

In the High Court of Judicature at Madras

Reserved on : 09.07.2015

Dated : 23.07.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and

The Hon'ble Mr.Justice M.VENUGOPAL

W.P.Nos.28915 to 28917, 30711/2014 & 17203 of 2015
and M.P.Nos.1, 1, 1 & 1 of 2014

- 1.S.Gnanavadiyu
.. Petitioner in W.P.28915 of 2014
- 2.V.Ganapathy
.. Petitioner in W.P.28916 of 2014
- 3.Dinesh Kumar
.. Petitioner in W.P.28917 of 2014/

- 1 Indian Bank
Rep. by the Chief Manager/ Authorized
Officer TKM Complex Katpadi Road
Vellore-632 004.
- 2 The Branch Manager
Indian Bank Vellore Main Branch Katpadi Road
Vellore-632 004. ...PETITIONERS IN
W.P.No.30711 OF 2014

- 1 K.Gopichandran
- 2 Mr. M.Rafiq Ahmed
- 3 K.M.Jamsheed
- 4 B.A.Mahaboob Basha
- 5 P.M.Nazeer Ahmed
- 6 P.Hajee Abdul Jabbar Sons
represented by its Partners
- 7 R.A.Aarif
- 8 R.Ibrahim
- 9 P.M.Imtiaz Ahmed
- 10 Jabeen Taj
- 11 G.Momin
- 12 S.K.Sanullah

13 K.M.Sanullah
14 Jamal Basha
15 Mrs. R.Inbalatha ...PETITIONERS IN W.P.17203 OF 2015

Vs

W.P.NOS.28915, 28916, 28917 OF 2014

1.M/s.Abdul Azeez Son & Company
rep. by its Managing Partner
Mr.K.Iqbal Ahmed

2.Indian Bank
rep. by its Chief Manager/
Authorised Officer,
TKM Complex, Katpadi Road, Vellore-632 004.

3.The Branch Manager,
Indian Bank, Vellore Main Branch,
TKM Complex, Katpadi Road,
Vellore-632 004.

4.The Registrar,
Debts Recovery Appellate Tribunal,
Egmore, Chennai-600 008.

5. Dinesh Kumar ...5th Respondent in W.P.Nos.28915,
28916/2014

S. Gnanavadivel ... 5th respondent in W.P.No.28917/14
& 6th Respondent in W.P.No.28916 of 2014

6. v. Ganapathy ...6th Respondent in W.P.Nos.28915,
28917/2014

7.M.Rafiq Ahmed

8.R.Inbalatha

9.K.M.Jamsheed

10.B.A.Mahaboob Basha

11.P.M.Nazeer Ahmed

12.P.Hajee Abdul Jabbar Sons

13.R.A.Aarif

14.R.Ibrahim

15.P.M.Imtiaz Ahmed

16.Jabeen Taj

17.K.Gopichandran

18.G.Momin

19.S.K.Sanullah

20.K.M.Sanullah

21.Jamal Basha

22..Lufuthulla Bros and Family.. Respondent in all the Petitions

W.P.Nos.30711 and 17203 of 2014

- 1 M/s.Abdul Azeez Son & Company
Rep. by its Managing Partner Mr.K.Iqbal Ahmed
...Respondents in both the WPs
- 2 The Debts Recovery Appellate
Tribunal No.55 Ethiraj Salai Chennai-8.
- 3 Dinesh Kumar
- 4 S.Gnanavadivel
- 5 V.Ganapathy
- 6 M.Rafiq Ahamed
- 7 R.Inbalatha
- 8 K.M.Jamsheed
- 9 BA Mahaboob Basha
- 10 PM Nazeer Ahmed
- 11 P.Hajee Abdul Jabbar Sons
- 12 R.A.Aarif
- 13 R.Ibrahim
- 14 P.M.Imtiaz Ahmed
- 15 Jabeen Taj
- 16 K.Gopi Chandran
- 17 G.Momin
- 18 S.K.Sanullah
- 19 K.M.Sanullah
- 20 Jamal Basha
- 21 Lufithulla Bros and Family ...Respondents 2 to 21 in
W.P.No.30711 of 2014
- 2 Indian Bank
Rep. by its Chief Manager / Authorized
Officer TKM Complex Katpadi Road
Vellore- 632 004.
- 3 The Branch Manager
Indian Bank Vellore Main Branch
TKM Complex Katpadi Road Vellore-632 004.
- 4 The Registrar
Debts Recovery Appellate Tribunal Egmore
Chennai-8.
- 5 S.Gnanavadivu
- 6 Dinesh Kumar
- 7 V.Ganapathy
- 8 Lufuthulla Bros and Family ...Respondents 2 to 7 in

