



CNR: KAHC010310312012

NC: 2026:KHC:46024
WP No. 25761 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 25761 OF 2012 (GM-KSFC)

BETWEEN

1. SRI C K SELVARAJ
S/O LATE M.K.CHARAKUN
AGED ABOUT 55 YEARS,

2. SMT R RAMANI
W/O C.K.SELVARAJ
AGED ABOUT 48 YEARS,

BOTH ARE RESIDING AT NO.131,
8TH CROSS, SIDDIQUE NAGAR,
BANNIMANTAP,
MYSORE-570 015

...PETITIONERS

(BY SRI. M.R. VIJAYKUMAR., ADVOCATE)

Digitally signed
by SHWETHA
RAGHAVENDRA

Location: HIGH
COURT OF
KARNATAKA

AND

1. KARNATAKA STATE FINANCE CORPORATION
NO.13 & 13-1, 8TH MAIN ROAD,
KAMAKSHI HOSPITAL ROAD,
SARASWATHIPURAM, MYSORE-570 009
REPRESENTED BY ITS
ASSISTANT GENERAL MANAGER

2. S SARDAR ALI
S/O LATE HAJI.M.SHEK ABDUL KHADAR
AGED ABOUT 56 YEARS,
R/A NO.128, C LAYOUT, BANNIMANTAP
MYSORE-570 015



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3. K RAVINDRA PRABHU
DIRECTOR, M/S ULFTRA TECK (PVT) LTD
NO.B-7, HEBBAL INDUSTRIAL ESTATE,
METAGALLI, MYSORE-570 016

.... RESPONDENTS

(BY SRI. BIPIN HEGDE., ADVOCATE &
SRI VINAYA KUMAR G.S., ADVOCATE FOR R1;
SRI. V.B. SHIVAKUMAR., ADVOCATE FOR R2;
SRI. A.C. NARENDRA., ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE SALE OF BUILDING IN FAVOUR OF 2ND RESPONDENT UNDER SALE DEED DATED 15.4.2010 MARKED AS ANNEXURE-K AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 19.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:
CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioners are before this Court seeking for the following reliefs:

- i. *To issue a writ of certiorari quashing the sale of building in favour of 2nd Respondent under sale deed dated 15.4.2010 marked as Annexure-A*
- ii. *Issue a writ of certiorari quashing the sale of machineries in favour of 3rd Respondent on 8.4.2010 as per Annexure-L.*
- iii. *Issue such other directions or orders as this Hon'ble Court deems it fit to grant to the petitioners under the circumstance of the case.*



2. The petitioners are partners of a registered partnership firm, M/s. Spencer Metal Lamp Caps, engaged in the manufacture, purchase and sale of tungsten wire, films and allied products. For establishing and operating the said industrial unit, the firm availed financial assistance of Rs.65,65,623/- from Respondent No.1-Karnataka State Financial Corporation (for short, "KSFC") in the year 1996 by creating a mortgage over the land, building and other assets of the industrial unit.
3. According to the petitioners, although they initially serviced the loan by paying the instalments as agreed, the unit subsequently suffered financial setbacks on account of adverse market conditions, labour unrest and other commercial difficulties, resulting in defaults in repayment. Invoking its powers under Section 29 of the State Financial Corporations Act, 1951 (for short, "the SFC Act"), the KSFC took possession of the industrial unit in August 2000. It is contended that the unit remained under the custody of the KSFC from 2000 till 15.08.2004. During this period, the factory remained closed, depriving the petitioners of the opportunity to operate the business, while interest on the outstanding loan continued to accrue.



4. The petitioners state that possession of the unit was restored to them on 15.08.2004. However, by that time the machinery had allegedly deteriorated due to prolonged non-use and had become unfit for immediate commercial operation. In an attempt to revive the industry, the petitioners availed additional financial assistance from Canara Bank for repair and restoration of the machinery. Despite such efforts, the unit could not be revived successfully, resulting in defaults in repayment of the dues owed both to the KSFC and Canara Bank.
5. Consequently, the KSFC again invoked its powers under Section 29 of the SFC Act and resumed possession of the unit on 08.01.2010. Thereafter, it initiated proceedings for sale of the secured assets by public auction. According to the petitioners, the auction notification dated 08.03.2010 was issued without obtaining a proper valuation of the property or fixing a reserve price. Since the first auction did not attract any bidders, the property was again notified for auction on 22.03.2010. The petitioners contend that during this period they had submitted a proposal for a One-Time Settlement offering to pay a sum of Rs.50,00,000/-.



6. The petitioners contend that despite the said One-Time Settlement proposal, the KSFC proceeded with the auction and accepted a bid of Rs.40,00,000/-, which, according to them, was substantially lower than their offer. Aggrieved thereby, the petitioners instituted O.S. No.648/2010 seeking a declaration that the auction sale was illegal and contrary to the settled principles governing sale of secured assets. The suit came to be dismissed. The appeal preferred in R.A. No.430/2011 also met with dismissal. It is in the above background that the petitioners have instituted the present writ petition seeking the reliefs extracted hereinabove.
7. Sri M.R. Vijaya Kumar, learned counsel appearing for the petitioners, advanced the following submissions:
- 7.1. The petitioners had originally availed a loan of Rs.65,65,623/-. However, by the time the secured assets were brought to sale, the outstanding liability had escalated to Rs.10,63,55,966/-, substantially on account of accumulated interest. It is contended that the outstanding amount had become nearly fifteen times the principal amount originally borrowed,



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which, according to the learned counsel, was arbitrary and wholly disproportionate.

7.2. Learned counsel submitted that the petitioners had offered to settle the outstanding dues by making payment of Rs.50,00,000/- under a One-Time Settlement Scheme. Despite the said offer, the KSFC proceeded with the auction and accepted a bid of only Rs.40,00,000/-, thereby acting against its own financial interest and causing prejudice to the petitioners. It is further contended that no proper valuation of the secured assets was undertaken and no reserve price was fixed before the auction. According to the petitioners, these procedural lapses discouraged prospective purchasers from participating in the auction, resulting in the property being sold for a grossly inadequate consideration.

7.3. Learned counsel further submitted that the market value of the property as on the date of the auction was in excess of Rs.2,00,00,000/-. Had the KSFC obtained a proper valuation report and fixed an appropriate reserve price before conducting the auction, the property



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would have fetched a substantially higher price and the petitioners would not have suffered a loss of approximately Rs.1.60 crores. It is therefore contended that the auction sale stands vitiated by failure to adhere to the settled principles governing the sale of secured assets.

7.4. He relies upon the decision of Hon'ble Apex Court in ***Divya Manufacturing Co., Tirupati Wool ... vs Union Bank of India***,¹ more particularly para No. 9, 10, 11, 13 and 16 thereof, which are reproduced hereunder for easy reference;

9. The learned counsel for the appellant submitted that the order passed by the High Court setting aside the confirmed sale is on the face of it illegal and erroneous. He submitted that before confirmation of sale in favour of Divya all endeavours were made by the judges and finally the offer of appellant to purchase at Rs.1.30 crores was accepted and sale was confirmed. At that time, Jay-Respondent No.8 had not increased its offer of Rs.1.25 crores. Respondent No.7 was not permitted to bid as he did not comply with the requirements mentioned in the advertisement for sale and, therefore, on 2nd July, 1998 before commencement of auction sale, he was not permitted to participate in auction. It is, therefore, submitted that after the sale is confirmed, subsequent higher offer cannot

¹ AIR 2000 SC 2146



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constitute a valid ground for setting aside such confirmation. He referred to various decisions in support of his contention and submitted that once the sale was confirmed by the Court after applying its mind to all relevant considerations, it is not permissible to probe in retrospect and to accept subsequent offers by Jay or Sharma. He pointed out that as such initial valuation report fixed the value of the property at Rs.37 lakhs only. Thereafter the appellant raised its offer to Rs.85 lakhs and agreed to re-employ the workmen, so the learned Single Judge confirmed the sale in its favour. As the said order was challenged before the Division Bench, the Division Bench directed the Official Liquidator to conduct fresh sale and finally the highest offer of appellant of Rs.1.30 crores was accepted by the Court. In such a situation, the Division Bench wrongly relied upon the judgment of this Court in LICA (P) Ltd. v. Official Liquidator and Anr. [(1996) 85 Company Cases 788]. It is also submitted that after disposal of the appeal, the Division Bench became functus officio and therefore also it could not review its earlier order.

10. *As against this, learned counsel for the Respondents submitted that as the price offered by the appellant is grossly inadequate in comparison to the subsequent offers by Respondent Nos.7 and 8, the Court was justified in setting aside the sale.*

11. *In our view, on facts it is apparent that the Division Bench of the High Court has considered all the relevant facts including the fact that at the initial stage, the appellant Divya offered only Rs.37 lakhs to purchase the properties. That means, the appellant wanted to purchase at a throw away price. Thereafter, at the intervention of the Court, the price was increased to Rs.1.3 crores by the appellant. This indicates that appellant was keen to purchase the property, however by paying only the bare minimal*



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amount and to take advantage of sale by the liquidator in the hope that if there are no other purchasers, it would purchase the Company at a price which is abnormally below the market price. It is also true that on 2nd July 1998, the offer made by the appellant was accepted and it was ordered that sale in its favour be confirmed, but at the same time, before possession of the property could be handed over, or before the sale deed could be executed in its favour, Respondent Nos.7 and 8 pointed out that the assets and properties could be sold at Rs.2 crores. For showing their bona fides, they were directed to deposit Rs.40 lakhs each and also to pay Rs.70 thousand each as damages to the appellant. Further, the application for setting aside the sale was filed within a few days of the order accepting the bid of the appellant. In these set of circumstances, when correct market value of the assets was not properly known to the Court and the sale was confirmed at grossly inadequate price, it was open to the Court to set it at naught in the interest of the company, its secured and unsecured creditors and the employees. Appellant is also duly compensated by payment of Rs.70 thousand each by Respondent Nos.7 and 8.

13. *From the aforesaid observation, it is abundantly clear that the Court is the custodian of the interests of the Company and its creditors. Hence, it is the duty of the Court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. As stated above, in the present case, the sale proceedings have a chequered history. The appellant started its offer after having an agreement with the Employees Samity for Rs.37 lakhs. This was on the face of it under bidding for taking undue advantage of Court sale. At the intervention of the learned Single Judge, the bid was increased to Rs.85 lakhs. Subsequently, before the Division Bench, the appellant increased it to Rs.1.30 crores. At that stage,*



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Respondent No.7, Sharma was not permitted to bid because it had not complied with the requirements of the advertisement. It is to be stated that on 26th June, 1998, the Division Bench has ordered that offers of Eastern Silk Industries Ltd. and Jay Prestressed Products Ltd. would only be considered on 2nd July, 1998 and confirmation of sale would be made on the basis of the offers made by the two parties. Further, despite the fact that the appellant Divya had withdrawn its earlier offer, the Court permitted it to take part in making further offer as noted in the order dated 2nd July, 1998. In these set of circumstances, there was no need to confine the bid between three offerors only.

16. *Further, there is a specific condition No.11 in terms and conditions of sale as quoted above which empowers the Court to set aside the sale even though it is confirmed for the interests of creditors, contributories and all concerned and/or public interest. In this view of the matter, it cannot be said that the Court became functus officio after the sale was confirmed. As stated above, neither the possession of the property nor the sale deed was executed in favour of the appellant. The offer of Rs.1.30 crore is totally inadequate in comparison to the offer of Rs.2 crores and in case where such higher price is offered, it would be in the interest of the Company and its creditors to set aside the sale. This may cause some inconvenience or loss to the highest bidder but that cannot be helped in view of the fact that such sales are conducted in Court precincts and not by a business house well versed with the market forces and price. Confirmation of the sale by a Court at grossly inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of sale, could be set aside on the ground that it was not just and proper exercise of judicial discretion. In such cases, a meaningful intervention by the Court may prevent, to some extent, underbidding at the time of auction*



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through Court. In the present case, the Court has reviewed its exercise of judicial discretion within a shortest time.

7.5. By relying on the ***Divya Manufacturing*** case, he submits that the Hon'ble Supreme Court has held that a sale conducted under the supervision of a Court may be set aside notwithstanding its confirmation, if it is demonstrated that the property has been sold for a grossly inadequate price and that a substantially higher value could have been realised. The Hon'ble Supreme Court further observed that the Court acts as the custodian of the interests of the company, its creditors and all stakeholders, and is therefore under an obligation to ensure that the property is not sold for a grossly inadequate consideration.

7.6. Learned counsel contended that the same principle ought to govern the present case. According to him, the petitioners had offered **Rs.50,00,000/-** towards a One-Time Settlement, whereas the KSFC accepted a bid of only **Rs.40,00,000/-**. It is further contended that the market value of the property was in excess of **Rs.2 crores** and



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that, had a proper valuation been undertaken and an appropriate reserve price been fixed, the secured asset would have fetched a substantially higher consideration. He therefore submitted that the auction sale is liable to be interfered with on the ground that the consideration received was grossly inadequate, irrespective of whether any procedural irregularity or fraud in the conduct of the auction is established, as the Court is duty-bound to ensure that public sales of secured assets are conducted in a manner that secures the best possible price for the benefit of both the borrower and the secured creditor.

7.7. He relies upon the decision of Hon'ble Apex Court in ***M/s S.J.S. Business Enterprises (P) Ltd. v. State of Bihar***,² more particularly para No.15, 16, 17 and 18 thereof, which are reproduced hereunder for easy reference;

15. In this case, admittedly, the appellant has withdrawn the suit two weeks after the suit had been filed. In other words, the appellant elected to pursue its remedies only under Article 226. The pleadings were also complete before the High Court. No doubt, the interim order which was passed by the High Court was obtained when the

² AIR 2004 SC 2421



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suit was pending. But by the time the writ petition was heard the suit had already been withdrawn a year earlier. Although the appellant could not, on the High Court's reasoning, take advantage of the interim order, it was not correct in rejecting the writ petition itself when the suit had admittedly been withdrawn, especially when the matter was ripe for hearing and all the facts necessary for determining the writ petition on merits were before the Court, and when the Court was not of the view that the writ petition was otherwise not maintainable.

16. *As the issue of suppression was the only ground on which the High Court has rejected the appellant's plea for relief, we would ordinarily have set aside the order of the High Court in view of our finding and remanded back to the High Court for decision of the matter on merits. But the matter has been argued on merits before us and we are in a position to dispose of the matter which we accordingly proceed to do. We are of the view that the sale effected in favour of Respondent 6 cannot be sustained. It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probabalise the abuse of that power. In such event it is for the officer concerned to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the court can assume that the impugned action was improper. (See Pannalal Binjraj v. Union of India [AIR 1957 SC 397] , AIR at p. 409.) Doubtless some of the restrictions placed on State financial corporations exercising their powers under Section 29 of the State Financial Corporations Act, as prescribed in Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279] are no longer in place in view of the subsequent decision in Haryana Financial Corpn. v. Jagdamba Oil Mills*



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[(2002) 3 SCC 496]. However, in overruling the decision in Mahesh Chandra [(1993) 2 SCC 279] this Court has affirmed the view taken in Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd. [(1995) 4 SCC 595] and said that in the matter of sale under Section 29, State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold. "This can be achieved only when there is a maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price." (SCC p. 601, para 12)

17. *Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subject-matter of sale is of such a nature which requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on "as-is-where-is basis" to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required.*

19. *In this case, the first notice of sale was given on 31-1-2002. A period of about four weeks was given to the purchasers to submit their offers by 28-2-2002. The period of four weeks can therefore be taken to be the ordinary norm. But when the second impugned notice of sale was given on 26-3-2002, less than three days were given to the purchasers to inspect the premises, make necessary arrangements and submit their offers to BICICO. Of these three days, two were public holidays when banks would have also been shut.*



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The period of notice was, in the circumstances, entirely inadequate. Besides, we have not been told the reason for this unusual haste. Such precipitate action was not called for unless there were some other considerations weighing with the authorities, considerations which have not been disclosed to the Court.

