assignment. The assignment, it is contended, cannot cure defects going to the very validity of the loan transaction or the mortgage.

22. It is further submitted that the petitioner has never been a borrower or guarantor and has derived no benefit from the alleged loan transactions. In these circumstances, permitting the auction to proceed would cause irreparable prejudice by creating third-party rights in the Subject Property. The balance of convenience, according to the petitioner, lies in preserving the property until the validity of the alleged mortgage is adjudicated.

23. The petitioner consequently submits that the impugned e-Auction Notice is without jurisdiction and amounts to deprivation of property without authority of law, besides being arbitrary and violative of Articles 14 and 21 of the Constitution. It is urged that the present case warrants interference under Articles 226 and 227, notwithstanding the availability of an alternate remedy, in view of the allegations of fraud, forgery and want of jurisdiction.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1

24. Mr. Rajiv Nayar, learned senior counsel for the respondent No.1, opposes the present petition. He opposes the same on 3 grounds:

a. The writ petition is not maintainable as an efficacious alternate remedy is available under Section 17 of SARFAESI Act and before Civil Court.

b. The writ petition against a private entity is not maintainable.

c. The writ petition has been instituted through a defective special power of attorney and the petitioner is guilty of suppression of facts.

25. He states that the Impugned Notice has been issued under Section 13(4) of the SARFAESI Act, against which the petitioner has an efficacious statutory remedy under Section 17 before the DRT. The SARFAESI Act is a self-contained code and, in view of the bar under Section 34, the present writ petition ought not to be entertained. Reliance is placed on *Bhadra International India Private Limited v. Punjab National Bank W.P. (C) 7939 of 2025* and *Celir LLP v. Bafna Motors (Mumbai) Private Limited and Ors (2024) 2 SCC 1.*

26. Without prejudice to the above contention, he states that even if the plea of the petitioner that the DRT does not have jurisdiction is accepted the present controversy cannot be amenable to writ jurisdiction. The remedy for the question of fraud will lie before Civil Court. The petitioner has already availed her rights before the civil court which is pending adjudication. He further submits that the present petition contains the same averment and the same questions which are contained in the civil suit which the petitioner has already availed. He relies on *Rushali Khera v. State (NCT of Delhi), 2023SCC OnLine Del 1320.*

27. Further the present writ petition is not maintainable against a private ARC, particularly when an efficacious remedy under the SARFAESI Act is available. It is stated that respondent No. 1 is an ARC, a private bodyand not a state or instrumentality of state discharging public function within the meaning of Article 12. Additionally, reliance is placed on *Girish Bansal v. Yashpal Singla, 2023 SCC Online Del 4981*, wherein the Hon'ble Supreme Court held that grievances against actions of private banks/ARCs under the SARFAESI Act must be agitated before the DRT. It is further submitted that the petition amounts to forum shopping, as substantially similar reliefs were earlier sought by the petitioner in a civil suit, which was rejected on the ground of availability of the DRT remedy.

28. Lastly, the writ petition is stated to have been instituted through a defective Special Power of Attorney, which does not authorise the alleged attorney holder to institute or prosecute the present proceedings.

SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 3 AND 4

29. Mr. Sidhant Kumar, learned counsel on behalf of the respondent Nos. 3 and 4 opposes the present petition on the same grounds as alleged by the respondent No. 1.

30. They further raise an additional ground being the petition is barred by delay, laches and acquiescence. He states that the petitioner herself issued a series of General Power of Attorney in favour of the respondent No. 3 authorising her to obtain loan by mortgaging the Subject Property. The same is also admitted by the petitioner in the letter dated 29.06.2021.It is due to that power of attorney that the respondent No. 3 obtained a loan from the respondent No. 2. The petitioner has taken no legal action since 2005 and has thus acquiesced to this position. She therefore cannot seek

to alter her position now. Therefore, the petition is barred by delay and laches.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

31. The learned senior counsel for the petitioner submits that the present writ petition goes beyond the ordinary challenge to SARFAESI proceedings, as it assails the validity of the security interest sought to be enforced against the petitioner's 1/3rd undivided share in the Subject Property. The availability of a remedy before the DRT, therefore, does not bar the exercise of jurisdiction under Articles 226 and 227 of the Constitution.