W.P.No.17203 of 2015

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for a writ of Certiorari, calling for the records of the impugned order dated 22.08.2014 in RA(SA) No.132 of 2012 on the file of the Debts Recovery Appellate Tribunal, Chennai and to quash the same being grossly illegal and untenable in law.

W.P.Nos.28915 to 28917 of 2014

For Petitioners : Mr.E.Omprakash for
M/s Ramalingam & Associates

For R 1 : Mr.T.Saikumar for
M/s Sai Bharath & Ilan

For R 2 & R3 : Mr.Jayesh B.Dolia for
M/s Aiyar & Dolia

R4 : Tribunal

R5 to R22 : Not pressed

W.P.No.30711 of 2014

For Petitioner : Mr.Jayesh B.Dolia for
M/s Aiyar & Dolia

For R 1 : Mr.T.Saikumar for
M/s Sai Bharath & Ilan

For R 3 to R5 : Mr.E.Omprakash for
M/s Ramalingam & Associates

For R6 to R21 : Mr.R.Subramanian

R2 : Tribunal

W.P.No.17203 of 2015

For Petitioner : Mr.R.Subramanian

For R 1 : Mr.T.Saikumar for
M/s Sai Bharath & Ilan

For R2 & R3 : Mr.Jayesh B.Dolia for
M/s Aiyar & Dolia

R4 : Tribunal

For R5 to R7 : Mr.E.Omprakash for
M/s Ramalingam & Associates

For R8 : Mr.R.Subramanian

C O M M O N O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioners have preferred the instant Writ Petitions praying for passing of a common order by this Court in calling for the records relating to the impugned order dated 22.08.2014 in R.A. (SA) No.132 of 2012 on the file of the Fourth Respondent/Debt Recovery Appellate Tribunal, Chennai and to quash the same as illegal and unsustainable one in the eye of law.

Petitioners' Contentions in W.P.Nos.28915 to 28917 of 2014:

2.The Learned counsel for the Petitioners submits that the impugned order dated 22.08.2014 in R.A.(SA) No.132 of 2012 passed by the Fourth Respondent/Debts Recovery Appellate Tribunal, Chennai in setting aside the dismissal order dated 09.12.2011 made in S.A.No.120 of 2009 and the Auction Sale conducted on 13.08.2004 and the Sale Certificates dated 09.04.2009 are erroneous one, since it was passed without appreciation of the facts and circumstances of the case.

3.It is the contention of the Learned counsel for the Petitioners that the Fourth Respondent/Appellate Tribunal by virtue of the impugned order dated 22.08.2014 had caused serious prejudice insofar as the sale in favour of the Petitioners which had become absolute, had been set aside without properly considering the evidence on record, documents and pleadings projected by the parties.

4.According to the Learned counsel for the Petitioners, the Petitioners being the successful auction purchasers, do have right to the property and the said right had become absolute on execution of the sale certificates and delivery of possession of the property under the provisions of the SARFAESI Act. Also that, the First Respondent/Borrower had lost its 'Right of Redemption' of the property which was the secured assets in the hands of the Second Respondent/Indian Bank.

5.The Learned counsel for the Petitioners urges before this Court that the First Respondent/Borrower had transferred its interest in the property to a third party purchaser, viz., one Ramesh, which fact was admitted in the pleadings of the First Respondent/Borrower before the Appellate Tribunal. Therefore, it is represented on behalf of the Petitioners that the Fourth Respondent/Appellate Tribunal should have held that the First Respondent/Borrower does not have any right to challenge the 'Auction Sale' and the so-called third party purchaser is only vested with the 'Equitable Right of Redemption' of

the said property.