7.8. By relying on the ***SJS Business Enterprise*** case, he submits that the Hon'ble Supreme Court has held that while exercising statutory powers under Section 29 of the State Financial Corporations Act, 1951, a State Financial Corporation is required to act bona fide, fairly and reasonably. The dominant consideration governing a sale under Section 29 is that the secured asset should realise the best possible price. The Hon'ble Supreme Court has further observed that such an objective can ordinarily be achieved only through maximum public participation, adequate publicity of the sale and by affording intending purchasers a reasonable opportunity to inspect the property, arrange the necessary finances and submit competitive bids.

7.9. Placing reliance on the aforesaid principles, learned counsel contended that the auction conducted by the KSFC did not satisfy the test



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of fairness and reasonableness laid down by the Hon'ble Supreme Court. According to him, the absence of a proper valuation, failure to fix a reserve price and the manner in which the auction was conducted prevented effective participation by prospective purchasers, with the result that the property failed to fetch its true market value. He therefore submitted that the sale, having been conducted in a manner inconsistent with the principles governing the exercise of powers under Section 29 of the State Financial Corporations Act, is liable to be set aside.

7.10. He relies upon the decision of Hon'ble Apex Court in **Gajraj Jain v. State of Bihar**,³ more particularly para No.10, 11, 13, 14 and 15 thereof, which are reproduced hereunder for easy reference;

10. *The above section has been interpreted by this Court in several matters. In the case of S.J.S. Business Enterprises (P) Ltd. v. State of Bihar [(2004) 7 SCC 166 : (2004) 3 Scale 374] the Division Bench of this Court, to which one of us (Ruma Pal, J.) was a party, while setting aside the impugned sale, observed that: (SCC pp. 175-76, paras 17-18)*

³ (2004) 7 SCC 151



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"17. ... It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probabalise the abuse of that power. In such event it is for the officer concerned to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the court can assume that the impugned action was improper (see *Pannalal Binjraj v. Union of India* [AIR 1957 SC 397] , AIR at p. 409.) Doubtless some of the restrictions placed on State financial corporations exercising their powers under Section 29 of the State Financial Corporations Act, as prescribed in *Mahesh Chandra v. Regional Manager, U.P. Financial Corpn.* [(1993) 2 SCC 279] are no longer in place in view of the subsequent decision in *Haryana Financial Corpn. v. Jagdamba Oil Mills* [(2002) 3 SCC 496] . However, in overruling the decision in *Mahesh Chandra* [(1993) 2 SCC 279] this Court has affirmed the view taken in *Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd.* [(1995) 4 SCC 595] and said that in the matter of sale under Section 29, the State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold.

'This can be achieved only when there is a maximum public participation in the process of



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sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price.’ (SCC p. 601, para 12)

18. Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subject-matter of sale is of such a nature which requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on ‘as-is-where-is basis’ to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required.”

11.*In the light of the aforestated judgment of this Court, the issue which arises for determination is — whether Respondent 2 Corporation acted reasonably and in accordance with Section 29 of the 1951 Act in transferring the assets of the Company on 19-3-2002 and in entering into agreement for sale with Respondent 4 on 26-4-2002. As stated above, Respondent 2 Corporation had a paramount first charge on the assets of the flour mill whereas Central Bank of India had the second charge thereon. There is a difference between a charge and a mortgage. In the case of a charge under Section 100 of the TP Act, there is no transfer of interest in the property. A charge is not a jus in rem. It is jus ad rem. It creates a right of payment out of the property/fund charged with the debt or out of proceeds of the realisation of such property, a*



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phrase used in Section 29(1) of the 1951 Act. A charge as defined under Section 100 of the TP Act may be enforced by sale [See Mulla: Civil Procedure Code (15th Edn.), p. 2420]. We have discussed the concept of charge as it has a direct bearing on the interpretation of Section 29 of the 1951 Act.

13. *In the present case, it is not in dispute that the assets of the flour mill were charged. The first charge was in favour of the Corporation; whereas the second was in favour of Central Bank of India. Under Section 29(1), the Corporation while enforcing the first charge was required to put the assets charged with the debt to sale and apply the sale proceeds in the manner stated in Section 29(4). But before doing so, it is imperative to have the assets proposed to be sold, valued. In breach of sub-sections (1) and (4) of Section 29, after putting the assets to sale by public auction the Corporation enters into an agreement for sale of the assets with Respondent 4 without ascertaining the market value and realising the sale proceeds for distribution. The assets are agreed to be sold for Rs 198.85 lakhs merely by adding the corporation dues and the claim of Central Bank of India. Even this sale consideration is not realised in full. The Corporation accepts downright payment of Rs 28.85 lakhs (its own dues) and the balance of Rs 170 lakhs is received by it in the form of a promise to it by Respondent 4 to pay the dues of Central Bank of India, which is not even a party to the arrangement. According to Kanga and Palkhiwala: Law and Practice of Income Tax (8th Edn., p. 47), a promise to pay the debt at a future date is no realisation. In the case of M.C. Chacko v. State Bank of Travancore [(1969) 2 SCC 343] it has been held by this*



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Court, that a mere undertaking to discharge an obligation or liability of the debtor may at the highest amount to indemnity, however, it is not enough to charge the property/fund with the debt. Further, according to Mulla and Pollock: Contract Act (12th Edn., p. 106), contracting parties may confer rights or benefits upon a third party in the form of promise to pay but the third party on whom such right or benefit is conferred by the contract cannot sue under it. Lastly, as stated above, a charge cannot be enforced against a bona fide purchaser for value (See Ghose: Law of Mortgage, p. 127). In the case of Subbu Chetti v. Arunachalam Chettiar [AIR 1930 Mad 382 : ILR 53 Mad 270 (FB)] it has been held that when a person transfers property to another and stipulates for payment by the purchaser to a third person, a suit by such person to enforce the stipulation will not lie. In the present case, there is no sale for distribution of sale proceeds in terms of Section 29(1). There is no realisation of the property, charged with debt, in terms of sub-sections (1) and (4) of Section 29 of the Act. The interest of Central Bank of India and the mortgagor is totally defeated by the impugned arrangement between Respondents 2 and 4. The words "realisation of the property pledged, mortgaged, hypothecated" presuppose realisation of sale proceeds and application/appropriation thereof to liquidate the dues of the paramount charge-holder and from the surplus payment to person(s) entitled thereto. It is for this reason that the best possible price has got to be tried for under Section 29 of the Act. In the circumstances, we hold that the impugned agreement of sale as well as the transfer of assets in favour of Respondent



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4 are in breach of Section 29(1) and Section 29(4) of the 1951 Act.

14. *In the present case, it has been urged that absence of valuation report and the reserve bid does not vitiate the sale. We do not find merit in this argument. In the case of S.J.S. Business Enterprises (P) Ltd. [(2004) 7 SCC 166 : (2004) 3 Scale 374] it has been held that the financial corporation, in the matter of sale under Section 29, must act in accordance with the statute and must not act unreasonably. In this case, the Corporation fails on both the counts. It has neither complied with the provisions of sub-sections (1) and (4) of Section 29, nor has it acted fairly. The test of reasonableness has been laid down in the above judgment in which it is held that reasonableness is to be tested against the dominant consideration to secure the best price. Value or price is fixed by the market. In the case of a going concern, one has to value the assets shown in the balance sheet (Datta, S.: Valuation of Real Property, p. 198). In our view, if the object of Section 29 of the Act is to obtain the best possible price then the Corporation ought to have called for the valuation report. This has not been done. There is no inventory of assets produced before us. The mortgaged assets of the Company could be sold on itemised basis or as a whole, whichever is found on valuation to be more profitable. No particulars in that regard have been produced before us. If publicity and maximum participation is to be attained then the bidders should know the details of the assets (or itemised value). In the absence of the proper mechanism the auction-sale becomes only a pretence. Further, in this case, the Corporation advanced Rs 90 lakhs to the*



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Company. At that time, it must have valued the assets. No such report has been produced. Lastly, in this case, the price of the assets is pegged to the dues of the Corporation and Central Bank of India. The assets are agreed to be sold to Respondent 4 not for the market price but against repayment of dues of the Corporation plus a promise to discharge the liability of Central Bank of India. Therefore, the Corporation, Respondent 2, has not acted reasonably. It has not taken any steps to secure the best price. In fact it has failed to protect the interest of Central Bank of India, which is having the second charge on the assets transferred to Respondent 4 as well as the mortgagor which would be entitled to the balance of the sale proceeds, if any. It was contended that as the bids were withdrawn, the offer of Respondent 4 was accepted. Even assuming for the sake of argument, that there were no offers except the offer of Respondent 4, it shows that value of the assets was Rs 198.85 lakhs (i.e. Rs 28.85 lakhs + Rs 170 lakhs). No reason has been given why Respondent 2 did not insist on downright payment of Rs 198.85 lakhs.

15. *In addition to the vitiating circumstances enumerated above, we find that under the public notice dated 22-2-2002, tenders were invited. They were to be submitted by 21-3-2002. Under the said notice, the tenders were to be opened on 22-3-2002. The takeover of assets is on 18-3-2002. However, on 19-3-2002, the Corporation hands over the assets to Respondent 4 against down payment of Rs 28.85 lakhs plus promise to the Corporation that the purchaser undertakes to pay the dues of Central Bank of India. A part of the amount of Rs 28.85 lakhs was paid by*



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demand drafts dated 9-3-2002. These circumstances indicate collusion between Respondent 2 Corporation, Respondent 3 and Respondent 4. The takeover of assets is ordered on 18-3-2002 and on 19-3-2002, the assets are handed over to Respondent 4 against down payment of Rs 28.85 lakhs in demand drafts dated 9-3-2002. Under Section 29(1) of the Act, the Corporation is entitled to sell or lease the assets in order to realise the pledged/hypothecated or mortgaged property. Under what colour of title were the assets handed over to Respondent 4 on 19-3-2002? Was it under sale, lease or repayment of loan? There is no explanation as to how Respondent 4 could have drawn demand drafts in favour of the Corporation on 9-3-2002 when their offer to purchase was on 17-3-2002. It is alleged on behalf of Respondent 4 that they were given the assets with a specific understanding of return of property if a higher offer was received in the auction. No such understanding is recited in the minutes of the Tender Committee nor in the recitals in the impugned agreement dated 26-4-2002. We do not find any resolution/minutes of the Board of Directors of the Corporation in that regard. In the agreement dated 26-4-2002, it has been recited that Rs 90 lakhs were advanced as loan in 1988 by the Corporation to the Company against equitable mortgage of land and assets. Under Section 60 of the TP Act, equity of redemption existed in favour of the Company. A mere agreement for sale of assets cannot extinguish the equity of redemption; it is only on execution of conveyance that the mortgagor's right of redemption will be extinguished. (See Mulla: Transfer of Property Act, p. 794.) In the present case, till today there is no conveyance



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and, therefore, on 21-3-2002 when the appellant herein paid Rs 28.85 lakhs to the Corporation representing its full dues, there was complete liquidation of the dues of the Corporation and yet the Corporation did not return the assets to the Company and arbitrarily and for extraneous reasons adjusted the said amount to the account of M/s Aditya Flour Mills. The reason is obvious. The Corporation intended to sell the assets only to Respondent 4 for a paltry amount of Rs 28.85 lakhs. It has been repeatedly urged before us, on behalf of Respondent 4, that the assets in question were not worth Rs 10 crores as alleged by the appellant. Even if we assume that Respondent 4 is right in its submission, even then, in terms of the offer of Respondent 4, the property was worth Rs 198 lakhs. But the Corporation handed over the assets and agreed to sell them against down payment of Rs 28.85 lakhs. No reason has been given by the Corporation as to why it did not insist on the full payment of Rs 198.85 lakhs. Be that as it may, the appellant herein cleared the dues of the Corporation on 21-3-2002, before opening of tenders on 22-3-2002, and yet the Corporation did not return the assets to the Company. Even the tender money deposited by the appellant was returned without any demand from the appellant so that it could be argued by the Corporation that the appellant had withdrawn from the auction and therefore the offer of Respondent 4 was accepted. In fact, the document at p. 186 shows that the appellant refused to collect the earnest money and, therefore, the amount was kept by the Corporation in a separate account. Lastly, in the case of Narandas Karsondas v. S.A. Kamtam [(1977) 3 SCC 247 : AIR 1977 SC 774] it has been held that putting of property to



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auction does not extinguish the right of redemption. Therefore, on 21-3-2002, the Company had a right to redeem the assets. It was submitted that the appellant intended to buy the assets in his own name. We do not find merit in this argument. The record shows that the appellant as the Director of the Company offered to clear the dues of the Corporation for which he insisted on the return of the title deeds (transfer papers) of M/s Katihar Flour Mills. In any event, in this case, we are concerned with the conduct of the Corporation which was required to act in accordance with Section 29 of the 1951 Act and not unreasonably. In this connection, it may further be pointed out that under the public notice inviting tenders, the Corporation was obliged to call for matching offers from the Directors/promoters/guarantors. The Corporation did not call for such offers as its object was to keep out all counter-offers. Lastly, we are satisfied that the impugned agreement dated 26-4-2002 has been entered into without any consideration in favour of Central Bank of India. In conclusion, we may state that in the present case, Respondent 2 Corporation has misused its authority and power in breach of law by taking into account extraneous matters and by ignoring relevant matters which has rendered all its acts ultra vires. [See Express Newspapers (P) Ltd. v. Union of India [(1986) 1 SCC 133 : AIR 1986 SC 872] AIR para 118.]

7.11. By relying on the **Gajraj Jain** case, he submits that the Hon'ble Supreme Court has reiterated the principles governing the exercise of powers under Section 29 of the State Financial



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Corporations Act, 1951. It has been held that while enforcing its security interest, the Financial Corporation is under a statutory obligation to act fairly, transparently and reasonably, with the paramount objective of securing the best possible price for the secured asset. The Hon'ble Supreme Court has further emphasised that obtaining a proper valuation of the property before sale is imperative and that the Corporation must adopt a procedure which ensures adequate publicity, meaningful competition amongst bidders and realisation of the true market value of the assets. The judgment further holds that where the sale is conducted without proper valuation, without fixing an appropriate reserve price, or in a manner suggestive of arbitrariness, favouritism or collusion, the sale would be vulnerable to judicial review and liable to be set aside.

7.12. Placing reliance on the aforesaid decision, learned counsel contended that the auction conducted by the KSFC suffers from the very infirmities noticed by the Hon'ble Supreme Court in **Gajraj Jain**. According to him, the Corporation neither obtained a proper valuation



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of the secured assets nor fixed a reserve price before proceeding with the auction. These omissions, according to the learned counsel, prevented the property from fetching its true market value and resulted in substantial prejudice to the petitioners. He therefore submitted that, in view of the law declared by the Hon'ble Supreme Court, the impugned sale is vitiated for non-compliance with the mandatory standards of fairness and reasonableness governing the exercise of powers under Section 29 of the State Financial Corporations Act, 1951.

7.13. He relies upon the decision of Hon'ble Apex Court in **FCS Software Solutions Ltd. v. La Medical Devices Ltd.**,⁴ more particularly para No.28 to 36 and 37 thereof, which are reproduced hereunder for easy reference;

28. *Having heard the learned counsel for the parties, in our opinion, no case has been made out by the appellant against the order passed by the High Court. From the facts stated above, it is clear that in November 2004, the bid of the appellant was highest and was accepted by the Official Liquidator. But it is also clear that certain facts which were necessary to be brought to the*

⁴ (2008) 10 SCC 440



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notice of intending purchasers were not set out in the proclamation of sale nor were disclosed at the time of sale notice. They related to valuation of movable and immovable properties, fixation of reserve price, non-inventory of plant and machinery, etc. The attention of the Company Judge was invited by other bidders by filing company applications. The Company Judge considered the objections and having prima facie satisfied himself, ordered fresh auction. We find no illegality in the said approach. When fresh bids were received, it was found that the highest offer was of Respondent 3 Society which was of Rs 3.5 crores. The Company Judge extended an opportunity to the appellant to raise its bid. It, however, appears that the appellant was adamant to get the property for Rs 1.47 crores on the ground that the said offer was highest and all the proceedings taken by the Official Liquidator and the Company Judge thereafter were totally illegal and unlawful. In our opinion, the Respondents are right that in such cases the approach of the Company Judge should be to get highest price so as to satisfy the maximum claims against the company in liquidation. The procedure followed by the Company Judge, therefore, cannot be said to be illegal.