32. He further submits that the principal allegations of fraud are against respondent Nos. 2 to 4, while respondent No. 1 acquired the loan despite being aware of the pending proceedings and criminal investigations against respondent No. 2 to 4. It is also contended that the petitioner was never served with the documents in the proceedings before DRT, Delhi, and that despite the order dated 18.04.2024, no affidavit of service has been filed by respondent Nos. 1 or 2, which, according to the petitioner, indicates collusion between them.

33. Learned counsel further states that fraud cannot be adjudicated by DRT and a civil suit is not a bar as the reliefs in the suit and the present petition are different.

ANALYSIS AND FINDINGS

34. I have heard the learned counsel for the parties and perused the material on record.

35. Following main issues arise for my consideration:

a. Whether a writ petition is maintainable against a Private ARC?

b. Whether the writ petition is liable to be rejected at the threshold as there exists an alternate remedy?

c. Whether the petition is barred by delay and laches?

Maintainability of a writ petition against a private asset reconstruction company and also where an alternate remedy exists

36. Mr. Nayar and Mr. Kumar, learned counsels have challenged the maintainability of the writ petition against an ARC. They state that an ARC is not amenable to writ jurisdiction especially in the light of the fact that it enforces a commercial transaction and does not perform a public function.

37. *Per contra*, Mr. Gaggar, learned senior counsel for the petitioner, submits that the case is founded on allegations of fraud and collusion between respondent Nos. 2 to 4. Placing reliance on *Mardia Chemicals Ltd. v. Union of India*, *(2004) 4 SCC 311*, he submits that where the action of a secured creditor is alleged to be fraudulent, the aggrieved party may seek recourse to the civil court. He further submits that the allegations in the present case are not unsubstantiated, as they are supported by the findings of an independent forensic expert appointed by this Court.

38. At the outset, it is clarified that there is no dispute with the proposition that a private ARC does not become an instrumentality of the State under Article 12 of the Constitution merely by exercising rights conferred upon it under the SARFAESI Act. However, the question that arises for consideration is whether, in the peculiar facts of the present case, the writ jurisdiction of this Court can be invoked?

39. The respondent No. 1 in the present case is the assignee of the mortgage and the respondent No. 2 is the assignor. The assignee steps into the

shoes of the assignor and ordinarily cannot accrue a right greater than that existed with the assignor. The petitioner has not merely challenged the dispute with respect to a private transaction but has challenged the very foundation of the loan i.e. the security interest and has further alleged that the loan facility documents have been executed through fraud and collusion between the respondent Nos. 2, 3 and 4 thereby challenging the very existence of the contract that gives rise to the proceedings under SARFAESI Act.

40. The respondent No. 1 has relied on ***Celir LLP (supra)*** to state that the writ petition against ARC is not maintainable. The Court in ***Celir LLP (supra)*** relied upon ***United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110*** which carved a narrow exception. The relevant paragraphs read as under:

> *"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.*
>
> *46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from*

discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [AIR 1969 SC 556] , Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

41. In the case of ***Whirlpool (Supra)*** as relied upon in ***Satyawati Tondon (supra)*** Saghir Ahmad, J. carved out three categories of exceptions wherein a writ petition can be entertained. A Court has to essentially inquire if the petition has been filed against violation of a fundamental right or if there is a violation of principles of natural justice or where the order or proceedings are without any jurisdiction.The relevant paragraph of ***Whirlpool (Supra)*** states as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

42. In the present case, the Court is merely looking at whether the allegations made by the petitioner are *prima facie* sufficient to determine whether the jurisdiction of DRT would be made out. The petitioner has relied upon the FSL report that determined that the signatures of the petitioner on loan documents are forged. The FSL report reads as under:

ANNEXURE - P 17

FORGERY DETECTION PVT. BUREAU (ESTD. IN 1932)

PARMESHWAR DAYAL M.A.

Delegate of the Sixth International Meeting of
Forensic Sciences. Held at Edinburg U.K.

ANIL KUMAR MATHUR

Member of the Indian Academy of Forensic Sciences
Member of the Indian Society of Criminology

&

ANMOL MATHUR B.COM

Forensic Examiners of Questioned Documents

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Our Ref: T/6327/RP1 June 25, 2021.