6.The Learned counsel for the Petitioners brings it to the notice of this Court that the Fourth Respondent/Debts Recovery Appellate Tribunal, Chennai should have appreciated the fact that the First Respondent/Borrower admitted that it sold the property to a third party after issuance of 'Demand Notice' under Section 13(2) of the SARFAESI Act and it only pleaded that the same was an inadvertent error. Further, the so-called purchaser of the subsisting mortgage had initiated numerous proceedings before the Civil Court and the Rent Control Forums.

7.The Learned counsel for the Petitioners submits that the Fourth Respondent/Appellate Tribunal had come to a wrong conclusion that the sale under the provisions of the SARFAESI Act is in violation of the orders of 'Status Quo' and was conducted without proper publication and therefore, was liable to be set aside.

8.The Learned counsel for the Petitioners contends that the First Respondent/Borrower had not disputed the availing of credit facilities, creation of mortgage, default in payment of dues, service of demand notice under Section 13(2) of the SARFAESI Act, possession notice and the sale notice dated 09.07.2004 under the provisions of the SARFAESI Act. As a matter of fact, the property was sold and the said sale was admitted subject to the decision of the Appellate Tribunal in S.A.No.15 of 2007. As such, the Fourth Respondent/Appellate Tribunal should have held after the dismissal of the said S.A.No.15 of 2007, the sale which took place earlier stood confirmed and the auction purchasers had derived a right to the property absolutely.

9.The plea of the Petitioners is that the Fourth Respondent/Appellate Tribunal had wrongly construed that there were orders of 'Status Quo' when the auction sale was completed on 13.08.2004, holding that the orders of the Debts Recovery Appellate Tribunal, Mumbai was later set aside by this Court in the Writ Petition and hence, status quo continues.

10.Yet another stand of the Petitioners is that the Fourth Respondent/Appellate Tribunal ought to have considered the fact that a 'Status Quo Order' was obtained by the First Respondent/Borrower on 29.07.2004 which was set aside by the Appellate Tribunal through an order dated 12.08.2004 and therefore, the auction was proceeded with on 13.08.2004 as there was no status quo order in operation on that date. Apart from that, this Court while entertaining the Writ Petition against the order of the Debts Recovery Appellate Tribunal had in fact remanded back the matter to the Debts Recovery Tribunal for consideration after setting aside the order dated 12.08.2004 without granting any relief to set aside the sale.

11.The Learned counsel for the Petitioners project an argument that the Appellate Tribunal should have considered the relief sought for in the Writ Petition in W.P.No.24814 of 2004 was only to set aside the auction sale and the said relief was not granted by this Court. Further, M.A.(SA) No.120 of 2004 was remanded for fresh consideration by the Debts Recovery Appellate Tribunal. As such, the order would not amount to continuing the status quo granted on 29.07.2004 by the Debts Recovery Tribunal-I, Chennai in S.A.No.20 of 2004.

12.The Learned counsel for the Petitioners contends that the Fourth Respondent/Appellate Tribunal had erroneously held that the sale dated 13.08.2004 was not published in two newspapers and it was published only in the English newspaper and the same is in violation of Rule 8 of the SARFAESI Act. Moreover, the Appellate Tribunal had failed to take note of the vital fact that the said notice was published in Vernacular daily namely, 'Dina Thanthi' on 10.07.2004 and there was strict compliance of the same. In reality, the First Respondent/Borrower on obtaining the status quo order from the Debts Recovery Appellate Tribunal had published a notice in 'Dina Thanthi' in response to the sale notice having been published earlier in the same newspaper.

13.The Learned counsel for the Petitioners submits that the findings of the Debts Recovery Appellate Tribunal is that the sale notice was not served on the persons who had mortgaged the property. To this, answer of the Petitioners is that, as the partnership firm viz., the First Respondent/ Borrower herein had challenged the measures on being served with the 'Notice of Sale' and further, the finding of the Appellate Tribunal in para 9 of the impugned order was related to subsequent sale after the disposal of the 'Appeal' in the earlier round of litigations.