29. *It may be observed at this stage that even before the Division Bench such opportunity was afforded to the appellant to raise its bid but it was not availed of by the appellant. The Division Bench, in the impugned order, noted:*

"Even during the course of proceedings in this appeal, we had specifically asked the learned counsel for the appellant as to whether the appellant was willing to go for inter se bidding to which he flatly declined."



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30. *In this connection, we may refer to some of the decisions of this Court to which our attention has been invited.*

31. *In Navalkha & Sons v. Ramanya Das [(1969) 3 SCC 537] it was held by this Court that the principles which should govern confirmation of sale are well settled. Where the acceptance of the offer by the commission is subject to confirmation of the court, mere acceptance of offer by the commission would not confer vested right to the property in favour of the bidder. Condition of confirmation by court operates as a safeguard against the property being sold at an inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. It is the duty of the court to satisfy itself about the proper valuation. But once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received.*

32. *In Kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd. [(1974) 2 SCC 213] this Court held that it is the duty of the court to accept the highest bid and the court is not bound to go on adjourning the sale on the basis of valuation report. Referring to and relying on Navalkha [(1969) 3 SCC 537] , the Court stated that in public sales, the authority must protect interest of the parties keeping in view the fact that a court sale is a forced sale and, notwithstanding the competitive element of public auction, the best price is not often forthcoming.*



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33. *In Union Bank of India v. Official Liquidator [(2000) 5 SCC 274] this Court observed that in auction-sale of the property of the company which is ordered to be wound up, the Company Court acts as a custodian for the interest of the company and its creditors. It is the duty of the Company Court to satisfy itself as to reasonableness of price by disclosing valuation report to secured creditors of the company and other interested persons. It was further held that the Court should exercise judicial discretion to ensure that sale of property should fetch adequate price. For deciding what would be reasonable price, valuation report of an expert is essential. The Company Judge himself must apply his mind to the valuation report. The Court observed that the High Court did not interfere with the auction-sale on the ground of sympathy for the workers which was not proper. The auction-sale was, therefore, set aside by this Court and the Official Liquidator was directed to resell the property after obtaining fresh valuation report and after furnishing copy of such report to secured creditors.*

34. *In Divya Manufacturing Co. (P) Ltd. v. Union Bank of India [(2000) 6 SCC 69] this Court held that even a confirmed sale can be set aside. In that case, the highest bid by a party was accepted by the Court and the sale was confirmed, but before possession was delivered to the auction-purchaser and the execution of the sale deed, other parties offered much higher price. The High Court required the subsequent bidders to deposit an amount of 25% which was done. Considering the facts in their entirety, the High Court set aside the confirmation of past highest bid. The said action was challenged in this Court. This Court held that in an appropriate*



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case, even confirmed sale can be set aside. The Court in this connection, relied upon earlier two decisions in LICA (P) Ltd. (1) v. Official Liquidator [(2000) 6 SCC 79 : (1996) 85 Comp Cas 788] and LICA (P) Ltd. (2) v. Official Liquidator [(2000) 6 SCC 82 : (1996) 85 Comp Cas 792] .

35. *The learned counsel for the appellant is no doubt right in submitting that in Divya [(2000) 6 SCC 69] there was a specific condition (Clause 11) which empowered the Court to set aside confirmed sale "in the interest of creditors, contributors and all concerned and/or in public interests". But the Court put the matter on principle and stated: (SCC p. 78, para 13)*

"13. ... it is the duty of the court to see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud."

(emphasis supplied)

It proceeded to observe: (SCC p. 79, para 16)

"16. ... Confirmation of the sale by a court at a grossly inadequate price, whether or not it is a consequence of any irregularity or fraud in the conduct of sale, could be set aside on the ground that it was not just and proper exercise of judicial discretion. In such cases, a meaningful intervention by the court may prevent, to some extent, underbidding at the time of auction through court."

(emphasis supplied)

36. *In Gajraj Jain v. State of Bihar [(2004) 7 SCC 151] this Court reiterated that in absence of valuation report and reserve price, the auction-sale becomes only a pretence. If there is no proper mechanism and if the intending*



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purchasers are not able to know details of the assets or itemised valuation, auction-sale cannot be said to be in accordance with law. If publicity and maximum participation is to be attained, all bidders must know the details of the assets and the valuation thereof.

37. *In the present case, it was alleged that there were several irregularities in the first auction. The tender notice did not state valuation of movable and immovable property; reserve price was not fixed, inventory of plant and machinery was not made available, etc. If on consideration of these facts, the Company Judge ordered fresh auction, in our considered opinion, no complaint can be made against such action.*

7.14. By relying on the **FCS Software Solutions** case, he submits that the Hon'ble Supreme Court has reiterated the settled principles governing judicial scrutiny of auction sales. It has been held that where material particulars such as the valuation of the movable and immovable assets, fixation of reserve price, inventory of plant and machinery and other relevant details are either not disclosed or not made available to prospective purchasers, the Court would be justified in directing a fresh auction in order to secure the highest possible price. The Hon'ble Supreme Court further observed that the Court acts as the custodian



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of the interests of the company and its creditors and is required to exercise its discretion to ensure that the sale of assets fetches an adequate and fair price. The judgment also reiterates that, in appropriate cases, even a confirmed sale may be set aside where the sale is shown to have been concluded at a grossly inadequate price or where the auction process suffers from material irregularities affecting its fairness.

7.15. Placing reliance on the aforesaid principles, learned counsel contended that the impugned auction cannot be sustained. According to him, no proper valuation report was obtained, no reserve price was fixed and no adequate particulars regarding the assets were made available to prospective purchasers, thereby depriving the auction of meaningful competition. He submitted that these deficiencies resulted in the secured assets being sold for a price substantially below their true market value. It was therefore contended that, applying the principles laid down by the Hon'ble Supreme Court, the impugned sale is liable to be set aside as the Corporation failed to adopt a



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procedure reasonably designed to secure the best possible price for the secured assets.

7.16. He relies upon the decision of Hon'ble Apex Court in **Swastik Agency v. State Bank of India, Bhubaneswar**,⁵ more particularly para No.17, 18, 19, 20, 28 and 76 thereof, which are reproduced hereunder for easy reference;

17. *The word 'value' means intrinsic worth or cost or price for sale of a thing/property (vide Union of India v. Bombay Tyre International Ltd.(1984) 1 SCC 467 : (AIR 1984 SC 420) and Gurbachan Singh v. Shivalak Rubber Industries, AIR 1996 SC 3057).*

18. *In State of U.P. v. Shiv Charan Sharma, AIR 1981 SC 1722, the Supreme Court explained the meaning of "reserve price" explaining that the price with which the public auction starts and the auction bidders are not permitted to give bids below the said price, i.e. the minimum bid at auction.*

19. *In Anil Kumar Srivastava v. State of U.P., AIR 2004 SC 4299, the Hon'ble Apex Court considered the scope of fixing the reserve price and placing reliance on its earlier judgment in Duncans Industries Ltd. v. State of U.P., AIR 2000 SC 355, explained that reserve price limits the authority of the auctioneer. The concept of the reserve price is not synonymous with valuation of the property. These two terms operate in different spheres. An invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. The valuation is a question of fact, it should be fixed on relevant*

⁵ AIR 2009 Ori 147



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material. The difference between the 'valuation' and 'reserve price' is that, fixation of an upset price may be an indication of the probable price which the property may fetch from the point of view of intending bidders. Fixation of the reserve price does not preclude the claimant from adducing proof that the land had been sold for a low price.

20. *In view of the above, it is evident that there must be application of mind by the authority concerned while approving/accepting the report of the approved valuer and fixing the reserve price, as the failure to do so may cause substantial injury to the borrower/guarantor and that would amount to material irregularity and ultimately vitiate the subsequent proceedings.*

28. *Thus, in view of the above, it is evident that law requires a proper valuation report, its acceptance by the authority concerned by application, of mind and then fixing the reserve price accordingly and accept the auction bid taking into consideration that there was no possibility of collusion of the bidders. The authority is duty bound to decide as to whether sale of part of the property would meet the outstanding demand. Valuation is a question of fact and valuation of the property is required to be determined fairly and reasonably.*

76. *In view of the above, the writ petition succeeds and is allowed. All proceedings subsequent to notice under Section 13 (4) of the Act, 2002 being in flagrant violation of the statutory provisions are liable to be quashed. The case is squarely covered by the judgments of the Apex Court referred to above in Dr. Rajbir Singh Dalai, 2008 AIR SCW 5817 (supra), Divya Manufacturing Company (P) Ltd., AIR 2000 SC 2346 (supra) and Valji Khimji and Company, 2008 AIR SCW 5828 (supra), wherein the Apex Court held that not giving wide publication of the auction notice itself is a good ground for quashing*



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the confirmed sale. In such a fact situation opposite party No. 4 is entitled to refund of the amount deposited by him. The opposite party-Bank shall refund the amount deposited by opposite party No. 4 with interest @ 10% per annum to him within four weeks from today. Opposite party No. 1 is directed to recalculate the amount due from the petitioner including interest thereon and issue a fresh demand notice to be served upon the petitioner within four weeks from today. We further direct that as the opposite party-bank proceeded illegally, it is not entitled to claim for legal expenses or recovery expenses from the petitioner. On receipt of the recomputed demand from the bank, the petitioner shall deposit the same within four weeks from the date of receipt failing which the bank shall be at liberty to proceed against the petitioner for making full recovery of its outstanding dues in accordance with law.

No costs.

- 7.17. By relying on the **Swastik Agency** case, he submits that the distinction between valuation of a property and fixation of a reserve price is well recognised in law. According to him, valuation is intended to ascertain the fair market value of the property on the basis of relevant material, whereas the reserve price is the minimum price below which the property ought not to be sold. It was submitted that the authority conducting the sale is required to obtain a valuation report from a competent valuer, apply its independent mind to such



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valuation and thereafter fix an appropriate reserve price before proceeding with the auction. Failure to adhere to these requirements, according to the learned counsel, constitutes a material irregularity, as it is likely to result in the secured asset being sold for a price substantially below its market value, thereby causing prejudice to the borrower as well as the secured creditor.

7.18. On the strength of the principles laid down by the Hon'ble Supreme Court in ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, Gajraj Jain v. State of Bihar, Divya Manufacturing Co. (P) Ltd. v. Union Bank of India*** and ***FCS Software Solutions Ltd. v. La Medical Devices Ltd.***, learned counsel submitted that the KSFC failed to adopt a fair, transparent and reasonable procedure while exercising its powers under Section 29 of the State Financial Corporations Act, 1951. According to him, the absence of a proper valuation, failure to fix an appropriate reserve price and the consequent failure to secure adequate public participation resulted in the property being sold for a grossly inadequate



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consideration. He therefore contended that the impugned auction sale is liable to be set aside as being contrary to the principles governing sales conducted by statutory financial corporations.

7.19. He relies upon the decision of Hon'ble Apex Court in ***Rakesh Kumar Goel v. U.P. State Industrial Development Corpn. Ltd.***,⁶ more particularly para No.17(v) thereof, which is reproduced hereunder for easy reference

17. (v) No reserve price for the plots in question was indicated either in the sale proclamations or even in the memos of auction.

7.20. He relies upon the decision of Hon'ble Apex Court in ***Kerala Financial Corpn. v. Vincent Paul***,⁷ more particularly para No.11, 20 and 21 thereof, which are reproduced hereunder for easy reference;

11. Though these details have been furnished by the counsel for KFC during the course of hearing, the fact remains that the State Government has not framed rules or guidelines for sale of public properties by way of tender or auction. KFC is incorporated under Section 3 of the Act. Section 29 of the Act empowers KFC to attach and sell the security in discharge of debts. It gives KFC the right

⁶ AIR 2010 SC 2451

⁷ (2011) 4 SCC 171



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to take over possession of the security offered while taking the loan and the right to transfer/sell the same as if KFC is the owner. The money acquired after such transfer/sale of the secured property shall be used in discharge of debts due to KFC including all expenses incurred by it. The residue amount, if any, is to be paid to the person entitled. Section 31 of the Act also provides the same remedy but the procedure goes through the District Judge. In terms of this section, KFC has to apply to the District Judge in whose jurisdiction the property may lie for an order of sale. However, Section 29 provides for speedy recovery. The procedure of attachment and sale of property though available under the Code of Civil Procedure, 1908, it shall apply only when there is a decree at the instance of any of the parties. In the present case, KFC had not proceeded through the civil court but has taken independent action under Section 29 of the Act.

20. *We have already concluded that the decree for specific performance granted by the High Court cannot be sustained. We also observed in the earlier part of our judgment that though KFC has initiated proceedings under Section 29 of the Act, admittedly, the State has not framed rules or guidelines in the form of executive instructions for sale of properties owned by them. Till such formation of rules or guidelines or orders as mentioned above, we direct KFC to adhere to the following directions for sale of properties owned by it:*

(i) The decision/intention to bring the property for sale shall be published by way of advertisement in two leading newspapers, one in vernacular language having sufficient circulation in that locality.

(ii) Before conducting sale of immovable property, the authority concerned shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the



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whole or any part of such immovable secured asset by any of the following methods:

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or*
- (b) by inviting tenders from the public; or*
- (c) by holding public auction; or*
- (d) by private treaty.*

Among the above modes, inviting tenders from the public or holding public auction is the best method for disposal of the properties belonging to the State.

(iii) The authority concerned shall serve to the borrower a notice of 30 days for sale of immovable secured assets.

(iv) A highest bidder in public auction cannot have a right to get the property or any privilege, unless the authority confirms the auction-sale, being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. It becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price.

(vi) The essential ingredients of sale are correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them.



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(vii) Reserve price means the price with which the public auction starts and the auction-bidders are not permitted to give bids below the said price i.e. the minimum bid at auction.

(viii) The debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the debtor suffers substantial injury by the sale.

21. *In view of our discussion and conclusion, we are satisfied that KFC has not strictly followed the above procedure in bringing the property for sale. Accordingly, we set aside the judgment and order passed by the High Court granting decree for specific performance in favour of Vincent Paul and all other sale transactions either in the form of tender or auction in respect of the property in question. We direct KFC to first issue the advertisement calling for tenders by way of public auction by following the directions mentioned above. Before resorting to such recourse, if KFC has accepted any deposit from any of the parties by way of tender or bid, the same shall be returned within a period of 30 days to the respective parties with simple interest @ 9% p.a. from the date of such deposit till it is repaid to the parties concerned.*

7.21. By relying on the ***Vincent Paul*** case, he submits that the Hon'ble Supreme Court has prescribed the procedural safeguards to be observed by State Financial Corporations while exercising their powers under Section 29 of the State Financial Corporations Act, 1951. It has been held that, prior to the sale of an immovable secured asset, the Corporation



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should obtain a valuation report from an approved valuer, fix an appropriate reserve price based upon such valuation and ensure adequate publicity so as to secure maximum public participation. The Hon'ble Supreme Court further observed that the paramount consideration in any such sale is the realisation of the best possible price for the secured asset and that confirmation of the auction should follow only after the authority is satisfied that the property has fetched an appropriate price and that the auction process is free from collusion or other irregularities.

7.22. Relying on the aforesaid decision, learned counsel submitted that the KSFC failed to adhere to the safeguards mandated by the Hon'ble Supreme Court. According to him, no proper valuation of the secured assets was obtained, no reserve price was fixed and the auction was conducted without adopting a procedure capable of securing the best possible price. He further contended that the Corporation could not have confirmed the sale without first satisfying itself that the consideration offered represented the fair



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market value of the property and that the auction process was fair and transparent. It was therefore submitted that the impugned sale is liable to be set aside for non-compliance with the principles governing the exercise of powers under Section 29 of the State Financial Corporations Act, 1951.