Re: Expert examination of Signatures in Question, as of Shashi Jatia, as appearing in the Photo Copies of three ICICI Bank Facility Agreements.

REPORT

1. I have examined the Signatures in Question, marked by me as X1 to X37, as of Shashi Jatia, as appearing in the Photo Copies of three ICICI Bank Facility Agreements, and have compared it with the Sample Signatures of Shashi Jatia, as follows: -

(A) Signatures in Question on:-

(1) Photo Copy of ICICI Bank Facility Agreement No. 7721284906, dated 20/04/2017 - - Signatures in Question marked by me as X1 to X8.

(2) Photo Copy of ICICI Bank Facility Agreement No. LBDELM2442446, dated 29/09/2015 - - Signatures in Question marked by me as X9 to X23.

(3) Photo Copy of ICICI Bank Facility Agreement No. LBDELM2442447, dated 29/09/2015 - - Signatures in Question marked by me as X24 to X37.

(B) Sample Signatures of Shashi Jatia on:-

(1) Photo Copy of Kotak - Delivery Instructions - - Sample Signature marked by me as S1.

(2) Photo Copy of PAN Card - AAGPJ9950N - - Sample Signature marked by me as S2.

TRUE COPY

(3] Photo Copy of Passport No. Z4782686, issued on 13/03/2018 -
- Sample Signature marked by me as S3.

(4) Photo Copy of FORM DIN - 2 -
- Sample Signature marked by me as S4.

Note: - The above-mentioned documents examined by me, bear the rubber stamp of my office, along with my initials.

2. I have examined the Signatures with the help of optical instruments, under proper lighting conditions.

3. In my opinion, the Signatures in Question marked by me as X1 to X37, as of Shashi Jatia, as appearing in the Photo Copies of three ICICI Bank Facility Agreements, as mentioned above, are not genuine - and have not been written by the writer of the Sample Signatures marked by me as S1 to S4 - viz. Shashi Jatia. The Signatures in Question X1 to X37, are loose imitations of a genuine signature of the writer of the Sample Signatures marked by me as S1 to S4 - viz. Shashi Jatia.

For FORGERY DETECTION PVT. BUREAU

(Anmol Mathur)
Examiner of Questioned Documents.

43. The said report has also been relied upon by the EOW to register the FIR No. 17/2022, and the petition for quashing of the said FIR by respondent Nos. 3 and 4 is pending adjudication. The investigation of the EOW has also concluded that there was enough evidence against the respondent Nos. 3 and 4 and the officials of the respondent No. 2 to proceed against them for charges of fraud and forgery. The status report dated 13.12.2024 has been filed by the EOW in the matter pending for quashing of FIR. The relevant paragraph of the same reads as under:

"5. During the further course of investigation, the disputed/allegedly forged signatures of the complainant, as available on relevant loan applications/credit facility agreements purportedly executed by the accused person with ICICI Bank Ltd, were sent to FSL for Handwriting Expert's opinion to ascertain the authorship thereof. As per opinion of the Handwriting Expert, the signatures did not match with those of the complainant; the signatures, disputed by the complainant of this case as above, have turned out to be forged.

6. During course of investigation, the petitioner/alleged persons Mr. Shiv Kumar Jatia and Ms. Archana Jatia inter-alia, both were examined qua allegations levelled by the complainant in this case. Both the said alleged persons admitted that through POAs executed by the complainant Smt. Shashi Jatia in favor of alleged Mr Shiv Kumar Jatia, a home loan to the tune of Rs. 3.5 Cr. and an OD facility to the tune of Rs. 3 Cr. were availed from ICICI Bank in December 2005 which were topped up from time to time. They claimed that all the loan/credit facilities in question were availed after having obtained the requisite authority from the complainant. It was further submitted by them that said loan/credit facilities were topped up from time to time wherein there was no requirement of complainant's signature as such, hence, no such signature of the complainant was forged. However, they failed to explain the

aspect of forgery of the signatures and; in absence of complainant who provided the photograph and KYC documents of the complainant to the branch official, if not the alleged persons.