14.The Learned counsel for the Petitioners contends that the finding of the Fourth Respondent/Appellate Tribunal that the sale conducted by means of an 'Ex-parte Order' passed by the Debts Recovery Appellate Tribunal, Mumbai, which was later set aside by this Court is improper and untenable in law. Also, it is the stand of the Petitioners that the Appellate Tribunal failed to note of the fact that the 'Ex-parte Order' of the Debts Recovery Appellate Tribunal, Mumbai had also permitted the same to be proceeded with but stayed the confirmation of sale. By means of subsequent order of the Debts Recovery Appellate Tribunal, it is submitted that the sale shall be subject to the finality of the SA and in such view of the matter, the Appellate Tribunal held that it was conducted subject to the orders as well as the proceedings and had attained finality on the dismissal of the SA by the Debts Recovery Tribunal-III, Chennai.

15.The Learned counsel for the Petitioners submits that the Petitioners are the successful bidders with the highest bid offer of sale of the properties in regard to item Nos.2, 4 and 1 respectively of the sale notices. All the Petitioners were issued with the necessary sale certificate dated 13.05.2008 by the Second Respondent/Bank and the same were duly registered as document Nos.5379, 5378 and 5380 of 2008 on the file of the District Registrar, Vellore.

16.The Learned counsel for the Petitioners in support of the contentions that the interim order merges with the final order and for all purposes, only the final order would operate referred to the following Hon'ble Supreme Court decisions:

- a)Commissioner of Excise of Delhi V. World Trunks Ltd., [2010 (11) SCC 153]
- b)Om Prakash Verma & Others V. State of Andhra Pradesh & Others [2010 (13) SCC 158]
- c)Dharam Dutt & Others V. Union of India & Others [2004 (1) SCC 712]
- d)Gojer Bros. Pvt. Ltd., V. Ratan Lal Singh [1974 (2) SCC 453]
- e)Kunhayammed V. State of Kerala & Others [2000 (6) SCC 359]

17.He also seeks in aid to the decisions of the Hon'ble Supreme Court in Janak Raj V. Gurdial Singh and another reported in AIR 1967 SC 608 and 2014 (1) CTC 732 in Sadashiv Prasad Singh's case to highlight the point that the Petitioners are the bona-fide purchasers for valuable consideration.

Submissions of the Petitioners/Bank in W.P.No.30711 of 2014:

18.The Learned counsel for the Petitioners/Bank submits that the First Respondent/Borrower availed loan facilities from it at Vellore Main Branch and executed necessary loan documents and also deposited the title deeds as security in respect of the concerned properties for due repayment of the loan availed.

19.The Learned counsel for the Petitioners contends that the First Respondent/ Borrower after availing the loan facilities has not taken necessary steps to settle the matter. As such, it is represented on behalf of the Petitioners that bank was constrained to invoke the ingredients of the SARFAESI Act by issuing notice dated 21.10.2002 under Section 13(2) of the Act, claiming a sum of Rs.1,29,27,587/- with further interest at contractual rate and costs.

20.The Learned counsel for the Petitioners/Bank proceeds to state that the First Respondent/Borrower approached the bank to settle the matter under one time settlement and offered to pay a sum of Rs.55 lakhs by their letter dated 31.12.2002 and the said offer was considered without prejudice to the rights and contentions.

Furthermore, the Petitioners/Bank agreed to receive a sum of Rs.55 lakhs with full and final settlement by the sanction ticket dated 24.02.2003 and as per the terms and conditions, the First Respondent/Borrower has to pay the said sum of Rs.55 lakhs within 30 days from the date of communication. As a matter of fact, the First Respondent/ Borrower paid a sum of Rs.10 lakhs and failed to pay the balance as one time settlement amount and further, failed to fulfill the terms and conditions of the one time settlement.

21.The Learned counsel for the Petitioners contends that since after receipt of 13(2) notice of the SARFAESI Act, the First respondent/Borrower approached this Court by filing W.P.No.8929 of 2003, challenging the issuance of the 13(2) notice and the said Writ Petition was dismissed on 01.07.2004. Apart from that, pending Writ Petition, the First Respondent approached the Bank and gave a proposal to pay a sum of Rs.45 lakhs towards full and final settlement and this proposal was considered by the Petitioners' Bank and agreed to receive the said sum within 90 days from the date of communication of the sanction ticket. Even for this sanction also, the First Respondent/Borrower had failed to comply with the same and therefore, this one time settlement also failed.