7.23. He relies upon the decision of Hon'ble Apex Court in **Anita Sadana v. Baljinder Kaur**,⁸ more particularly para No.12, 13, 16, 17 and 18 thereof, which are reproduced hereunder for easy reference;

12. *In the matter of Kerala Finance Corporation v. Vineet Paul, (2011) 4 SCC 171 : (AIR 2011 SC 1388), the State has not made rules for sale of property. Hon'ble Apex Court has issued guidelines for sale of property. The guideline IV to VIII are as under:*

(iv) A highest bidder in public auction cannot have a right to get the property or any privilege, unless the authority confirms the auction-sale, being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an

⁸ AIR 2014 MP 125



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opportunity of making an offer. It becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price.

(vi) The essential ingredients of sale are correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them.

(vii) Reserve price means the price with the public auction starts and the auction-bidders are not permitted to give bids below the said price i.e. the minimum bid at auction.

(viii) The debtor should be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the debtor suffers substantial injury by the sale.

From the aforesaid guidelines, it is evident that before sale of the property is confirmed the valuation report has to be taken and all endeavours should be made before confirming the auction sale that the property has fetched the best price.

13. *In Navalkha and Sons v. Sri Ramanya Das, (1969) 3 SCC 537 : AIR 1970 SC 2037, the Apex Court while dealing with the confirmation of sale by Court held that there must be a proper valuation report, which should be communicated to the judgment-debtor and he should file his own valuation report and the sale should be conducted in accordance with law and after confirmation of sale and issuance of sale certificate. Court cannot interfere unless it is found that some material irregularity in the conduct of sale has been committed. The Court further held that it should not be a forced sale. A valuer's report should be as good as the actual offer and the variation should be*



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within limit. Such estimate should be done carefully. The Court further held as under:

"The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion....".

16. *In Anil Kumar Shrivastava v. State of U.P., (2004) 8 SCC 671 : AIR 2004 SC 4299, the Hon'ble Apex Court considered the scope of fixing the reserve price and placing reliance on its earlier judgment in Duncans Industries Ltd. v. State of U.P., (2000) 1 SCC 633 : AIR 2000 SC 355, explained that reserve price limits the authority of the auctioneer. The concept of the reserve price is not synonymous with valuation of the property. These two terms operate in different spheres. An invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. The valuation is a question of fact, it should be fixed on relevant material. The difference between the 'valuation' and 'reserve price' is that, fixation of an upset price may be an indication of the probable price which the property may fetch from the point of view of intending bidders. Fixation of the reserve price does not preclude the claimant from adducing proof that the land had been sold for a low price".*

17. *In view of aforesaid analysis the submissions of the learned counsel for the petitioners that valuation report was obtained, reserve price was fixed and petitioner was apprised therefore the rule 8(5) of Security Interest (Enforcement) Rules, 2002 were strictly complied with in bringing property for sale are devoid of any merits therefore cannot be*



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accepted. There is no need to consider the other submissions raised on behalf of the petitioner because both the petitions are liable to be dismissed on the sole ground of non-compliance of Rule 8(5) Security Interest (Enforcement) Rules, 2002.

18. *The Hon'ble Apex Court in Lachhman Dass v. Jagat Ram, (2007) 10 SCC 448 : (AIR 2007 SC (Supp) 1169) has held that a right to hold property is a constitutional right as well as a human right. A person cannot be deprived of his property except in accordance with the provisions of statute. As noticed above the petitioner Bank has not complied with the mandatory rule we do not find any illegality and perversity in the orders passed by both the Tribunals. However the DRAT has imposed a cost of Rs 50,000/- on the petitioner Bank. There is no whisper on which ground the same has been imposed. We see no reason for imposition of cost. Therefore the direction with regard to imposition of cost is unsustainable. Hence it is quashed. Both the petitions are disposed of accordingly. No order as to costs.*

7.24. By relying on the **Anita Sadana** case, he submits that the Court, after considering the principles laid down by the Hon'ble Supreme Court in **Kerala Financial Corporation v. Vincent Paul, Navalkha & Sons v. Sri Ramanya Das** [(1969) 3 SCC 537] and **Anil Kumar Srivastava v. State of Uttar Pradesh** [AIR 2004 SC 4299], reiterated that the authority conducting an auction sale is under an obligation to ensure that the property fetches a fair and adequate price before confirming the



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sale. It was further observed that proper valuation of the property, fixation of an appropriate reserve price and affording the borrower a reasonable opportunity in relation to the valuation process are important safeguards to ensure transparency and fairness in the conduct of the sale. The decision also reiterates that the concepts of valuation and reserve price are distinct and that both are intended to facilitate the realisation of the best possible price for the property.

7.25. Learned counsel submitted that the KSFC failed to comply with these well-settled safeguards while conducting the impugned auction. According to him, the Corporation neither obtained a proper valuation of the secured assets nor fixed an appropriate reserve price before bringing the property to sale. He further submitted that the Corporation confirmed the auction without satisfying itself that the property had realised its fair market value or that the auction process was free from any infirmity. It was therefore contended that the absence of these procedural safeguards constitutes a material irregularity which has



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caused substantial prejudice to the petitioners and consequently renders the impugned sale liable to be set aside.

7.26. He relies upon the decision of Hon'ble Apex Court in ***Union Bank of India v. Official Liquidator H.C. of Calcutta***,⁹ more particularly para Nos. 10, 13, 14, 23 and 28 thereof, which are reproduced hereunder for easy reference;

10. *At the outset, we would state that in proceedings for winding up of the company under liquidation, the court acts as a custodian for the interest of the company and the creditors. Therefore, before sanctioning the sale of its assets, the court is required to exercise judicial discretion to see that properties are sold at a reasonable price. For deciding what would be a reasonable price, valuation report of an expert is must. Not only that, it is the duty of the court to disclose the said valuation report to the secured creditors and other interested persons including the offerors. Further, it is the duty of the court to apply its mind to the valuation report for verifying whether the report indicates reasonable market value of the property to be auctioned, even if objections are not raised.*

13. *Further, in the present case, it is admitted that valuation report was called for by order dated 16-2-1996; once the report was called for, it was the duty of the Court to see that copy of the said report is given to the secured creditors and other affected persons. It was known to the Court that the appellant secured creditor was claiming more than*

⁹ (2000) 5 SCC 274



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Rs 4 crores from the Company. It appears that valuation report was kept as a secret, confidential document. After winding-up order, the properties of the Company are in the custody of the Court for the benefit of the secured creditors and if anything remains, thereafter for other creditors and its shareholders. In the present case, without disclosing the valuation report to the creditors and without fixing its reserve price, the properties were auctioned and the sale was confirmed. This approach is unjustifiable by any judicial standard and is against the normal procedure for auctioning the immovable property of the Company which is to be wound up.

14. *Further, it appears that learned Judge has not applied his mind to the valuation report itself. He has only considered the last figures given in the valuation report which says that total valuation of the property was Rs 66,19,032. Had the Court considered the report, it would have immediately noticed that the valuation report was not at all reliable. This would be clear from the following facts narrated in the valuation report:*

"Valuation

On inquiry from the local people, it is understood that the land price in this particular area varies between Rs 2 lakhs to 2.5 lakhs per katta depending on size, position, road frontage, low land or high land etc. However, after considering all aspects, it is felt fair and reasonable value at Rs 2 lakhs per katta is found reasonable but as a matter of fact the land is leasehold. So the value of land will be lease because of leasehold land.

As per lease beginning of the year of 1963 for the term of 99 years @ Rs 300 per month.

So, the rent for 99 years @ Rs 300 = Rs 3,56,400.

15% municipal tax and repairing of structure etc. = Rs 53,460.

Total rent, tax etc. for 99 years = Rs 4,09,860

So, the value of land for 99 years = Rs 4,09,860

(Rupees four lakhs nine thousand eight hundred and sixty only.)"



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23. *In the present case, the said judgment has no bearing mainly because as soon as the amount was deposited by Respondent 2, possession of the property was handed over to him. Not only that, in our view, similar contention was dealt with in Allahabad Bank v. Bengal Paper Mills case [(1999) 4 SCC 383] and is rejected by assigning the following reasons: (SCC p. 394, para 24)*

"It could not have turned a blind eye to the many defects that it itself noted in the order of sale merely because the Banks had moved the appeals after five months; nor was there any justification for taking into consideration the expenditure that had been incurred by the second Respondent subsequent to its possession of the assets and properties. In the first place, the Division Bench should have noted that the learned Single Judge had with unseemly haste ordered possession thereof to be handed over to the second Respondent on the very next day. In the second place, the appeals had been filed within the period of limitation. Expenditure incurred during this period could not render the appeals, in effect, infructuous. The same would apply to expenditure incurred subsequent to the filing of the appeals and until the time that they were heard. The second Respondent knew that the appeals were pending and that they could end in the order of sale being set aside. Such expenditure as it incurred with this knowledge was at its risk. In the third place, and most important, the interests of the creditors of the Company, particularly the unsecured creditors, overweighed such equities, if any, as might have been considered to be in favour of the second Respondent. It was, in our view, the obligation of the Division Bench to have struck down the order of sale, having regard to what it found wrong with it."

28. *In the result, the appeal is allowed. The impugned order passed by the Company Judge in Company Petition No. 316 of 1981 confirmed in appeal GA No. 708 of 1996 is quashed and set*



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aside with costs. The Official Liquidator is directed to recover the possession of the property sold as per the inventory and thereafter to refund the amount deposited by Respondent 2 auction-purchaser. It would be open to Respondent 2 to file proper application for recovering any other expenditure incurred by it after purchase of the said property if it is entitled to recover the same.

7.27. By relying on the ***Union Bank of India*** case, he submits that the Hon'ble Supreme Court emphasised the importance of obtaining an expert valuation before confirming the sale of immovable assets. The Hon'ble Supreme Court observed that the authority supervising the sale must apply its mind to the valuation report to satisfy itself that the price offered reflects the reasonable market value of the property and that the sale is not concluded for an inadequate consideration. The valuation report is an important safeguard against disposal of valuable assets at an undervalue and that failure to properly consider the valuation may vitiate the sale.

7.28. Learned counsel submitted that the KSFC failed to obtain and consider a proper valuation before bringing the secured assets to sale. According to him, had a proper valuation been



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undertaken and duly considered, the property would not have been sold for a consideration of Rs.40,00,000/-, despite its alleged market value being in excess of Rs.2 crores. He therefore contended that the sale stands vitiated for failure to adopt a fair procedure capable of securing a reasonable price for the secured assets.

7.29. He relies upon the decision of Hon'ble High Court of Andhra Pradesh in ***M/s Sai Balaji Housing Pvt. Ltd and Ors., vs. Sri Bharathi Warehousing Corporation.,***¹⁰ more particularly para No.9, 10, 11 and 13 thereof, which are reproduced hereunder for easy reference;

9. In order to deal with the first contention, advanced by the learned Senior Counsel for the appellants, it would be highly essential and expedient to reproduce Order 21 Rule 72-A CPC, which stipulates as follows:

72A. Mortgagee not to bid at sale without the leave of the Court.

(1) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

¹⁰ 2024 SCC OnLine AP 744.



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AVSS,J & JS,J (2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be-(a) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot;and

(b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(3) In other respects, the provisions of sub-rules (2) and (3) of rule 72 shall apply in relation to purchase by the decree-holder under that Rule".

10. *In the case on hand, there is no dispute as regards the reality that the Court sold the property in one lot, as such, Clause (a) of Rule 72-A (2) of Order 21 CPC is applicable and governs the situation.*

It is pertinent to note that the Decree-holder indicated Rs.60.00 Lakhs and the Amin mentioned as Rs.1.00 Crore as the value of the property and the fact remains that the amount shown in the E.P. being Rs.1.85 Crores, but the Executing Court fixed the reserve price as Rs.1.25 Crores. Now the issue, which needs to be examined, is:

"Whether fixation of such amount by the Executing Court is in accordance with Order 21 Rule 72-A CPC"?

AVSS,J & JS,J In this context, it would be appropriate to refer to the judgments cited by the learned counsel.

11. *In the case of P.Ramireddy v. P.Sundara Rama Reddy, reported in AIR 1986 AP 29, the composite High Court of A.P., at paragraph Nos.5 to 7, held as follows:*

"5. The order is susceptible of two constructions. One is that the decree-holder is permitted to bid in the auction and the bid amount shall not be less



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than the upset price. The is permitted to set off. The other one as contended for the appellant. It is true that the petition itself is to permit the second Respondent to bid in the auction on behalf of the decree-holder. That petition was allowed. Therefore the permission was granted to the second Respondent to bid in the auction on behalf of the decree-holder subject to the condition that the bid amount shall not be less than the upset price. On a fair reading of the order, I am inclined to agree with the learned counsel for the appellant that his contention is the correct one. But still the question is Whether the permission granted to the second Respondent is legal? In the Code of Civil Procedure (Amendment) Act 104 of 1976, O. XXI, R. 72-A was brought on statute through S. 72 thereof with effect from Feb. 1, 1977, which reads thus:

"72-A. Mortgagee not to bid at sale without the leave of the Court.-- (1) Notwithstanding anything contained in R.72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be--

(a) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and AVSS,J & JS,J

(b) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributed to each lot in relation to the amount then due for principal, interest and costs on the mortgage.



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(3) In other respects, the provisions of sub-rules (2) and (3) of R. 72 shall apply in relation to purchase by the decree-holder under that rule."

6. A reading thereof would postulate that notwithstanding anything contained in R. 72, a mortgagee-decree-holder of immovable property shall not bid for or purchase property sold in execution of a decree without obtaining the leave of the Court to bid for or purchase the property. The leave granted shall be subject to the condition that the reserve price shall be not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot. If the leave is granted to the mortgagee-decree-holder to bid in the auction or purchase the hypotheca, the language couched in R. 72-A(2) thereof manifests in mandatory language that the Court "then shall fix" a reserve price as regards the mortgage and unless the Court otherwise directs, the reserve price "shall be not less than the amount due" for principal, interest and costs in respect of the mortgage if the property is sold in one lot and if it is sold in more than one lot, not less than such sum as shall appear to the Court to be properly attributable to such lots in relation to the amount then due for principal, interest and costs on the mortgage.

7. The contention of Sri Ramana Reddy, learned counsel for the appellant is that the language "unless the Court otherwise directs" would engraft within its ambit, the discretion provided in R. 72(1) and in exercise thereof the lower Court granted permission subject to the condition that the bid shall not be less than the upset price. To appreciate this contention, it is necessary to consider what is the ambit and meaning of the words "unless the Court otherwise directs" in the context of R.72-A read as a whole. Undoubtedly, the words "unless the Court otherwise directs" would give a meaningful construction of discretion in the Courts while AVSS,J & JS,J granting permission to the mortgagee-decree- holder to



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participate in the bid. But the exercise of the discretion and direction otherwise granted would be germane to the purpose sought to be achieved under R.72-A. The question therefore is what is the purpose of R.72-A. The language couched in R. 72-A appears to emphasise the mandatory character of the duty cast on the Court. The manner of exercise of the power under sub-rule (2) of R.72-A makes manifest from the words "the Court shall fix the reserve price" for sale shall not be less than the amount due under the decree i.e., the principal amount, interest thereon and costs, if the land is sold in one lot shall be conterminous with the extinguishment of the debt due. If it is sold in more than one lot, the reserve price shall be so apportioned consistent with the nature of the property, the extent thereof or quality and the amount sought to be recovered and shall be evenly distributed so as to apportion the debt and liquidation thereof. From the language thus manifested by the statute, it gives in unmistakable terms the legislative animation that it intended to relieve the mortgagor from all the liabilities incurred under the mortgage. It also seems to eradicate or at least aimed to nip in the bud the incurable tendency on the part of the decree-holder to take undue advantage of the Court sale by purchasing the hypotheca at a lower price by procuring collusive bidders at ja farce of sale and to knock off the property at a minimal price and then to take recourse to recover the residue of the decree debt by other process available under the Code. If the mortgagee-decree-holder opts to make avail of the statutory facility to bid in or purchase the hypotheca in such Court auction he shall abide by law i.e, he should be prepared to purchase the property in discharge of full quids viz., in full satisfaction of the entire outstanding debt due under the mortgage decree in execution. Considered from this perspective, the necessary conclusion is that it is the mandatory duty of the executing Court while granting leave to the mortgagee-decree-holder either under O. XXI R. 72(1) or under O. 21 R. 72-A, to comply with the



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fixation of the reserve price in conformity with AVSS,J & JS,J the mandatory conditions stipulated under sub- rule (2)(a) or (b) of R.72-A. That it is mandatory is made manifest when we read the opening language of R.72-A viz., "notwithstanding anything contained in R.72." The non- compliance thereof renders the grant of permission to the mortgagee-decree-holder fatal and per se illegal. The exercise of discretion under sub-rule (2) of R.72-A is in the nature of an exception and for the exercise thereof the legislature carved out large leeway to the Court by employing the language "the Court unless, otherwise directs". It is obviously difficult for the legislature to foresee diverse situations or circumstances that may confront the Court invoking the rule. To meet such situation power is preserved in the Court. In a given case on its peculiar facts and circumstances, for relevant and germane reasons mentioned thereunder the Court may otherwise give directions. But such directions must always be to subserve the object of R.72-A but not in defeasance thereof. Lest while exercising the wide discretion the purpose and working of R.72-A would be rendered otiose and nugatory and could easily be frustrated or defeated. When permission to mortgagee is granted in conformity with R.72-A, then and then only the mortgagee could make avail of the statutory benefit of set off under R.84(2) of O.21. Otherwise the mortgagee on the sale being knocked down in his favour shall pay immediately 25% of the amount of purchase money as envisaged, under R.84(1) and in default thereof the property shall forthwith be resold. A reading of the order of the Court below extracted earlier would clearly show that the lower Court did not accord permission to the appellant in compliance of R.72-A(2) and thereby he is denuded the benefit of set off under R.84(2). Admittedly no deposit of 25% of the amount of purchase money was immediately deposited by the second Respondent either by himself personally or on behalf of the appellant. As a fact, no deposit was made nor the property was resold forthwith.