7. *Further investigation qua complicity of the bank officials involved in this case has also been made which revealed that the processing/documentation in respect of loan/credit facilities in question was carried out by the ICICI Bank through its outsourced agency namely, Bharat Financial Services, which was having its office that time at 236, Defense Colony Flyover Market, New Delhi. The said agency is not traceable at its given address till date, however, further efforts in this direction and investigation qua complicity of other bank officials is still in progress.*

8. *From the facts, as discussed above, there are sufficient evidence against both the petitioners that they, in active complicity and collusion with their other accomplices/bank officials, conspired to commit fraud not only upon the complainant but also ICICI Bank Ltd, by dishonestly availing a loan/credit facilities to the tune of Rs. 14,96,21,513.00 (Fourteen Crore Ninety-Six Lacs Twenty-One Thousand Five Hundred Thirteen only) having forged her signatures and used them in mortgaging the abovementioned property further wherein complainant has 1/3rd share."*

44. In the present case I am not required to go into the reliability or evidentiary value of the Status report and the FSL report, but the same *prima facie* shows that fraud was played by employees of respondent Nos. 2 and respondent Nos. 3 and 4. I am of the view that if the finding of the fraud is proved subsequently when the civil suit attains finality, then the impugned action by the respondent No. 1 in the DRT proceedings would be without jurisdiction and rather ultravires as then the respondent No. 1 could not have held petitioner's property as a mortgage against the loan amount.

45. Further the Hon'ble Supreme Court in ***Mardia Chemicals (supra)*** has categorically adjudicated the issue that if the mortgagor has alleged fraud against the secured creditor or if the claim of the secured creditor is so absurd and untenable which may not require any probe, the limited jurisdiction of the civil court can also be invoked. The relevant paragraphs of the same reads as under:

> *"50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine.Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court.Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this*

contention as advanced by Shri Salve is not correct. A-full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say, the prohibition covers even matters which can be taken cognizance of by the DebtsRecovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having

been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely, V. Narasimhachariar, AIR at pp. 141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22: (AIR p.143)

> *"22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the court before sale with an injunction for staying the sale if there are materials to show that thepower of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: Adams v. Scott. I need not point out that this restraint on the exercise of the power of sale will be exercised by courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary: Law of Mortgages, Vol. II, 4th Edn., p. 784.)"*

46. The aforesaid principle was considered in ***Tajunissa v. Vishal Sharma, (2022) 2 HCC (Del) 154***, wherein this Court explained the scope of the exception recognised in ***Mardia Chemicals (supra)***. The relevant observations read as under:

> ***"24.****Mardia Chemicals Ltd. case [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] involved a challenge, wholesale, to the SARFAESI Act, with particular emphasis on Section 13. It was sought to be contended, before the Supreme Court, that Section 13 of the SARFAESI Act allowed a secured creditor to proceed against the property of the borrower merely on the borrower defaulting in payment within the stipulated period, consequent on notice under Section 13(2) being issued by the secured creditor. The burden of the challengers' song was that the statute did not provide for any dispassionate adjudicatory mechanism, which would factor in the concerns and interests of the borrower, and the legitimate defences that the borrower may have had against the claim of the creditor.*
>
> *…*
>
> ***26.*** *One of the issues which was discussed in the judgment, and with which alone we are concerned in the present case, was whether the borrower could seek recourse to a civil court, once Section 13 was invoked by the secured creditor. Inter alia, it was sought to be contended before the Supreme Court that, perhaps, recourse to the civil court was*

permissible before the secured creditor took possession of the properties of the borrowers/guarantors under Section 13(4), but not after action under Section 13(4) had been taken. The Supreme Court, however, negatived the contention, holding that, once Section 13 stood invoked by the secured creditor, recourse to the civil court stood statutorily barred, even before the matter proceeded to the Section 13(4) stage. Mr Gupta places especial reliance on the observations of the Supreme Court in that regard, which are to be found in Para 50 of the report:

"50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken

in pursuance of any power conferred under this Act". That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13."