22.The Learned counsel for the Petitioners/Bank draws the attention of this Court that after disposal of W.P.No.8929 of 2003, the Bank invoked Section 13(4) of the SARFAESI Act by taking symbolic possession of the properties by issuance of Possession Notice dated 01.07.2004 and after taking possession, the Bank through its Authorised Officer issued Sale Notice by inviting bids from the public for sale of the mortgaged properties.

23.Continuing further, the Learned counsel for the Petitioners' Bank states that the First Respondent/borrower challenged the sale notice by filing S.A.No.20 of 2004 before the Debts Recovery Tribunal-I, Chennai and the Debts Recovery Tribunal had granted an interim order of status quo dated 29.07.2004. As against this order, the Bank filed an Appeal in M.A.(SA) No.120 of 2004 before the Debts Recovery Appellate Tribunal and the Learned Chairperson, Mumbai, in-charge of Debts Recovery Appellate Tribunal, Chennai by an order dated 12.08.2004 was pleased to set aside the order of the Debts Recovery Tribunal-I, Chennai and permitted the bank to proceed with the sale but the sale may not be confirmed till the matter was heard by the Presiding Officer of the Debts Recovery Tribunal-I, Chennai on merits.

24.The Learned counsel for the Petitioners brings it to the notice of this Court that based on the order of the Debts Recovery Appellate Tribunal, the Petitioners' Bank proceeded with the sale scheduled on 13.08.2004 and in the auction conducted on 13.08.2004, persons namely, 1. Dinesh Kumar Jain 2. V.Ganapathi 3. S.Gnanavadi

4. a)Fatima Saudi b)V.Sayeed Ahmed c)V.Luthfullah and d)Rahilla were declared as highest bidders and the Bank received a sum of Rs.17.20 lakhs towards 25% of the bid amount.

25.The Learned counsel for the Petitioners submits that the First Respondent/Borrower being aggrieved against the order of Debts Recovery Appellate Tribunal, Chennai, approached this Court by way of filing W.P.No.24814 of 2004 and this Court on 13.09.2004, set aside the order of Debts Recovery Appellate Tribunal, Chennai and remanded the matter for fresh disposal by the Debts Recovery Appellate Tribunal, Chennai. In turn, the Debts Recovery Appellate Tribunal, Chennai disposed of the Appeal by remitting back the matter to Debts Recovery Tribunal, Chennai for disposal of the S.A.No.20 of 2004 on merits.

26.The Learned counsel for the Petitioners/Bank contends that after bifurcation of the Debts Recovery Tribunal, the S.A.No.20 of 2004 was transferred to Debts Recovery Tribunal-III, Chennai and renumbered as S.A.No.15 of 2007 and the Debts Recovery Tribunal-III, Chennai, heard the matter and finally dismissed the S.A.No.15 of 2007 by order dated 09.05.2008 with costs. After dismissal of the said SA, on receipt of the balance sale consideration, sale certificates were issued to the purchasers in terms of the sale which was held on 13.08.2004 pursuant to the order passed by the Debts Recovery Appellate Tribunal, Mumbai on 12.08.2004 in M.A.(SA) No.120 of 2004.

27.According to the Learned counsel for the Petitioners/Bank as against the order of dismissal dated 09.05.2008 in S.A.No.15 of 2007 passed by the Debts Recovery Tribunal-III, Chennai, the First Respondent/Borrower filed an 'Appeal' under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal, Chennai in RA(SA) No.60 of 2008 and the same was dismissed on merits on 08.04.2009.