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The non-compliance of the mandatory requirement of R.84(1) renders the sale per se illegal. Brouched from this perspective, I have no hesitation to conclude that AVSS, J & JS,J the permission granted to the appellant is palpably illegal and the sale also became illegal land so the Court below has rightly set aside the sale warranting no interference in this appeal. The lower Court is directed to proceed with the execution as expeditiously as possible. In view of O. XXXIV, R. 5 of the Code of Civil Procedure, it is still open to the judgment-debtor to pay the decretal amount in terms thereof and get the debt discharged. The appeal is accordingly dismissed. Since none are appearing for the Respondent, there is no order as to costs".

13. *In the case of N.Prabhakara Naidu v. Nellore Finance Corporation, reported in 2008 (6) ALD 685, the composite High Court of A.P., at paragraph Nos.10, 14, 15, 20 to 23, held as follows:*

"10. The learned Counsel representing the revision petitioner placed strong reliance on the decision in Gajadhar Prasad v. Babu Bhakta Ratan, (1973) 2 SCC 629 : AIR 1973 SC 2593, wherein the Apex Court at Paras 13 and 15 observed as hereunder:

"It was submitted that the Court should not have put its own valuation on the property, as such a procedure was certain to prejudice the minds of prospective purchasers with regard to the value of the property to be auctioned. We find that there is some conflict of opinion in the High Courts on this question. The Madras High Court, in S.K. Veeraswami Pillai v. Kalyanasundaram Mudaliar, AIR 1927 Mad 1009 (1); Srinivasan v. Andhra Bank Ltd., AIR 1949 Mad 398; Yellappa Naidu v. G. Venugopal, AIR 1958 Mad 423 and the Allahabad High Court, in Md. Said Khan v. Md. Abdus Sami Khan, AIR 1932 All 664; Dwarka Dass v. Bhawani Prasad, AIR 1960 All 510, have held that it is unnecessary for the Court to give its own estimate.



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The Calcutta High Court in Rajah Ramessur Prashad Narain Singh v. Rai Sham Kissen, (1904) 8 Cal WN 257; Saurendra Mohan Tagore v. Hurruk Chand, (1908) 12 Cal WN 542; Bejoy Singh Dadhtdia v. Ashutosh Gossain, AIR 1924 Cal 589; Lachira v. Rameshvar Singh, AIR 1930 Cal 781; Pashupati Nath v. Bank of Behar, AIR 1932 Cal 141; New Birbhum Coal Co. Ltd. v. Surendra Nath Laik, AIR 1934 Cal 205 the Patna High Court in Raghunath Singh v. Nazari Sahu, AIR 1917 Pat 381 and Mt. Golab Kuer v. Mt. Bibi Saira, AIR 1919 Pat 372 and the Rangoon High Court in A.M.K.M. Firm v. Baishmaw, AIR 1937 Rang 137, have expressed opinions favouring giving of the Court's own estimate of the value of AVSS,J & JS,J the property to be sold. But, a mere acceptance of the valuation given by the decree-holder has been held to be material irregularity in A.M.K.M. Firm v. Baishmaw (supra). The High Court of Bombay, in Charandas Vasanji v. Dossabhoy Maganlal, AIR 1939 Bom 182; Premaraj Pannalal Shop v. Sadabai, AIR 1935 Bom 331, has held that, although, it is not necessary for the execution Court to value the property to be sold, yet, it may do so if it thinks fit. In Sitabai Rambhau Marathe v. Gangadhar Dhanram, AIR 1935 Bom 331, however, the Bombay High Court held that the Court is bound to hold an enquiry as to the value of the property and to state it in the sale proclamation. Although the Madras High Court had held that it is not necessary for the Court to give its own valuation, it expressed the opinion that it is desirable, where there is a wide divergence between the valuation of the decree- holder and of the judgment-debtor, to have property valued through an Amin and to state it in the proclamation: The Calcutta view, in some of the cases mentioned above, was that, although the Court need not give its own valuation of the property in the sale proclamation, it would be justified in stating the valuation given by the parties.



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A review of the authorities as well as the amendments to Rule 66(2)(e) make it abundantly clear that the Court, when stating the estimated value of the property to be sold, must not accept merely the ipse dixit of one side. It is certainly not necessary for it to state its own estimate. If this were required, it may, to be fair necessitate insertion of something like a summary of a judicially considered order, giving its grounds, in the sale proclamation which may confuse bidders. It may also be quite misleading if the Court's estimate is erroneous. Moreover, Rule 66(2)(e) requires the Court to state only the facts it considers material for a purchaser to judge the value and nature of the property himself. Hence, the purchaser should be left to judge the value for himself. But, essential facts which have a bearing on the very material question of value of the property and which would assist the purchaser in forming his own opinion must be AVSS,J & JS,J stated. That is, after all, the whole object of Order 21 Rule 66(2)(e), Civil Procedure Code. The Court has only to decide what all these material particulars are in each case. We think that this is an obligation imposed by Rule 66(2)(e). In discharging it, the Court should normally state the valuation given by both the decree-holder as well as the judgment-debtor where they have both valued the property; and these do not appear fantastic. It may usefully state other material facts, such as the area of land, nature of rights in it, municipal assessment, actual rents realized, which could reasonably be expected to effect valuation. What could be reasonably and usefully stated succinctly in a sale proclamation has to be determined on the facts of each particular case. Inflexible rules are not desirable on such a question."....

7.30. By relying on the **Sai Balaji Housing** case, he submits that while dealing with sales of mortgaged properties under Order XXI Rule 72-



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A of the Code of Civil Procedure, the Court emphasised the importance of fixing an appropriate reserve price before permitting the mortgagee to participate in the auction. According to the learned counsel, the underlying principle is that adequate safeguards should be adopted to prevent secured assets from being sold at an undervalue.

7.31. Relying upon ***Sai Balaji Housing***, learned counsel submitted that the requirement of fixing an appropriate reserve price constitutes an important safeguard intended to ensure fairness in the conduct of auction sales and to protect the interests of both the borrower and the secured creditor.

8. Sri. Bipin Hegde., learned counsel for Respondent No.1- KSFC would submit that;

8.1. Learned counsel submitted that the KSFC had strictly complied with the provisions of the State Financial Corporations Act, 1951, while exercising its powers under Section 29. Since the petitioners had committed persistent defaults in repayment of the loan, the Corporation took possession of the industrial



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unit on 16.11.2000 and made repeated efforts to dispose of the secured assets by public auction. According to him, the property was brought to sale on six occasions, namely, on 10.11.2000, 12.03.2001, 13.05.2002, 04.01.2003, 01.10.2003 and 22.02.2004.

8.2. It was submitted that pursuant to the sixth sale notification dated 22.02.2004, the highest offer received was for a sum of Rs.13.35 lakhs, which was below the Corporation's internal valuation and was therefore rejected. Thereafter, at the request of the petitioners, who expressed their intention to revive the industrial unit, the Corporation restored possession of the unit on 15.08.2004 upon payment of Rs.50,000/-.

8.3. Learned counsel further submitted that the possession taken by the Corporation in the year 2000 was solely for the purpose of realising the secured assets and not for operating the industrial unit. Upon restoration of possession, the petitioners again failed to regularise the loan account. Consequently, the Corporation once again took possession of the unit on



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01.09.2008. At the request of the petitioners, who undertook to pay Rs.40,000/- per month towards the outstanding dues, the Corporation again restored possession. Since the petitioners failed to honour the said undertaking, possession was once again resumed on 25.03.2009.

8.4. It was further submitted that the petitioners thereafter made yet another request for restoration of possession by undertaking to pay Rs.1,00,000/- per month. Accepting the said request, the Corporation extended a further opportunity to the petitioners. However, upon their failure to comply with the undertaking, a notice dated 16.11.2009 was issued and possession of the unit was once again taken over on 08.01.2010.

8.5. Learned counsel submitted that thereafter a valuation report was obtained on 18.02.2010. Even prior thereto, a public auction notice had been issued on 22.01.2010. Since the offer received pursuant to the said notification was below the assessed value of the property, the same was not accepted. In the meanwhile, the



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petitioners challenged the proposed auction by filing W.P. No.7353 of 2010, which came to be dismissed on 10.03.2010 ***Spencer Metal Lamp Caps v. Karnataka State Financial Corporation.***¹¹

8.6. It was further submitted that following the dismissal of the writ petition, a fresh auction notification was issued on 11.03.2010. In the auction conducted pursuant thereto, the highest bid of Rs.40,00,000/- was accepted on 22.03.2010. The successful bidder remitted the sale consideration on 31.03.2010. Possession of the plant and machinery was delivered on 08.04.2010, possession of the land and building was handed over on 13.04.2010 and the sale deed executed on 15.04.2010 came to be registered on 19.04.2010.

8.7. Learned counsel further submitted that the petitioners thereafter instituted O.S. No.648 of 2010 seeking a declaration that the auction sale was illegal. The said suit came to be dismissed on 05.04.2011. The appeal preferred in R.A. No.430 of 2011 was also dismissed on

¹¹ W.P. No.7353 of 2010, dt. 10.03.2010



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13.06.2012. According to him, despite the said proceedings, the present writ petition came to be instituted on 25.06.2011.

8.8. On the basis of the aforesaid sequence of events, learned counsel submitted that the Corporation had extended repeated opportunities to the petitioners to regularise the loan account and revive the industrial unit. According to him, despite restoration of possession on more than one occasion and repeated indulgence shown by the Corporation, the petitioners failed to honour their commitments, leaving the Corporation with no alternative but to proceed with the sale of the secured assets.

8.9. With regard to the petitioners' contention relating to the One-Time Settlement proposal, learned counsel submitted that the petitioners had offered to pay a sum of Rs.50,00,000/- only on the condition that the said payment be accepted in full and final settlement of the entire outstanding liability. Since the outstanding dues as on the relevant date exceeded Rs.10 crores, the Corporation was



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justified in rejecting the proposal. It was submitted that the amount realised by sale of the secured assets was only a part recovery of the outstanding dues and the balance liability of the petitioners continued to subsist.

8.10. Learned counsel therefore submitted that the Corporation had acted strictly in accordance with law, after extending repeated opportunities to the petitioners, and that the impugned sale did not suffer from any illegality, arbitrariness or procedural infirmity warranting interference by this Court.

8.11. In this regard, he relies upon the decision of this Court in ***Spencer Metal Lamp Caps vs. Karnataka State Financial Corporation***, more particularly para No.2 and 3, which are reproduced hereunder for easy reference;

2. The records reveal that the petitioner has raised certain loan from the Respondent-KSFC. Since the said loan amount is not paid periodically, the Respondent initiated action against the petitioner under Section 29 of the State Finance Corporation Act (for short hereinafter referred to as the 'Act'). Initially the order was passed as per Annexure-G, dated 25.3.2009 under Section 29 of the Act and consequently possession of all the assets of the industrial concern owned by the petitioner, was taken, as the petitioner did not pay the dues



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amounting to Rs.9,00,88,131.12. Thereafter the petitioner represented before the Respondent and pleaded for leniency. Thereafter the order at Annexure-G came to be recalled by the Respondent-Corporation and the possession of the Industrial Unit was handed over to the petitioner. At that point of time, the petitioner had agreed that the petitioner would be repaying the loan amount in monthly instalments of Rs.1,00,000/-.

3. *In spite of the leniency shown by the Respondent, the petitioner did not choose to repay the loan amount as agreed by it. Hence, a notice as per Annexure-F, dated 16.11.2009 was issued to the petitioner calling upon to have its say in the matter, within seven days. Even thereafter, the petitioner did not pay the amounts. The Respondent waited till 8.1.2010 and has passed the order at Annexure-M under Section 29 of the Act once again and consequently the possession of the assets of the industrial concern is taken over by the Respondent for recovery of a sum of Rs.10,06,48,877.42.*

The order at Annexure-M is not called in question in this writ petition.

As aforementioned, the petitioner has questioned the notice at Annexure-F and the order at Annexure-G. The order at Annexure-G is already recalled by the Respondent. Annexure-F is simply a notice issued to the petitioner to have its say in the matter. Therefore, the first prayer cannot be granted. Even otherwise, this Court does not find any ground to show leniency in favour of the petitioner, inasmuch as the petitioner has failed to comply with his words that he would be paying Rs.1,00,000/- every month. Hence, this Court declines to grant any relief to the petitioner in this writ petition.

Hence, writ petition fails and accordingly same is dismissed.



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8.12. By relying on the ***Spencer Metal Lamp Caps*** case, he submits that the said judgement is arising out of the earlier proceedings between the same parties. Referring to the said order, he submitted that this Court had taken note of the fact that the Corporation had initially taken possession of the petitioners' industrial unit under Section 29 of the State Financial Corporations Act, 1951, but had subsequently restored possession on the petitioners' request upon their undertaking to repay the outstanding dues in monthly instalments of Rs.1,00,000/-. This Court also noticed that the petitioners failed to honour the said undertaking, whereupon the Corporation once again took possession of the secured assets after issuing a notice dated 16.11.2009. Taking note of these facts, this Court declined to interfere with the action of the Corporation and dismissed the writ petition.

8.13. Placing reliance upon the aforesaid order, learned counsel submitted that the conduct of the petitioners in repeatedly seeking restoration of possession on assurances of repayment, while consistently failing to comply with such



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undertakings, has already been noticed by this Court in the earlier proceedings. According to him, the petitioners, having repeatedly defaulted despite the indulgence shown by the Corporation, cannot now contend that the action taken by the KSFC under Section 29 of the State Financial Corporations Act, 1951, was arbitrary or unfair.

8.14. He relies upon the decision of the Hon'ble Apex Court in ***Karnataka State Industrial Investment & Development Corpn. Ltd. v. Cavalet India Ltd.***,¹² more particularly para No.16, 17 and 19 thereof, which are reproduced hereunder for easy reference;

16. *In Karnataka State Financial Corpn. v. Micro Cast Rubber & Allied Products (P) Ltd. [(1996) 5 SCC 65] the issue was whether the Financial Corporation was wrong in rejecting the offer given by the borrower which, after proper evaluation, was considered lower than the offer made by the purchaseRs. This Court, while upholding the action of the Financial Corporation, held that the guidelines contained in Mahesh Chandra [(1993) 2 SCC 279] are in the nature of guidelines for the exercise of the power under Section 29 of the Act and the action of the State Financial Corporation should not be interfered with if it has acted broadly in consonance with those guidelines. The Court reiterated the law laid down in Gem Cap [(1993) 2 SCC 299] as regards the scope of*

¹² (2005) 4 SCC 456



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judicial review in matters of sale by the State Financial Corporation in exercise of the power conferred on it under Section 29 of the Act.