…

28. *To the statutory proscription engrafted in Section 34 of the SARFAESI Act, therefore, the Supreme Court has, in the afore-extracted passage from Mardia Chemicals Ltd. case [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] , chiseled out an exception, in a case in which "for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever".*

29. *The words used by the Supreme Court indicate that the exception to availability of the ordinary civil remedy, by the borrower, where the secured creditor has proceeded to take*

action under Section 13 of the SARFAESI Act, is not couched in exhaustive terms. The Supreme Court starts by using the expression "for example". This, even by itself, indicates that the categories of cases envisaged in the succeeding part of the sentence merely exemplify those cases in which recourse to the civil court is permissible, and are not exhaustive in that regard.

30. *The first category of such cases, as envisaged by the Supreme Court, is "where the action of the secured creditor is alleged to be fraudulent". All that is required is, therefore, an allegation. Once there is, in the pleadings of the plaintiff before the civil court, an allegation that the act of the secured creditor is fraudulent, the proscription against recourse to the ordinary civil remedy, in Section 13, ceases to apply.*

34. *Collusion, if alleged, therefore, partakes, in its essence, of the character of fraud. Particularly in the case of a bank, which enjoys a fiduciary relationship with the public, an expansive interpretation to the expression "fraud" has to be accorded. Whether the allegation is right or wrong, substantial or merely chimerical, or merely a puff in the air, is not relevant while examining the applicability of Para 51 of the report in Mardia Chemicals Ltd. case [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] . Once the allegation exists, it exists, for better or for worse. Once fraud, on the part of the secured creditor, is alleged,*

recourse to ordinary civil remedies cannot be denied to the plaintiffs."

47. Clearly, in the light of the ratio laid down in ***Mardia Chemicals (Supra)*** as explained in ***Tajunissa (supra)*** the Civil Court has jurisdiction to entertain the plea of the petitioner against alleged fraud. The remedy does not lie before the DRT under Section 17. The bar of Section 34 of the SARFAESI Act does not exclude the jurisdiction of the Civil Court where fraud and forgery are alleged. In the present case the allegations of the petitioner are not merely a puff in the air, but have been *prima facie* made out on the basis of an independent forensic report.

48. At this stage it is relevant to reiterate that the petitioner has already availed the said remedy by filing a civil suit being CS SCJ No. 779/2022 which was dismissed under Order VII Rule 11 *vide* order dated 09.06.2023 on the ground that DRT has exclusive jurisdiction. The appeal challenging the same is pending adjudication before ADJ, Saket. There has not been any adjudication on the merits of the case by the Trial Court as alleged by the petitioner.

49. In the case of ***IEEE Mumbai Section Welfare Assn. v. Global IEEE Institute for Engineers, 2025 SCC OnLine SC 1756***, it was held as under:

> ***"5.*** *Having heard learned counsel for the appellant and learned senior counsel for the respondent, we observe that in a case where an appeal is filed by being aggrieved by the rejection of a plaint in exercise of powers under Order VII Rule 11CPC, the High Court ought not to have granted an order of temporary injunction. We say so for the reason that*

the plaint itself has been rejected by the Commercial Court and the correctness or otherwise of the said rejection is a matter at large before the High Court. When the plaint itself has been rejected, it cannot be said that the appeal filed against such an order is a continuation of a suit. It may be that in the commercial suit the respondent herein had the benefit of an interim injunction, but once the plaint has been rejected by the trial court i.e. the Commercial Court, in the instant case, until it is revived/restored, an order of temporary injunction cannot operate against the defendant in the suit, who is the respondent in the appeal filed against the rejection of the plaint. In other words, it is necessary that there ought to be a subsisting plaint in order to seek an order of temporary injunction."

(emphasis added)

50. In view of the above it is clear that the petitioner could not have filed an application for interim orders and even if filed the same would not yield results as during pendency of appeal, the application would not have been entertained by the appellate court.