28.It is contended on behalf of the Petitioners/Bank that bank initiated SARFAESI proceedings by issuing Demand Notice in respect of second set of properties on 16.12.2006 against which W.P.No.2431 of 2007 was filed and it was decided in favour of the Bank on 05.12.2007. Thereafter, Bank issued Sale Notice dated 26.09.2008, fixing sale on 05.11.2008 and thereafter, IA No.1995 of 2008 was filed by the First Respondent/Borrower in RA(SA) No.60 of 2008 instead of filing separate SA. In fact, the Second Respondent/Debts Recovery Appellate Tribunal, Chennai through an order dated 23.10.2008, stayed the auction stating that status quo is ordered to be maintained and tenders, if any received are directed to be kept in abeyance till 07.11.2008. Therefore, the bids were not opened. Subsequently, bids were opened and auction was conducted on 09.04.2009 after dismissal of the R.A.(SA) No.60 of 2008 on 08.04.2009.

29.The Learned counsel for the Petitioners/Bank urges before this Court that the First Respondent/Borrower filed W.P.No.8004 of 2009 as against the order dated 08.04.2009 passed by the Debts Recovery Appellate Tribunal in R.A.(SA) No.60 of 2008 and this Court by order dated 07.08.2009, disposed the said Writ Petition by granting liberty to the First Respondent/Borrower to approach the Debts Recovery Tribunal by way of filing application under Section 17 of the SARFAESI Act and further observed that the Debts Recovery Tribunal shall decide all the questions raised by the First Respondent including other questions that would be raised during the course of submission.

30.The Learned counsel for the Petitioners/Bank contends that the First Respondent/Borrower approached the Debts Recovery Tribunal by filing S.A.No.120 of 2009 under Section 17 of the SARFAESI Act and that the Debts Recovery Tribunal-III, Chennai dismissed the said SA through an order dated 09.12.2011. The First Respondent/Borrower dissatisfied with the said order passed in S.A.No.120 of 2009 filed an 'Appeal' before the Debts Recovery Appellate Tribunal in R.A.(SA) No.132 of 2012. On hearing both sides, the Debts Recovery Appellate Tribunal, Chennai on 22.08.2014 allowed the appeal filed by the First Respondent/Borrower by setting aside the auction sale conducted on 13.08.2004 and set aside the sale certificates issued in favour of the Respondents 6 to 20.

31.The Learned counsel for the Petitioners/Bank strenuously submits that the Debts Recovery Appellate Tribunal ought to have seen that while passing the order on 08.04.2009 in RA(SA) 60 Of 2008, it was categorically held that the First Respondent/Borrower had not challenged the procedure followed by the Bank in inviting tenders and fixing the reserve price etc., and it was rightly found by the Appellate Tribunal that the sale of the secured assets for Rs.68.61 lakhs in favour of the auction purchasers and receipt of 25% of the same are legally valid. At this stage, it is represented on behalf of the Petitioners/Bank that this order was not set aside by this Court in W.P.8004 of 2009. However, the Second Respondent/Debts Recovery Appellate Tribunal through its order dated 22.08.2014 in R.A.(SA) No.132 of 2012 set aside this as well, which is legally untenable.

32.The Learned counsel for the Petitioners/Bank vehemently takes a stand that the Second Respondent/Debts Recovery Appellate Tribunal should have seen that the second set of properties was put in 'Auction' and the bids are received by the Bank and after the dismissal of the appeal, the same was confirmed after calling all the bidders. There are no irregularities in conducting and confirming the sale. In fact, the bids were received on or before 05.11.2008 with

the Bank as per order dated 23.10.2008 of the Debts Recovery Appellate Tribunal in I.A.1995 of 2008 in RA(SA) No.60 of 2008 and after dismissal of R.A.(SA) No.60 of 2008 on 08.04.2009, the sale process was completed. Thereafter, tenders were opened and auction was taken on 09.04.2009. As such, the observations made of the Debts Recovery Appellate Tribunal in the order in R.A.(SA) 132 of 2012 on 22.08.2014, that sale had not taken place on the notified date and thereafter, issuance of sale certificate to be processed on 09.04.2009 was improper and were unsustainable since sale was not cancelled/set aside but only deferred owing to judicial intervention.