17. *In Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496] a three-Judge Bench, while overruling the decision in Mahesh Chandra [(1993) 2 SCC 279] held that it was contrary to the letter and intent of Section 29 of the Act and observed that the views expressed in that case were too wide and did not take note of the ground realities and the intended objects of the statute and if the guidelines as indicated were to be strictly followed, it would be giving premium to a dishonest borrower. The views would not further the interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance and would only provide an unwarranted opportunity to the defaulter, in most cases chronic and deliberate, to stall recovery proceedings. Further, the Court observed that: (SCC p. 507, para 15)*

"It is one thing to assist the borrower who has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments. That has to be established by adducing material."

The Court found that the guidelines issued in Mahesh Chandra [(1993) 2 SCC 279] placed unnecessary restrictions on the exercise of power by the Financial Corporation contained in Section 29 of the Act by requiring the defaulting unit-holder to be associated or consulted at every stage in the sale of the property. The Court felt that the procedure indicated in Mahesh Chandra [(1993) 2 SCC 279] would lead to further delay in realisation of the dues by the Financial Corporation by sale of assets. The Court held that it was always expected that the Corporation would try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity,



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wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out. The Court approved the view expressed in Gem Cap [(1993) 2 SCC 299] and found it to be more in line with the legislative intent behind enacting the Act.

19. *From the aforesaid, the legal principles that emerge are:*

(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:

(a) there is a statutory violation on the part of the Corporation, or

(b) where the Corporation acts unfairly i.e. unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.



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(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

8.15. By relying on the **Karnataka State Industrial Investment** case, he submits that the Hon'ble Apex Court, after considering the earlier decisions of the Hon'ble Supreme Court in **Karnataka State Financial Corporation v.**



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Micro Cast Rubber & Allied Products (P) Ltd.,¹³ and U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. [(1993) 2 SCC 299], summarised the principles governing the exercise of powers by State Financial Corporations under Section 29 of the State Financial Corporations Act, 1951. The Hon'ble Supreme Court held that while the Corporation is expected to adopt a fair, transparent and reasonable procedure in disposing of secured assets, the dominant consideration is to secure the best possible price for the property. The Court further observed that public auction is not the only permissible mode of sale and that any procedure capable of securing the best price through adequate publicity and transparency would satisfy the requirements of law.

8.16. Learned counsel submitted that the scope of judicial review under Article 226 of the Constitution in matters relating to the exercise of powers under Section 29 is extremely limited. According to him, this Court does not sit in appeal over the commercial decisions of the Financial Corporation and cannot substitute

¹³ (1996) 5 SCC 65



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its own opinion for that of the Corporation merely because another view is possible. Interference is warranted only where the action of the Corporation is shown to be in violation of a statutory provision or is vitiated by mala fides, arbitrariness or unreasonableness. He therefore submitted that, in the absence of any such infirmity, the impugned sale does not call for interference in exercise of the writ jurisdiction.

8.17. He relies upon the decision of this Court in ***Rekha Rajendra Vs. Karnataka State Financial Corporation and Ors.***¹⁴ more particularly para No.8 and 13, which are reproduced hereunder for easy reference;

8. The powers of the court under Article 226 of the Constitution in respect of the financial loan under the State Financial Corporations Act, more so, in relation to Section 29 of the Act has been categorically stated by the Apex Court in the case of Karnataka State Industrial Investment - Development Corporation Ltd., v. Cavalet India Limited and others, reported in I.L.R. 2005 Kor 3347. The Ape Court in an identical situation has stated the legal principle as follows:

"From the aforesaid, the legal principles that emerge are:

¹⁴ WP No.7506 of 2005 dated 01.06.2006



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(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) in a matter between the Corporation and its debtor, a writ Court has no say except in two situations:

(a) there is a statutory violation on the part of the Corporation, or

(b) where the Corporation acts unfairly i.e., unreasonably.

(ii) In commercial matters, the Courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however, more prudent. Commercial or business like it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum



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public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decisions has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price."

13. *It is not brought to my notice that the Respondents have acted in a manner which is unfair or with any malafide intention. The petitioner was given enough chance and time to repay the loan and postponed the sale of the unit not once but thrice. But the petitioner has not chosen to avail the said opportunity. Obviously the Respondent cannot postpone the sale indefinitely to recover the dues. The fairness required of the Respondent cannot be carried to the extent of disabling them from recovering what is due to them.*



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8.18. By relying on the ***Rekha Rajendra*** case, he submits that this Court, after following the law laid down by the Hon'ble Supreme Court in ***Karnataka State Industrial Investment & Development Corporation Ltd. v. Cavalet India Ltd.*** reiterated that interference under Article 226 in matters arising out of the exercise of powers under Section 29 of the State Financial Corporations Act, 1951, is warranted only where the action of the Financial Corporation is vitiated by statutory violation, mala fides, arbitrariness or unreasonableness. This Court further held that where repeated opportunities have been granted to the borrower to discharge the outstanding dues, the Corporation cannot be expected to postpone recovery proceedings indefinitely in the name of fairness.

8.19. Placing reliance upon ***Rekha Rajendra***, learned counsel reiterated that the KSFC had afforded the petitioners several opportunities to regularise the loan account before resorting to the sale of the secured assets. He therefore submitted that the action of the Corporation cannot be characterised as arbitrary or unfair



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so as to warrant interference under Article 226 of the Constitution.

8.20. He relies upon the decision of Hon'ble Apex Court in ***Haryana Financial Corpn. v. Jagdamba Oil Mills***,¹⁵ more particularly para No.13 and 18 thereof, which are reproduced hereunder for easy reference;

13. The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. As was observed by this Court in U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd. [(1995) 2 SCC 754] in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in Karnataka State Financial Corpn. v. Micro Cast Rubber & Allied Products (P) Ltd. [(1996) 5 SCC 65 : JT (1996) 6 SC 37] in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the

¹⁵ 2002 (3) SCC 496



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scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of State Financial Corporation, or (b) where State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India (in short "the Constitution"), the High Court does not sit as an Appellate Authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist.

18. *The subsequent decisions of this Court in Gem Cap [(1993) 2 SCC 299] , Naini Oxygen [(1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] and Micro Cast Rubber [(1995) 2 SCC 754] run counter to the view expressed in Mahesh Chandra case [(1993) 2 SCC 279] . In our opinion, the issuance of the said guidelines in Mahesh Chandra case [(1993) 2 SCC 279] are contrary to the letter and the intent of Section 29. In our view, the said observations in Mahesh Chandra case [(1993) 2 SCC 279] do not lay down the correct law and the said decision is overruled.*

8.21. By relying on the **Haryana Financial Corporation** case, he submits that the Hon'ble Supreme Court authoritatively explained the scope of the powers exercisable by a State Financial Corporation under Section 29 of the State Financial Corporations Act, 1951, and the corresponding limits on judicial review under Article 226 of the Constitution. The Hon'ble Supreme Court held that a Financial Corporation, while discharging its statutory



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functions, is entitled to take commercial decisions based upon the material available to it and that such decisions are not liable to be interfered with merely because another view is possible. The Hon'ble Supreme Court further held that the fairness expected of the Corporation cannot be extended to the extent of disabling it from recovering its legitimate dues and overruled the earlier decision in ***Mahesh Chandra*** [(1993) 2 SCC 279] insofar as it imposed restrictions inconsistent with the scheme and object of Section 29.

8.22. Learned counsel submitted that the scope of judicial review in matters arising out of the exercise of powers under Section 29 is confined to cases involving a statutory violation or where the action of the Financial Corporation is vitiated by mala fides, arbitrariness or unreasonableness. According to him, this Court cannot substitute its own commercial assessment for that of the Corporation or examine the wisdom of the decision taken by it. He therefore submitted that, in the absence of any such infirmity, the auction sale conducted



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by the KSFC does not warrant interference under Article 226 of the Constitution.

8.23. He relies upon the decision of Hon'ble Apex Court in ***Karnataka State Financial Corpn. v. Micro Cast Rubber & Allied Products (P) Ltd., & Ors.,*** more particularly para No.6 and 7 thereof, which are reproduced hereunder for easy reference;

6. The directions contained in para 22 of the judgment in Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279] are in the nature of guidelines for the exercise of the power under Section 29 of the Act. The action of the State Financial Corporation is not liable to be interfered with if it has acted broadly in consonance with these guidelines. In the facts and circumstances of this case, we are of the opinion that directions 2, 3 and 4 in these guidelines had been substantially complied with by the appellant. There was compliance with direction 2 inasmuch as before issuing the first advertisement for sale of the unit in March 1981 the unit had been evaluated at Rs 28 lakhs. Keeping in view the various offers that have been received, it cannot be said that the said evaluation was improper. Directions 3 and 4 were also fulfilled inasmuch as Respondent 1 was made aware of the various offers that had been received in response to the advertisements that were issued from time to time and Respondent 1 was given sufficient opportunity to submit proposal for revival of the unit or to obtain higher offers. The only question is whether in accepting the offers of M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers the appellant has rejected the higher offer of Respondent 2. As pointed out earlier, the offer made by Respondent 2 was not accepted by the



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appellant for the reasons that on proper evaluation it was found that it could not be regarded higher than that made by M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers because it was found that the offer made by Respondent 2 envisaged the payment of dues to the Karnataka Electricity Board by the appellant, whereas the offers made by M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers envisaged payment of such dues by the offerers. It was also found that there was shorter time for payment of consideration in the offers of M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers inasmuch as under the said offers the entire consideration is payable within 4 years, whereas in offer of Respondent 2 the payment is to be completed in 5 years after initial commencement of production. Furthermore, it was found that in offers of M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers, down payment of 25%, amounting to Rs 6 lakhs, was being made, while in case of Respondent 2 only Rs 2 lakhs was offered. Moreover, in the offer of Respondent 2 no earnest money was to be paid, while earnest money was to be deposited by other offers. As regards the undertaking by Respondent 2 to pay Rs 10 lakhs to Canara Bank in final settlement of the dues of Respondent 1, it may be stated that the said liability towards Canara Bank is secured by second charge on the land, plant and machinery that was being sold by the appellant. The said sale by the appellant was subject to the said charge. Every purchaser was bound to discharge the said liability of the Canara Bank and the offer of payment of Rs 10 lakhs by Respondent 2 to Canara Bank does not, therefore, enhance the value of the said offer.

7. In the matter of a sale by the State Financial Corporation in exercise of the power conferred on it under Section 29 of the Act the scope of judicial review is confined to two situations, namely, (1) where there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, i.e.,



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unreasonably. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation. [See: *U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd.* [(1993) 2 SCC 299] , SCC at p. 306.] It has not been pointed out that there is any statutory violation on the part of the appellant in accepting the offers of M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers and in rejecting the offer of Respondent 2. Nor can it be said that the action of the appellant in not accepting the offer of Respondent 2 and accepting the offers of M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers was unfair or unreasonable. The High Court was, therefore, not justified in interfering with the action of the appellant in accepting the offers of M/s Prime Inputs (India) Ltd. and M/s Shakti Rubbers for the sale of the unit of Respondent 1. The writ petition filed by Respondents 1 and 2 is, therefore, liable to be dismissed.

- 8.24. By relying on the ***Micro Cast Rubber*** case, he submits that the Hon'ble Supreme Court held that where the Financial Corporation has broadly acted in accordance with the requirements governing the exercise of its powers under Section 29 of the State Financial Corporations Act, 1951, its commercial decision in accepting one offer in preference to another is ordinarily not amenable to judicial review. The Hon'ble Supreme Court further held that the Corporation is entitled to evaluate competing offers on commercial considerations



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and that such decisions cannot be interfered with merely because another view is possible.

8.25. He relies upon the decision of Hon'ble Apex Court in ***U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd.***,¹⁶ more particularly para No.21 and 23 thereof, which are reproduced hereunder for easy reference;

21. However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

23. We are, therefore, of the view that this is not a matter where the High Court should have stepped in and substituted its judgment for the judgment of the Corporation which should be deemed to know its interests better whatever the sympathies the Court had for the prosperity of the Company. In matters commercial, the courts should not risk their judgments for the

¹⁶ (1995) 2 SCC 754



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judgments of the bodies to whom that task is assigned.

8.26. By relying on the ***U.P. Financial Corpn*** case, he submits that the Hon'ble Supreme Court recognised that a State Financial Corporation is an independent statutory body entrusted with the responsibility of taking commercial decisions in the discharge of its statutory functions. The Hon'ble Supreme Court held that, unless the action of the Corporation is vitiated by mala fides or any other recognised ground of judicial review, its commercial decisions are not open to interference merely because the Court may consider another course of action to be more appropriate or commercially prudent.

8.27. He relies upon the decision of Hon'ble Apex Court in ***U.P. Financial Corporation vs. M/s Gem Cap (India) Pvt. Ltd.***¹⁷ more particularly para No.10 thereof, which is reproduced hereunder for easy reference;

10. *It is true that the appellant Corporation is an instrumentality of the State created under the State Finance Corporations Act, 1951. The said Act was*

¹⁷ 1993 AIR SCW 1189



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*made by the Parliament with a view to promote industrialisation of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a period not exceeding years from the date of loan. We agree that the Corporation is not like an ordinary money-lender or a Bank which lends money, it is a lender with a purpose - the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be earned to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. **The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot 40 in the name of fairness. Fairness is not a one way street, -more particularly in matters like the present one.** The above narration of facts shows that the Respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the Corporation at bay. Approaching the Courts through successive writ petitions is but a part of this game. Another*



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circumstance. These Corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tempered - nay, determined, in the light of all these circumstances. Indeed, in a matter between the Corporation and its debtor, a writ court has no say except in two situations: (1) There is a statutory violation on the part of the Corporation or (2) where the ""Corporation s acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an Appellate Authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints - self-imposed undoubtedly - of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

8.28. By relying on the **M/s. Gem Cap** case, he submits that the Hon'ble Supreme Court recognised that, although a State Financial Corporation is an instrumentality of the State established to promote industrial development by extending financial assistance, it nevertheless functions as a creditor and is



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under a corresponding obligation to recover public funds advanced by it. The Hon'ble Supreme Court observed that the doctrine of fairness cannot be extended to such an extent as to disable the Corporation from recovering its legitimate dues or compel it to indefinitely support defaulting borrowers at the expense of public funds. The Hon'ble Supreme Court further held that the jurisdiction of the High Court under Article 226 cannot be exercised as if it were an appellate jurisdiction over the commercial decisions of the Corporation.

8.29. Learned counsel submitted that the KSFC, while being required to act fairly and in accordance with law, is equally obliged to safeguard public funds and recover the amounts lawfully due to it. According to him, the petitioners, having repeatedly defaulted in repayment despite several opportunities afforded by the Corporation, cannot invoke the doctrine of fairness to prevent the Corporation from exercising its statutory powers under Section 29 of the State Financial Corporations Act, 1951. He therefore submitted that the impugned action does not warrant interference



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in the exercise of the writ jurisdiction under Article 226 of the Constitution.

9. None has been appearing for Respondents No.2 and 3- the auction purchasers and hence no arguments were advanced on their behalf.
10. Heard Sri M.R.Vijaya Kumar., learned counsel appearing for the petitioners and Sri. Bipin Hegde., learned counsel appearing for Respondent No.1-KSFC and perused papers.
11. After the matter was reserved for orders, Shri Vinaya Kumar G.S., a new counsel entered appearance for KSFC; hence he was also heard, he reiterated the submissions of Sri Bipin Hegde, there is no other substantially additional or different argument advanced.
12. The points that would arise for consideration are;
 - (i) **Whether the sale of the petitioners' secured assets by the Karnataka State Financial Corporation under Section 29 of the State Financial Corporations Act, 1951, is liable to be interfered with on the ground that the Corporation failed to act fairly, reasonably and in accordance with law while conducting the auction?**



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(ii) Whether, in the facts of the present case, the impugned auction sale is vitiated by reason of the alleged absence of proper valuation, non-fixation of reserve price, failure to secure the best possible price, rejection of the petitioners' One-Time Settlement proposal or any other material irregularity?

