

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**WP(C) 2914/2024**  
**CM 79602024**

**Imran Ahmad Daryal and Anr.** ...Petitioners(s)/Appellant(s)

Through: Mr. Ajaz Chesti, Advocate

**Vs.**

**J&K Bank Limited and Anr.** ...Respondent(s)

Through: Mr. N.A. Dendru, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE**  
**HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE**

**ORDER**  
**18.12.2024**

**Per Atul Sreedharan-J (Oral)**

1. In terms of the order dated 13.12.2024, this Court had granted interim relief to the petitioners whose property was to be e-auctioned by the respondent-Bank for non-payment of dues.
2. On that date, the learned counsel for the petitioners referred to ground "A" wherein a categoric averment has been made by the petitioners, supported by an affidavit that notice under Section 13(2) was never issued to the petitioners. However, as the learned counsel for the respondents was unable to deny the same on 13.12.2024, and as the averment has been supported by an affidavit, this Court till next date of hearing had directed that further proceedings pursuant to the e-auction shall not be taken.
3. In the same order itself this Court made it clear that if in the reply of the respondents it appears that the notice under Section 13(2) was issued, and, there was material to show that the same was received by

the petitioners, the Court shall be at liberty *inter alia* to direct the prosecution of the petitioners for filing of a false affidavit and registration of an FIR and, thereafter, the matter was directed to be listed on top of the list.

4. Today, learned counsel appearing for the respondents is present before this Court and has placed before this Court the response limited to the issuance of the notice under Section 13(2) to the petitioners. Annexure 1 to the response is the notice issued under Section 13(2) to the petitioners/borrowers on 19.12.2019 with proof of dispatch to the petitioners by the speed post.
5. As prima facie it appears that the petitioners have made a false statement before this Court, the interim relief granted in terms of the order dated 13.12.2024 stands vacated. However, for further orders for directing prosecution of the petitioners for filing a false affidavit and the registration of the FIR, this Court feels in the interest of justice that it would be necessary to hear counsel for the petitioners before passing orders in that direction.
6. Later on, learned counsel for the petitioners appeared before this Court and wanted order passed earlier during the day to be amended. Thereafter, the learned counsel for the respondents also appeared before this Court. In continuation with the order passed earlier in the morning, the learned counsel for the petitioners submits that the Notice under Section 13(2) was issued on 19.12.2019, and thereafter, on the request of the petitioners' one time settlement was offered to the petitioners by them. However, they again defaulted in payments.
7. Under the circumstances, learned counsel for the petitioners submits

that the earlier notice of 19.12.2019 had merged with the offer of the One Time Settlement (OTS) and therefore, the law required a fresh Notice under Section 13(2) to be passed by the Bank yet again so that the petitioners could avail the opportunity of preferring a representation under Section 13(3A). He has also placed reliance on the judgment of the Hon'ble Supreme Court passed in case titled "**Mardia Chemicals Ltd. & Ors Vs. Union of India & Ors.**" [(2004) 4 SCC 311], of which he has read out from the head notes, where the Hon'ble Supreme Court has held that financial transactions which are governed by the 2002 Act cannot be a one-sided affair shutting out all possible and reasonable remedies to the borrowers and permitting assumption of drastic powers for speedier recovery of the NPAs on the part of the Banks and Financial Institutions. The head note further states that possession of more drastic powers calls for exercise of higher degree of good faith and fair play, which is also the basic principle of lender's liability.

8. In this particular case, the petitioners have not mentioned in the petition that he had received a Notice under Section 13(2) earlier on 19.12.2019. Even during the course of oral submissions, the learned counsel for the petitioners was categorical and vehement in asserting that no such Notice under Section 13(2) was ever received by his client and it was only on that basis that interim protection was granted by this Court but with a caveat of severe consequences to follow including the criminal action, if the said averment in the petition and the oral submission was found to be untrue.
9. The documents placed before this Court today alongwith the application, reveal that the Notice was earlier issued under Section

13(2) of the SARFAESI Act on 19.12.2019 and this was deliberately and maliciously withheld from this Court both in the petition and in the oral submissions made before this Court by the learned counsel who obviously has acted under instructions of his client.

10. The proof of dispatch has also been given by the learned counsel for the respondents which shows that the said Notice was issued under Section 13(2) to the petitioners. The submissions made by the learned counsel for the petitioners today also reflect that the said notice was received by the petitioners and that is how he approached the bank for the one time settlement which was offered to him. This was a vital fact which ought to have been placed both in the petition and oral submission. But the said submission/averment was not merely missing in the petition and the arguments but was purposely concealed from this Court in order to take the interim relief.

11. As far as the doctrine of merger is concerned, this Court is unable to appreciate the same. The Act is a Special Act, which does not provide for reissuance of Notice under Section 13(2) merely because the OTS offered was also not honored. If the contention put forth by the learned counsel for the petitioners is accepted, the proceedings would be interminable even under the SARFAESI Act, which was not the original intention of the legislature.

12. However, the issue herein is totally different, it is one of propriety of approaching the Court with clean hands especially when jurisdiction is invoked under Article 226.

13. Under the circumstances, this Court holds that the petitioners are guilty of gross *suppressio veri and suggestio falsi* and the petition is **dismissed**.

14. In furtherance of the order passed on the last date of hearing, the Registrar General of this Court is requested to initiate proceedings to prefer a complaint before the police for the prosecution of the petitioners herein for the offences of filing a false affidavit before this Court. If the offences are non-cognizable in nature, then steps be taken to prefer a compliant case before the Judicial Magistrate concerned and if the offences are cognizable to proceed in accordance with law and register an FIR against the petitioners.

(MOHD YOUSUF WANI)  
JUDGE

(ATUL SREEDHARAN)  
JUDGE

SRINAGAR:  
18.12.2024  
ARIF