Contentions of the Petitioners/Auction Purchasers in W.P.17203 of 2015:

33.According to the Learned counsel for the Petitioners, the impugned order dated 22.08.2014 in R.A.(SA)No.132 of 2012 passed by the Debts Recovery Appellate Tribunal, Chennai defeats the Petitioners' right as bona fide auction purchasers of the property brought for sale by the Second Respondent/Bank under the provisions of SARFAESI Act. Further, being the highest bidders and after making payment, got sale confirmed and in fact, the Second Respondent/Bank had executed the Sale Certificates in their favour and duly registered on the file of the District Registrar, Vellore. Thus, these Petitioners have become the absolute owners of the properties.

34.The Learned counsel for the Petitioners submits that the First Respondent/ Borrower as in fact, sold portions of the mortgaged properties including the subject property in favour of one N.Ramesh by registered sale deeds and had suppressed the material facts before the Debts Recovery Tribunal, Debts Recovery Appellate Tribunal and this Court. Since the First Respondent/ Borrower had sold portion of the property, he has lost its right to challenge the measures as the alleged purchaser who had acquired the property has an 'Equitable Right of Redemption'. Also that, on failure to redeem the property, the Second Respondent as a mortgagee had every right to enforce the mortgage to realise the dues.

35.The Learned counsel for the Petitioners contends that the First Respondent/Borrower challenged the dismissal order of the SA by filing an appeal before the Debts Recovery Appellate Tribunal in RA (SA) No.60 of 2008 and the said Appeal was dismissed on 08.04.2009 with costs, thereby, confirming the order of Debts Recovery Tribunal-III, Chennai in S.A.No.15 of 2007. Therefore, the proceedings had reached finality and the auction sale stood confirmed in favour of the Petitioners.

36.The Learned counsel for the Petitioners submits that the Debts Recovery Appellate Tribunal should have seen the second set of properties received by the Bank and in fact, there are no irregularities in conducting the auction sale and confirmed the same

in favour of the Petitioners.

37.The Learned counsel for the Petitioners/Auction Purchasers contends that the Petitioners are the successful bidders in the tender cum auction conducted by the Authorised Officer of the Second Respondent/Bank and in the sale notice dated 26.09.2008 issued by the Second Respondent/Bank, it could be seen that notice under Section 13 (2) was issued on 21.10.2002 and on 27.05.2008, possession in respect to the properties purchased by the Petitioners was taken under Section 13(4) of the Act.

38.The Learned counsel for the Petitioners/Auction purchasers contends that after issuance of Possession notice and/or after taking possession i.e., on 27.05.2008, the First Respondent/borrower had not exercised its right of redemption under Section 13(8) of the Act and that the sale notice mentioned that the property would be sold by tender cum auction and that sale shall be confirmed on the person making highest offer. In fact, the date of auction was 05.11.2008 and the last date of accepting of tender was 04.11.2008 by 5.00 p.m.

39.At this juncture, it is the stand of the Petitioners that in respect of the Properties purchased by them, the borrower had not questioned the same under the provisions of Section 13(4) of the Act or publication notice under the SARFAESI Act.

40.The Learned counsel for the Petitioners submits that the First Respondent/Borrower filed I.A.No.1995 of 2008 in S.A.446 of 2008 before the Debts Recovery Appellate Tribunal instead of projecting an application or appeal under Section 17 of the Act before the Debts Recovery Tribunal but only had chosen to file an interim application and that too before the Debts Recovery Appellate Tribunal which was incorrect one in law. In this connection, the Learned counsel for the Petitioners takes a stand that SARFAESI proceedings either Section 13(4) or the sale notice cannot be challenged for the first time before the Debts Recovery Appellate Tribunal. As such, the First Respondent/Borrower had lost of its right to question any of the acts pursuant to the possession notice or taking possession by the bank.

41.The Learned counsel for the Petitioners contends that the status quo order dated 23.10.2008 passed by the Debts Recovery Appellate Tribunal makes it clear that there is no prohibition in receiving sealed tenders but the same could be opened consequent to the status quo order.

42.The Learned counsel for the Petitioners submits that status quo was ordered to be maintained and tenders if any received were directed to be kept in abeyance till 07.11.2008. Further on

08.04.2009, the Debts Recovery Appellate Tribunal disposed of the main case (RA.(SA) No.60 of 2008) against the borrower and thereafter, the borrower filed W.P.8004 of 2009 before this Court on 23.04.2009.