(iii) What order?

13. This Court answers the above points as follows:

14. **Answer to Point No.(i): Whether the sale of the petitioners' secured assets by the Karnataka State Financial Corporation under Section 29 of the State Financial Corporations Act, 1951, is liable to be interfered with on the ground that the Corporation failed to act fairly, reasonably and in accordance with law while conducting the auction?**

14.1. Sri M.R. Vijaya Kumar, learned counsel for the petitioners submitted that the petitioners had borrowed a sum of Rs.65,65,623/- in the year 1996. By the time the secured assets were brought to sale, the demand of the Corporation had swelled to Rs.10,63,55,966/-, which is close to fifteen times the amount borrowed. Such an escalation, according to him, is by itself arbitrary and wholly disproportionate.



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14.2. The petitioners had offered Rs.50,00,000/- under a One-Time Settlement. Ignoring that offer, the KSFC accepted an auction bid of only Rs.40,00,000/-, thereby acting against its own financial interest and to the prejudice of the petitioners. No valuation of the secured assets was obtained, and no reserve price was fixed before the auction. These lapses, he submitted, kept away genuine purchasers, and a property worth more than Rs.2,00,00,000/- came to be sold for a small fraction of its value, causing a loss of about Rs.1.60 crores to the petitioners.

14.3. In support of the standard of conduct expected of a Financial Corporation, he relied upon ***S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*** [AIR 2004 SC 2421], particularly paras 15, 16, 17 and 19, extracted earlier in this order. He laid emphasis on para 16, where the Hon'ble Supreme Court held that the statutory powers vested in a State Financial Corporation under the State Financial Corporations Act must be exercised bona fide, that the Corporation must act in accordance with the statute and must not act unfairly, that is, unreasonably, and that reasonableness is to be tested against



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the dominant consideration of securing the best price for the property, which is ordinarily achieved through maximum public participation after adequate publicity. He also relied on para 17, which requires that a fair and practical period of time be given to intending purchasers, and para 19, where a sale notice giving less than three days was held to be entirely inadequate.

14.4. He further relied upon ***Gajraj Jain v. State of Bihar*** [(2004) 7 SCC 151], particularly paras 10, 11, 13, 14 and 15, extracted earlier. Emphasis was laid on para 14, where the Hon'ble Supreme Court held that if the object of Section 29 of the Act is to obtain the best possible price, the Corporation ought to call for a valuation report, and that in the absence of a proper mechanism the auction-sale becomes only a pretence, and on paras 13 and 15, where the transfer made in that case was held to be in breach of sub-sections (1) and (4) of Section 29 and vitiated by collusion.

14.5. On this basis, he submitted that the KSFC failed to act fairly, reasonably and in accordance with



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law while conducting the auction, and that the sale is therefore liable to be interfered with in exercise of the jurisdiction under Articles 226 and 227 of the Constitution of India.

14.6. Sri Bipin Hegde, learned counsel for Respondent No.1 – KSFC submitted that the Corporation acted strictly under Section 29 of the said Act, and that too only after showing indulgence to the petitioners for nearly a decade. On account of persistent defaults, possession of the unit was taken in the year 2000. The secured assets were then brought to sale on six occasions, that is, on 10.11.2000, 12.03.2001, 13.05.2002, 04.01.2003, 01.10.2003 and 22.02.2004. The highest offer received in all these attempts was a sum of Rs.13.35 lakhs pursuant to the sixth notification, which was rejected as it was below the Corporation's internal valuation. Thereafter, at the request of the petitioners, who wished to revive the unit, possession was restored to them on 15.08.2004 on payment of Rs.50,000/- per month.



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14.7. The petitioners once again failed to regularise the loan account. Possession was taken on 01.09.2008, restored on their undertaking to pay Rs.40,000/- per month, taken again on 25.03.2009 when the undertaking was breached, restored yet again on a fresh undertaking to pay Rs.1,00,000/- per month, and, on breach of that undertaking as well, a notice dated 16.11.2009 was issued and possession was finally resumed on 08.01.2010.

14.8. A public auction notice was issued on 22.01.2010 and a valuation report was obtained on 18.02.2010. The offer received pursuant to the said notice was below the assessed value and was therefore not accepted. The firm's challenge to the proposed auction in W.P. No.7353 of 2010 was dismissed by this Court on 10.03.2010- **Spencer Metal Lamp Caps v. Karnataka State Financial Corporation**. A fresh auction notification was issued 11.03.2010, the highest bid of Rs.40,00,000/- was accepted on 22.03.2010, the sale consideration was remitted on 31.03.2010, possession of the plant and machinery was delivered on 08.04.2010,



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possession of the land and building was handed over on 13.04.2010, and the sale deed dated 15.04.2010 was registered on 19.04.2010.

14.9. The petitioners thereafter filed O.S. No.648 of 2010 for a declaration that the auction sale was illegal, which was dismissed on 05.04.2011, and the appeal in R.A. No.430 of 2011 was also dismissed on 13.06.2012. The One-Time Settlement offer of Rs.50,00,000/- was conditional upon it being accepted in full and final settlement of dues exceeding Rs.10 crores, and was rightly rejected; the sale proceeds were only a part recovery and the balance liability of the petitioners survives.

14.10. He relied upon the order of this Court in ***Spencer Metal Lamp Caps v. Karnataka State Financial Corporation***, particularly paras 2 and 3, extracted earlier, where this Court noticed the recall of the earlier order under Section 29, the restoration of possession on the petitioner firm's promise to pay Rs.1,00,000/- per month, the breach of that promise, and declined to show any further leniency.



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14.11. On the scope of interference, he relied upon ***Karnataka State Industrial Investment & Development Corpn. Ltd. v. Cavalet India Ltd.*** [(2005) 4 SCC 456], particularly paras 16, 17 and 19, extracted earlier, which summarise nine principles; by referring to the decisions in ***Karnataka State Financial Corpn. v. Micro Cast Rubber & Allied Products (P) Ltd.*** [(1996) 5 SCC 65], paras 6 and 7; ***Haryana Financial Corpn. v. Jagdamba Oil Mills*** [2002 (3) SCC 496], [paras 13 and 18], by which ***Mahesh Chandra v. Regional Manager, U.P. Financial Corpn.*** [(1993) 2 SCC 279] was overruled; ***U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd.*** [(1995) 2 SCC 754], paras 21 and 23; ***U.P. Financial Corporation v. M/s Gem Cap (India) Pvt. Ltd.*** [1993 AIR SCW 1189], para 10, and the order of this Court in ***Rekha Rajendra v. Karnataka State Financial Corporation*** [WP No.7506/2005 dt. 01.06.2006], paras 8 and 13.

14.12. On the strength of these decisions he submitted that this Court, under Article 226, does not sit in appeal over the commercial decisions of the



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Corporation; that interference is confined to cases of statutory violation or of unfair, that is, unreasonable action; that fairness is not a one-way street; and that, in the absence of any such infirmity, no interference is called for.

14.13. The entire challenge arises out of action taken under Section 29 of the State Financial Corporations Act, 1951. Since both sides have built their arguments on this provision, it is necessary to first extract it. Section 29 of the said Act reads as under:

"29. Rights of Financial Corporation in case of default.-(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.



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(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of the concern."

14.14. A plain reading of the provision indicates the following. The right under sub-section (1) arises upon default by the industrial concern. On such default, the Corporation may take over the management or possession of the concern and may sell the secured property, and by sub-section (2) the transfer vests in the purchaser all rights as if the transfer had been made by the owner. Sub-section (4) directs that the



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money received shall be held in trust and applied first towards costs, then towards the debt due to the Corporation, with the residue going to the person entitled.

14.15. What is important for the present case is that Section 29 itself does not prescribe any particular mode of sale, nor does it, in terms, require a valuation report or the fixation of a reserve price. The control over the power is the one which the Hon'ble Supreme Court has read into it, namely, that the Corporation, being an instrumentality of the State, must act bona fide, fairly and reasonably, the touchstone of reasonableness being the securing of the best price.

14.16. There is, in truth, no dispute between the parties on the governing law. The decisions relied upon by the learned Counsel for the petitioners in ***S.J.S. Business Enterprises*** (para 16) and the decisions relied upon by the Corporation in ***Gem Cap*** (para 10) and ***Micro Cast Rubber*** (para 7) essentially say the same thing. In ***Micro Cast Rubber***, at para 7, the Hon'ble Supreme Court held:



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"7. In the matter of a sale by the State Financial Corporation in exercise of the power conferred on it under Section 29 of the Act the scope of judicial review is confined to two situations, namely, (1) where there is a statutory violation on the part of the State Financial Corporation, or (2) where the State Financial Corporation acts unfairly, i.e., unreasonably. While exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the State Financial Corporation...."

14.17. In **Gem Cap**, at para 10, the Hon'ble Supreme Court cautioned that the doctrine of fairness was not meant to convert writ courts into appellate authorities over administrative bodies, and observed that:

".....The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street..."

14.18. The same twin tests were reaffirmed by a three-Judge Bench in **Jagdamba Oil Mills** (para 13), which, at para 18, overruled **Mahesh Chandra** [(1993) 2 SCC 279] as being contrary to the letter and intent of Section 29, and they were distilled into nine principles in **Cavalet India** (para 19). Of those principles,



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principles (i), (ii), (iv), (viii) and (ix) bear directly on this point: the High Court does not sit in appeal over the Corporation; a writ court has no say except where there is a statutory violation or where the Corporation acts unfairly, that is, unreasonably; unless the action is mala fide, even a wrong decision of the Corporation is not open to challenge; fairness cannot be a one-way street; and reasonableness is to be tested against the dominant consideration of securing the best price.

14.19. This Court will therefore examine the record on these two tests, namely, statutory violation and unfairness or unreasonableness.

14.20. On the first test - statutory violation, Sri M.R. Vijaya Kumar was unable to point to any provision of the Act or of any rule made under it which the Corporation is said to have breached. As analysed above, Section 29 does not oblige the Corporation to accept a settlement proposal, nor does it lay down the machinery of valuation or reserve price. The sale here was by public auction; the full bid amount of Rs.40,00,000/- was received on



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31.03.2010; and the amount was appropriated towards the loan account in the manner sub-section (4) contemplates, the dues being far in excess of the sale proceeds so that no residue arose for payment to the petitioners. The requirements of sub-sections (1), (2) and (4) of Section 29 were thus answered on the facts.

14.21. It is on facts that ***Gajraj Jain*** [(2004) 7 SCC 151], on which strong reliance was placed, is clearly distinguishable. In that case, as paras 13 and 15 show, the Corporation did not sell the assets in the manner Section 29 contemplates: it handed over the assets to a private party against a down payment of Rs.28.85 lakhs and a mere promise by that party to pay the dues of the Central Bank of India, a stranger to the arrangement; tenders were to be opened on 22.03.2002, yet the assets were delivered on 19.03.2002 against demand drafts dated 09.03.2002, drawn even before the offer to purchase was made; and the Hon'ble Supreme Court found (para 15) that these circumstances indicated collusion and held (para 13) that the agreement and transfer



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were in breach of sub-sections (1) and (4) of Section 29.

14.22. Nothing of that kind exists here. There was an open auction, an outside purchaser made full payment of the bid, and the proceeds were appropriated towards the costs and debt. The principle in para 14 of ***Gajraj Jain***, that a valuation ought to be called for is also not offended, because the record shows a valuation report dated 18.02.2010 obtained before the notification of 11.03.2010 pursuant to which the sale was held.

14.23. On the second test - unfairness or unreasonableness, the admitted chronology speaks for itself. The loan was of the year 1996. Possession was first taken in the year 2000. Between 10.11.2000 and 22.02.2004 the Corporation attempted to sell the unit six times, and even then declined the highest offer of Rs.13.35 lakhs because it was below its own assessed value, conduct which protected, rather than harmed, the borrower. Possession was restored on 15.08.2004 on the petitioners' plea of revival. When defaults continued,



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possession was taken on 01.09.2008 and restored on an undertaking to pay Rs.40,000/- per month; taken again on 25.03.2009 and restored on a fresh undertaking of Rs.1,00,000/- per month; and it was only after the breach of that undertaking too that notice dated 16.11.2009 was issued and possession finally resumed on 08.01.2010. A creditor which returns the secured asset to the borrower three times over on nothing more than promises, and which turns down low offers to its own delay and cost, cannot be described as having acted unfairly when it ultimately sells. If anything, it is the petitioners whose conduct falls within the description in para 10 of **Gem Cap** of borrowers 'putting forward one or other ploy' while having no intention of repaying.

14.24. The conduct of the petitioners up to 08.01.2010 has, in fact, already been examined by this Court. In **Spencer Metal Lamp Caps** (paras 2 and 3), this Court, while dismissing W.P. No.7353 of 2010 on 10.03.2010, recorded the restoration of possession on the promise of



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Rs.1,00,000/- per month, the breach of that promise, and held:

"...this Court does not find any ground to show leniency in favour of the petitioner, inasmuch as the petitioner has failed to comply with his words that he would be paying Rs.1,00,000/- every month."

14.25. That order was passed inter partes, has attained finality, and the auction impugned here was held only after its dismissal. The petitioners who are partners of the very same firm **Spencer Metal Lamp Caps** cannot re-agitate the very same conduct in this petition and invite a different conclusion.

14.26. The submission that the demand of Rs.10,63,55,966/- against a principal of Rs.65,65,623/- is by itself arbitrary cannot be accepted. The escalation is the arithmetic of interest accruing under the loan agreement over some fourteen years of continuous default. It was never the petitioners' plea that interest was charged at a rate, or computed in a manner, contrary to the agreement or to the statute. Disputes on the state of accounts are matters of evidence for the civil court, and the petitioners did carry the dispute over this very



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sale to the civil court in O.S. No.648 of 2010, where they failed, and failed again in R.A. No.430 of 2011. A writ court, on affidavits, cannot re-open such questions.

14.27. The decision in ***S.J.S. Business Enterprises*** does not carry the petitioners' case further, for two reasons. First, on facts, the vice found there (para 19) was that the second sale notice gave intending purchasers less than three days, of which two were public holidays, an 'unusual haste' which was never explained. Here, the sale process stretched over years and the final round itself ran from the notice of 22.01.2010 to the auction of 22.03.2010; no comparable haste is even alleged. Secondly, para 15 of that decision, on the question of the parallel suit, in truth supports the Respondents: there the suit had been withdrawn before the writ petition was heard, and it was for that reason that the writ petition was held maintainable. Here, the petitioners elected the civil remedy, prosecuted the suit to judgment, lost, appealed and lost again. The decree of the civil court on the legality of this very sale stands, and a writ of



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certiorari cannot be employed as a device to get around it.

14.28. In ***Naini Oxygen***, at para 23, the Hon'ble Supreme Court held that 'in matters commercial, the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned.' In ***Rekha Rajendra***, at para 13, this Court, on facts very close to the present, held that where the borrower was given chance after chance and the sale was postponed repeatedly, 'obviously the Respondent cannot postpone the sale indefinitely to recover the dues.' Both apply with full force here.

14.29. In the result, neither of the two recognised grounds of interference is made out. There is no statutory violation; there is no unfairness or unreasonableness; and no mala fides are pleaded with any particulars, let alone proved.

14.30. Every argument advanced by Sri M.R. Vijaya Kumar under this point, and each of the decisions cited by him on it, has been considered and found either to state principles



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with which there is no quarrel or to arise from facts far removed from the present.

14.31. This court answers Point No.(i) by holding that the sale of the petitioners' secured assets by the Karnataka State Financial Corporation under Section 29 of the State Financial Corporations Act, 1951 is not liable to be interfered with; the Corporation has not been shown to have failed to act fairly, reasonably and in accordance with law while conducting the auction.