51. Further, with regards to the issue of maintainability of the writ petition in view of the alternative remedy, in ***Gurdeep Singh v. Punjab & Sindh Bank, 2015 SCC OnLine Del 6724*** it was observed as under:

"7. In the present case the suit (CS (OS) 427/06) filed by the Petitioner (renumbered as Suit No. 106/2012) initially decided the threshold issue of maintainability. The court held in favour of the petitioner and proceeded to entertain

the suit. Further proceedings before the DRT and DRAT, however continued. In these circumstances, the recovery proceedings could not be interdicted. It is also a matter of record that the suit has reached an advanced stage of the proceedings; issues have been framed and the parties have to lead evidence. If at this stage, the Bank is allowed to proceed against the property and ultimately the petitioner's pleas succeed, he would have been prejudiced irrevocably. As against this, the bank is in possession of the suit property and is also the decree holder to the tune of Rs 35,62,112. If the mortgage transaction is held to be genuine, it would be free to proceed against it. The proceedings under Article 226 of the Constitution of India are discretionary and meant to reach out wherever the justice of the case demands a particular direction. The courts have discretion to issue such orders ex debito justitiae. The Supreme Court (though in a different context) in Sangram Singh v. Election Tribunal, Kotah, (1955) 1 SCC 323 : AIR 1955 SC 425 - while considering the provisions of the Code dealing with the trial of suits-that: "Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that

justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle." Therefore, on a balance of the equities, we are of the opinion that the recovery proceedings should not go on till the suit is decided finally one way or the other."

(emphasis added)

52. Thus, the existence of an efficacious alternative remedy is not an absolute bar to the exercise of jurisdiction under Articles 226 and 227 particularly where the proceedings impugned before the Court are alleged to be founded upon fraud and forgery and the very existence of the underlying security interest is under challenge.

53. Notwithstanding of the appeal, the fact remains that the petitioner has invoked the jurisdiction of this Court under Articles 226 and 227, alleging, that a fraud has been played upon the petitioner by respondent

Nos. 2, 3 and 4. There is already a prima facie finding in favour of the petitioner qua the alleged fraud and forgery.

54. In such circumstances, the present petition can and ought to be entertained because if the petitioner's 1/3rd share in the property is permitted to be auctioned and, subsequently, a competent court returns a finding that the loan documents were forged and fabricated, the petitioner's property would be beyond redemption, third-party rights would have been created, and an auction purchaser would have acquired rights in the property through a public auction.

55. This would prejudice not only the rights of the petitioner but also those of the auction purchaser and would inevitably lead to further rounds of litigation. It is the duty of the Court to prevent such multiplicity of proceedings and, at the same time, safeguard the rights of the petitioner. The property of the petitioner cannot be taken away in the manner as followed by the respondents.

56. Further, the authorities relied upon by the respondents do not persuade this Court to take a different view. The case laws relied upon by the respondents, concern the general principle that a borrower aggrieved by the actions of a bank or an ARC under the SARFAESI Act must ordinarily avail the remedies provided under the statute. The present case, however, raises a distinct question concerning the alleged fraudulent creation of the very security interest sought to be enforced. The challenge is supported by prima facie forensic material and the findings recorded in the EOW status report. The present case must, therefore, be considered in the light of its particular facts and the recognised exceptions to the rule of alternative remedy.

57. In view of the aforesaid circumstances, I have no hesitation in holding that the present writ petition is maintainable.

Whether the petition is barred by delay, laches and acquiescence

58. The next issue that arises for my consideration is whether the petition is barred by delay and laches. The learned counsel for the respondent No. 3 and 4 has raised an argument that petitioner herself issued a series of General Power of Attorneys in favour of the respondent No. 4 authorising him to obtain loan by mortgaging the Subject Property. The same is also admitted by the petitioner in the letter dated 29.06.2021. It is due to those power of attorneys that the respondent No. 3 obtained a loan from the respondent No. 2. Since the petitioner has taken no legal action since 2005, she has thus acquiesced to this position. Therefore, the petition is barred by delay and laches.

59. I am unable to accept this submission at this stage, for the following reasons. First, the plea of acquiescence assumes that the loans in question were raised under the Powers of Attorneys of 2005 - 2008. That is the very point in dispute. The petitioner's case is that the five facilities date from 2015 to 2020, that she never signed the loan documents, and that she first learnt of them only on 29.05.2021. She wrote to the bank, obtained documents on 19.06.2021, obtained a forensic report on 25.06.2021, complained to the EOW on 31.08.2021, and filed a civil suit in July 2022. This is not the conduct of a person who knew of the mortgage and accepted it. Further, even assuming that the respondent No. 3 and 4 were operating under the GPAs that also did not give them the right to forge signatures of the petitioner on the Loan facility documents.