15. **Answer to Point No.(ii): Whether, in the facts of the present case, the impugned auction sale is vitiated by reason of the alleged absence of proper valuation, non-fixation of reserve price, failure to secure the best possible price, rejection of the petitioners' One-Time Settlement proposal or any other material irregularity?**

15.1. Sri.M.R. Vijaya Kumar, learned counsel for the petitioners submitted that the auction was notified and held without obtaining a proper valuation of the secured assets and without fixing any reserve price. These omissions discouraged genuine purchasers, robbed the auction of competition, and resulted in a



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property worth more than Rs.2 crores being knocked down for Rs.40,00,000/-, a grossly inadequate price, while the petitioners' One-Time Settlement offer of Rs.50,00,000/- was brushed aside.

15.2. He relied on ***Divya Manufacturing Co. (P) Ltd. v. Union Bank of India*** [AIR 2000 SC 2146], paras 9, 10, 11, 13 and 16, extracted earlier, for the proposition that even a confirmed sale may be set aside where the price is grossly inadequate, the Court being the custodian of the interests of the company and its creditors; on ***FCS Software Solutions Ltd. v. La Medical Devices Ltd.*** [(2008) 10 SCC 440], paras 28 to 37, where a fresh auction ordered by the Company Judge on account of non-disclosure of valuation, reserve price and inventory was upheld; and on ***Union Bank of India v. Official Liquidator, High Court of Calcutta*** [(2000) 5 SCC 274], paras 10, 13, 14, 23 and 28, where a sale confirmed without disclosing the valuation report, and without the Judge applying his mind to a patently unreliable report, was set aside.



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15.3. He further relied on ***Swastik Agency v. State Bank of India*** [AIR 2009 Ori 147], paras 17, 18, 19, 20, 28 and 76, on the distinction between 'valuation' and 'reserve price' and the need for application of mind to the valuer's report before fixing the reserve price; on ***Rakesh Kumar Goel v. U.P. State Industrial Development Corpn. Ltd.*** [AIR 2010 SC 2451], para 17(v), noting that no reserve price had been indicated in the sale proclamations there; on ***Kerala Financial Corpn. v. Vincent Paul*** [(2011) 4 SCC 171], paras 11, 20 and 21, laying down the procedure to be followed by Financial Corporations for sales under Section 29, including valuation by an approved valuer, fixation of reserve price, advertisement in two newspapers and thirty days' notice to the borrower; on ***Anita Sadana v. Baljinder Kaur*** [AIR 2014 MP 125], paras 12, 13, 16, 17 and 18, applying those safeguards and holding non-compliance with Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 to be fatal; and on ***M/s Sai Balaji Housing Pvt. Ltd. v. Sri Bharathi Warehousing Corporation*** [2024 SCC OnLine AP 744], paras 9, 10, 11 and



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13, on the mandatory fixation of a reserve price under Order XXI Rule 72-A of the Code of Civil Procedure, 1908 where the mortgagee seeks to bid at a court sale.

15.4. Sri Bipin Hegde, learned counsel for Respondent No.1 – KSFC submitted that the plea of absence of valuation is contrary to the record, a valuation report was obtained on 18.02.2010, and both in 2004 and in the first round of 2010 offers were rejected precisely because they fell below the assessed value, which demonstrates that the Corporation was working to a valuation and applying its mind to it.

15.5. The One-Time Settlement offer of Rs.50,00,000/- was not an offer to purchase the property; it was a demand that dues exceeding Rs.10 crores be wiped out in full and final settlement for that sum. Its rejection, and the acceptance of the auction bid of Rs.40,00,000/- as a part recovery keeping the balance claim alive, was a commercial decision squarely within ***Micro Cast Rubber*** (paras 6 and 7). There being six failed auctions between



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2000 and 2004, where the best offer was Rs.13.35 lakhs; the figure of Rs.2 crores now pressed is a bare assertion unsupported by any material. The sale stood completed, price paid, possession delivered, sale deed registered on 19.04.2010 - and its legality was upheld by the civil court and the first appellate court.

15.6. **Alleged absence of proper valuation:** The foundation of this plea is factual, and the record is against it. A valuation report dated 18.02.2010 was obtained before the notification dated 11.03.2010 pursuant to which the sale of 22.03.2010 took place. The conduct of the Corporation corroborates the report's existence and use: the highest offer of Rs.13.35 lakhs received in 2004 was rejected as below the internal valuation, and the offer received pursuant to the notice dated 22.01.2010 was likewise rejected as below the assessed value. A creditor anxious to sell at any price does not keep rejecting offers as too low. As against this, the petitioners have placed no material whatsoever, no valuer's report, no comparable sale instance, no offer from any ready purchaser, to support the asserted value of



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Rs.2 crores. Auction was admittedly held on 22.03.2010; the valuation report of 18.02.2010 preceded the notification under which the sale was actually held. The plea of absence of valuation therefore fails on facts.

15.7. Once that is so, ***Union Bank of India v. Official Liquidator*** does not assist the petitioners. There (paras 10, 13 and 14), the sale was by the Company Court, which acts as custodian; the valuation report was kept 'a secret, confidential document' from the secured creditors; and the report itself, on its face, was unreliable, valuing leasehold land at the aggregate of 99 years' rent, matters to which the learned Company Judge had not applied his mind. Here the sale was by the Corporation under its own statutory power, a valuation existed and was acted upon, and no statute or rule then governing Section 29 sales required the report to be published to the borrower. The principle of that decision, that valuation must exist and must be considered, is satisfied on this record; its facts have no parallel here. Paras 23 and 28 of that decision, dealing with the equities of the auction purchaser there and



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the final directions, likewise have no application.

15.8. Alleged non-fixation of reserve price:

Neither Section 29 nor any rule framed under the State Financial Corporations Act, 1951 as it stood at the time of the impugned sale prescribed the fixation or publication of a reserve price. The directions in ***Vincent Paul*** (para 20), requiring, among other things, valuation by an approved valuer, fixation of a reserve price in consultation with the secured creditor, advertisement in two newspapers and thirty days' notice to the borrower, were issued by the Hon'ble Supreme Court on account of the absence of statutory rules, and, by their very terms, were to operate 'till such formation of rules or guidelines or orders'. That decision was rendered in the year 2011. The impugned sale was complete in all respects by 19.04.2010, when the sale deed was registered. Directions laid down after a sale is complete cannot be pressed into service to undo it; a completed transfer which vested title under Section 29(2) is to be tested by the law as it stood on the date of sale. Even on



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substance, what a reserve price is designed to achieve, a floor below which the property will not go, was achieved in fact, for the Corporation worked to an assessed value and rejected every offer which fell below it, both in 2004 and in the first round of 2010.

15.9. The decision in ***Rakesh Kumar Goel*** takes the matter no further. Para 17(v) of that decision, to contend that 'No reserve price for the plots in question was indicated either in the sale proclamations or even in the memos of auction' and the sale there was interfered with on the cumulative effect of several irregularities. The decision does not lay down, as an absolute proposition, that the mere absence of a published reserve price by itself voids every sale, and it cannot be read as overriding the settled twin tests discussed under point No.(i).

15.10. The decisions in ***Swastik Agency*** and ***Anita Sadana*** both arose under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In ***Swastik Agency***, the sale followed a notice under Section 13(4) of that Act, and the



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Hon'ble High Court of Orissa (paras 17 to 20 and 28) explained the distinction between valuation and reserve price and the need for application of mind to the valuer's report, allowing the writ petition (para 76) for 'flagrant violation of the statutory provisions'.

15.11. In **Anita Sadana**, the Hon'ble High Court of Madhya Pradesh rested its conclusion (para 17) squarely on non-compliance with Rule 8(5) of the Security Interest (Enforcement) Rules, 2002, which expressly mandates valuation by an approved valuer and fixation of a reserve price, and (para 12) applied the guidelines of **Vincent Paul**, which, as held above, post-date the present sale; para 13 thereof applied **Navalkha & Sons v. Sri Ramanya Das** [(1969) 3 SCC 537], para 16 applied **Anil Kumar Srivastava v. State of U.P.** [AIR 2004 SC 4299] on the valuation/reserve price distinction, and para 18 noticed that a person cannot be deprived of property except in accordance with the statute. The ratio in both cases is breach of an express statutory rule. The SARFAESI Rules do not govern a sale under Section 29 of the State Financial



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Corporations Act, and no corresponding rule existed under that Act in 2010. The general principle these decisions embody, that the seller must apply its mind to value is, as found at paragraph 13.4.1, satisfied here. Both decisions are therefore distinguishable.

15.12. The facts in ***Sai Balaji Housing*** are different from the present facts. It construed Order XXI Rule 72-A of the Code of Civil Procedure, 1908, extracted at para 9 of that decision, under which a mortgagee cannot bid at a court sale in execution of a mortgage decree without leave, and, where leave is granted, the executing court 'shall fix a reserve price' not less than the amount due (paras 10 and 11, applying ***P. Ramireddy v. P. Sundara Rama Reddy*** [AIR 1986 AP 29], and para 13, noticing ***N. Prabhakara Naidu v. Nellore Finance Corporation*** [2008 (6) ALD 685]). The impugned sale was not a court sale in execution of a decree, and the KSFC neither sought leave to bid nor bid at all; the property was purchased by outside parties. The provision and the decision have no application. The broader idea for which they were cited,



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protection against sale at an undervalue, has been dealt with above.

15.13. **Alleged failure to secure the best possible price / gross inadequacy:** The petitioners' relied on ***Divya Manufacturing*** and ***FCS Software***, and both are distinguishable on the same three grounds. First, both were sales conducted by the Company Court in liquidation, where the Court itself is the custodian of the interests of the company and its creditors (***Divya Manufacturing***, para 13; ***FCS Software***, para 33; noticing ***Union Bank of India***); a sale by a Financial Corporation under Section 29 is tested not on the custodial standard but on the twin tests settled in ***Micro Cast Rubber, Gem Cap, Haryana Financial Corpn*** and ***Cavalet India***, as held under point No.(i). Secondly, in both cases there was a concrete, substantially higher offer actually before the Court, Rs.2 crores against Rs.1.30 crores in ***Divya Manufacturing*** (paras 11 and 16), backed by deposits of Rs.40 lakhs each, and Rs.3.5 crores against Rs.1.47 crores in ***FCS Software*** (para 28) - and in ***FCS Software*** the appellant twice refused the opportunity of



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inter se bidding (para 29). In the present case, no higher offer to purchase has ever existed at any point of time: six auctions between 2000 and 2004 peaked at Rs.13.35 lakhs; the 2010 rounds produced Rs.40,00,000/- after a lower offer had been refused; and neither the petitioners nor anyone at their instance has, till date, produced a purchaser willing to pay more. Thirdly, in ***Divya Manufacturing*** the Hon'ble Supreme Court itself emphasised (para 16) that 'neither the possession of the property nor the sale deed was executed in favour of the appellant' when the confirmation was recalled, and that the terms of sale there contained condition No.11 expressly reserving such a power. Here the price was paid on 31.03.2010, possession was delivered on 08.04.2010 and 13.04.2010, and a registered sale deed of 19.04.2010 stands in favour of third parties. Para 37 of ***FCS Software*** only holds that a Company Judge who orders a fresh auction on noticing irregularities cannot be faulted; it is no authority for setting aside a completed sale, years later, on a bare assertion of value. Paras 30 to 36 of ***FCS Software***, which review



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Navalkha, Kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd. [(1974) 2 SCC 213], ***Union Bank of India, Divya Manufacturing and Gajraj Jain***, in fact include the caution in ***Navalkha*** (para 31) that once the Court concludes that the price offered is adequate, 'no subsequent higher offer can constitute a valid ground for refusing confirmation', and the recognition in ***Kayjay Industries*** [(1974) 2 SCC 213], para 32, that a court sale is a forced sale and 'the best price is not often forthcoming' - observations which are against the petitioners.

15.14. Adequacy of price is, in the end, a question of fact. The dominant consideration is to secure the best price (***S.J.S. Business Enterprises***, para 16; ***Cavalet India***, para 19, principles (v) and (ix)), but 'best price' means the best price the market will realistically yield, not a figure asserted by the borrower. The market was tested here not once but eight times over a decade. The petitioners' figure of Rs.2 crores has no basis, no valuation report is produced nor is such an offer made by anyone. The civil court, after a full trial in O.S. No.648 of 2010,



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negatived the plea that the sale was illegal or undervalued, and the first appellate court affirmed that finding in R.A. No.430 of 2011. Sitting in writ jurisdiction, merely because this time the Writ Petition is filed by the partners and not the Firm, this Court neither re-appreciates that evidence nor conducts a valuation of its own; interference with facts is permissible only on pleaded and established grounds, and none is established.

15.15. Rejection of the One-Time Settlement

proposal: The comparison pressed by the petitioners, Rs.50,00,000/- offered by them against Rs.40,00,000/- accepted from the bidder, is a comparison of unlike things. The auction bid was a price for the property; on its acceptance the Corporation received Rs.40,00,000/- and its claim for the large balance of its dues survived. The One-Time Settlement was not an offer to buy the property at all; it was a condition that dues exceeding Rs.10 crores be treated as fully and finally settled for Rs.50,00,000/-. Acceptance of the settlement would have extinguished the entire claim for a paltry sum of Rs.10,00,000/- more



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than the bid; rejection of it kept the balance alive. Far from acting against its own interest, the Corporation acted in the only commercially sensible way. Whether to accept a settlement, and on what terms, is a commercial evaluation of competing offers of precisely the kind which ***Micro Cast Rubber*** (para 6) holds is for the Corporation to make, and which, per para 7 thereof and para 21 of ***Naini Oxygen***, which, this Court will not second-guess. No statutory provision obliges the Corporation to accept a One-Time Settlement, and no mala fides in its rejection are pleaded with particulars.

15.16. **Any other material irregularity:** None has been pointed out. Successive auction notifications spread over a decade were issued, in the last round from 22.01.2010 to the auction of 22.03.2010, with participation by bidders; the petitioners were fully aware at every stage, having themselves challenged the proposed auction in W.P. No.7353 of 2010; and no ground such as fraud, collusion between bidders, or denial of notice is pleaded with any particulars. To this may be added the conduct of the petitioners after the sale: the price was



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paid and the deed registered by 19.04.2010; the petitioners chose the civil forum, lost in 2011, lost in appeal in 2012, and only then pursued the present petition, by which time third-party rights had long since crystallised in Respondents No.2 and 3, who hold a registered conveyance carrying the effect of Section 29(2). The equities, like the law, are against interference.

15.17. The alleged infirmities, absence of valuation, non-fixation of reserve price, failure to secure the best price, rejection of the One-Time Settlement, or any other irregularity are either contrary to the record or without foundation in law.

15.18. This court answers Point No.(ii) by holding that the impugned auction sale is not vitiated by the alleged absence of proper valuation, non-fixation of reserve price, failure to secure the best possible price, rejection of the petitioners' One-Time Settlement proposal, or any other material irregularity.



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16. **Answer to Point No.(iii): What order?**

16.1. In view of the findings on points No.(i) and (ii), the writ petition must fail. No statutory violation, unfairness, unreasonableness or mala fides on the part of Respondent No.1 is made out; the specific irregularities alleged are contrary to the record or unsustainable in law; the sale stands completed by a registered conveyance in favour of Respondents No.2 and 3; and the legality of the sale has already been upheld by the civil court and the first appellate court. The reliefs of certiorari sought against the sale deed dated 15.04.2010 and the sale of the machinery dated 08.04.2010 therefore cannot be granted, and no case is made out for any other direction under Articles 226 and 227 of the Constitution of India. It is made clear that the appropriation of the sale proceeds and the recovery of any balance dues shall continue to be governed by law.

16.2. In the result, this Court passes the following:



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ORDER

- i. The writ petition is ***dismissed***.
- ii. Interim order, if any subsisting, stands vacated.
- iii. Pending interlocutory applications, if any, do not survive for consideration and are disposed of.

This Court has been assisted by Ms.Harshada, Law Clerk, in reviewing this Judgment.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

SR
List No.: 2 Sl No.: 2