60. Second, the letter of 29.06.2021 does not bear the meaning attributed to it by the respondent Nos. 3 and 4. It says that the earlier Powers of Attorneys stood revoked on the family separation, and it asks respondent No. 4 to disclose any action taken under the said letter. It does not admit that the petitioner authorised these loans or this mortgage. The letter is reproduced as under:

SHASHI R JATIA

Four Seasons Hotel,
27th floor, Plot no.1/136,
Dr. E Moses Road, Worli,
Mumbai-400 018
Tel: 24818910

Without Prejudice

Date: 29th June, 2021

To,
Mr. S.K. Jatia,
B-50, Gulmohar Park,
New Delhi- 110049.

Dear Mr. Jatia,

Re.: Power of Attorney(ies) executed in your favour by Mrs. Shashi Jatia

As you are aware, prior to the family separation that took place in January, 2013, during the period when both, business and family affairs, were being jointly managed between my family and your family, for the purpose of administrative convenience various documents, including Power of Attorney(ies) were executed by me authorising you to act on my behalf as my constituted attorney for various purposes more particularly mentioned in the said documents/Power of Attorney(ies). However, in January, 2013, a family separation took place where under the businesses were separated. As a result of the aforesaid separation, all documents including Power of Attorney(ies) executed by me in your favour authorising you to act on my behalf are deemed to have been cancelled and consequently all authorizations granted thereunder revoked. Thus, any action taken by you post revocation of the powers granted in your favour, on the basis of the authority granted in your favour *vide* the aforesaid documents without my express consent are null and void and would not bind me in any manner whatsoever. You are requested to forthwith intimate me if you have acted on any of the aforesaid documents/Power of Attorney(ies) and undertaken any actions post January, 2013 and share a copy of such document/s executed by you.

Without prejudice to the aforesaid, out of abundant caution, by way of the present letter I am putting you to notice that all documents, Power of Attorney(ies) executed by me prior to January, 2013 in your favour authorising you to act on my behalf stand revoked. Any action taken by you under the revoked documents/Power of Attorney(ies) would, apart from being null and void, be illegal.

The present letter is without prejudice to all my rights in law, equity or otherwise, which are expressly reserved.

Yours truly,

Shashi Jatia.
Mrs. Shashi Jatia

61. Whether the petitioner in fact knew of the mortgage, and whether she acquiesced to it, are questions of fact that must be decided on evidence by the competent forum. This Court cannot decide them in a writ petition. The material before the Court is enough for a prima facie view. It consists of the FSL report, the status report of the EOW dated 13.12.2024 recording that the signatures were found to be forged, and the absence of any explanation from respondent Nos. 3 and 4 for those signatures. On that material the plea of acquiescence cannot be accepted as a ground for refusing to examine the petitioner's case.

62. The fact that the petitioner become aware of the alleged fraud on 29.05.2021 and thereafter has continuously been following up, including filing of civil suit clearly persuades me to hold that the petitioner is not the one who has been sleeping over her rights. Hence, the petition cannot be said to be barred by delay and laches.

63. The respondents argue that the petitioner is guilty of suppression of material facts that DRT proceedings were pending before the DRT II. The petitioner in her rejoinder submissions has alleged that the petitioner was unaware of the proceedings before the DRT II. The petitioner has placed on record the orders of DRT proceedings wherein the petitioner has not been served. The orders dated 18.04.2024 and 21.01.2026 read as under:

2026:DHC:9120

DEBTS RECOVERY TRIBUNAL-II, DELHI

Dated: 18.4.2024

Item No. 7

OA/197/2023

IN THE MATTER OF:-

ICICI BANK LIMITED Vs MR SHIV KUMAR JATIA AND ORS

Present:
Shri Abhishek Srivastava, counsel for Applicant Bank
Shri Om Batra, counsel for D1 and D2 – ombatra@unumlaw.in - 9810225856
None for D3

This matter is taken up today through video conferencing.

Ld. Counsel for Applicant Bank seeks 02 weeks time to file the affidavit of service. Let it be filed.

However, D1 and D2 are being represented today through the counsel. Ld. Counsel for D1 and D2 submitted that D1 and D2 are before the NCLT, Delhi and that an application under section 95 of IBC 2016 has been preferred against the defendants.

Ld. Counsel to file his vakalatnama within a week's time under intimation to the Applicant Bank.

Applicant Bank is directed to supply copy of OA paper book to the counsel for D1 and D2 within 07 days. He is also directed to file a copy of the order passed by the Hon'ble NCLT, if any.

D3 appears to be one of the family members. However, Ld. Counsel for D1 and D2 submitted that he has no instructions in respect of D3.

Ld. Counsel for Applicant Bank submitted that though the application has been preferred before the Hon'ble NCLT but there is no stay granted in the matter under section 95 IBC, 2016. Ld. Counsel for D1 and D2 submitted that interim moratorium starts the day the application is filed as per section 96 of IBC 2016.

Matter be listed before the Hon'ble Presiding Officer on 17.5.2024 for appropriate orders.

SD
18/4/24
(Deepak Kr. Raikwar)
AR/Registrar I/C
DRT-II, Delhi

Debts Recovery Tribunal-II, Delhi

OA/197/2023
ICICI BANK LIMITED Vs MR SHIV KUMAR JATIA AND ORS

21.01.2026 Item no.68

Present: Mr. Abhishek Srivastava, Counsel for Prudent ARC
Mr. OM Batra, Counsel for defendant no.1 & 2
None for defendant no.3

Matter is taken through Video Conferencing/Hybrid mode.

IA/1335/2025

The applicant bank has moved an application **(IA No.1335/2025)** for substitution of name of Prudent ARC Ltd. in place of ICICI Bank Ltd. as the debt has been assigned to Prudent ARC Ltd. **which is formal in nature, hence allowed.** The amended memo of parties is taken on record. **Registry is directed to amend the cause title.**

As per order sheet dated 18.04.2024 defendant no.1 & 2 are before Ld. NCLT.

The Ld. Counsel for applicant bank submitted that defendant no.1 & 2 are not before Ld. NCLT. He is directed to file affidavit in this regard before the next date positively.

List the matter on 31.07.2026.

(SUSHIL KUMAR RASTOGI)
PRESIDING OFFICER
DRT-II, Delhi

64. It is evident that nobody was appearing on behalf of the petitioner on both the dates. Thus, prima facie it seems that the petitioner was unaware of

the proceedings before DRT. Thus, the averment that the petitioner has suppressed material facts of the case is not borne out.

65. Another challenge posed by the learned counsel for the respondents is that the petitioner has prayed for the same relief as was prayed in the civil suit. The petitioner has challenged the validity of mortgage and has also challenged the validity of loan documents in the civil suit, while in the present petition the petitioner has, among other prayers, prayed for stay of e-auction notice. The present writ petition is based on infraction of rights of the petitioner and is not seeking the same relief as prayed for in the suit.

66. Hence I am of the view that the undivided 1/3rd share of the petitioner in property cannot be permitted to be sold in e auction till the veracity of the loan documents is adjudicated by a competent court of jurisdiction.

67. If the entire property is sold on an "as is where is" basis, to a bidder who makes the highest bid, third-party equities arise. If the petitioner is right, she would be compelled to recover her property from an auction-purchaser, or be left to a money claim. Article 300A of the Constitution states that no person shall be deprived of property save by authority of law.

68. Further with regards to the contention of the respondents regarding the defective General Power of Attorney dated 20.04.2023, I am not in agreement as firstly, it is an hyper technical plea. Secondly, the General Power of Attorney in paragraphs 5 to 7 authorises the son of the petitioner to take steps to file the present petition, hence to my mind the petition is validly instituted.

69. Thus, the writ petition is allowed and the petitioner's undivided 1/3rd share in the immovable property bearing No. B-50, Gulmohar Park, Zone F-3, Masjid Moth, New Delhi – 110049 shall be excluded from the auction. There is no restriction imposed with regard to the 2/3rd undivided share of the said property.

JASMEET SINGH, J.

OCTOBER 13th, 2026/DE