43.At this stage, the Learned counsel for the Petitioners projects an argument that subsequent to the dismissal of the main appeal in R.A.(SA) No.60 of 2008, status quo order ceased to exist and that the First Respondent/borrower had not exercised its Right of Redemption or in any manner settled the dues to the bank and that the Authorised Officer on 09.04.2009, confirmed the sale in favour of the Petitioners and later, issued the sale certificates. Therefore, it is the contention of the Petitioners that they are the bona-fide purchasers for valuable consideration and their rights as absolute owners pursuant to the sale could not be questioned except in cases where the borrower establishes fraud having been committed in the sale. Moreover, it is pointed out on behalf of the Petitioners before this Court that though the borrower being aware of the sale in favour of them, it had not made the Petitioners as party in W.P.No.8004 of 2009 and further, this Court on 07.08.2009 had disposed the W.P.No.8004 of 2009 with the observations made thereunder.

44.The Learned counsel for the Petitioners submits that the Debts Recovery Tribunal on 09.12.2011 had passed final order in S.A.120 of 2009 by holding that the Authorised Officer had meticulously followed the mandatory procedure under the Act and Rules made thereunder and further, they acquired the sale of secured assets on 13.08.2004 and 09.04.2009, pursuant to the sale notices dated 09.07.2004 on 26.09.2008 was valid and conducted in accordance with the provisions of the Act and Rules made there under.

45.The Learned counsel for the Petitioners states that the First Respondent/borrower filed an appeal before the Debts Recovery Appellate Tribunal in R.A.(SA).132 of 2012 and on 22.08.2014, the Appellate Tribunal allowed the Appeal without assailing reasons as to how the order of DRT-III, Chennai in S.A.No.120 of 2009 was wrong.

46.The Learned counsel for the Petitioners contends that the sale certificate was issued only when the sale became absolute and that the sale certificate was not compulsorily registerable one. Furthermore, the Authorised Officer had sold the four items of mortgaged properties on 13.08.2004 when the order of status quo dated 29.04.2004 was not in force.

47.The Learned counsel for the Petitioners submits that the impugned order dated 22.08.2014 passed by the Debts Recovery Appellate Tribunal in RA.(SA) 132 of 2012 had failed to consider the points putforth by the auction purchasers and the bank and

further, it had not formulated necessary points for determination and consideration and adjudicate on the issues raised by the respective parties.

48.The Learned counsel for the Petitioners refers to the decision of the Hon'ble Supreme Court in Sadhasiv Prasad Singh V. Harendar Singh and others [CDJ 2014 SC 024] wherein it was held that "rights of an auction purchaser in the property purchased by him cannot be extinguished except in cases where the said purchase can be assailed on the ground of fraud or collusion". He also refers to the judgment of this Court dated 26.04.2005 in C.S.No.980 of 1999 and TOS.32 of 2000 between K.Chandrasekara Rao and others V. G.Masilamani & others [CDJ 2005 MHC 993] wherein in para 43 it was held that "bona fide purchasers and revocation of the probate subsequently will not operate as a bar for the title to the property".

49.The learned counsel for the Petitioners refers to the judgment of the Division Bench of this Court dated 10.08.2007 in WA (MD) Nos.145 & 146 of 2007 in CDJ 2007 MHC 2046 [K.Chidambara Manickam V. Shakeena and others] wherein it was held that "sale of the secured asset in public auction as per Section 13(4) of the SARFAESI Act, which ended in issuance of a sale certificate as per Rule 9 (7) of the rules is a complete and absolute sale for the purpose of SARFAESI Act and the same need not be registered under the provisions of the Registration Act".

50.The Learned counsel for the Petitioners relies on the order of this Court in W.P.Nos.13854 & 13855 of 2014 in CDJ 2015 MHC 657 [N.Prakash V. The Registrar, DRAT, Chennai & others] wherein it was held that the "petitioner ought to have filed an application for redemption and not filed an application for redemption within 30 days from the proclamation of sale of Schedule II property and further, it was also observed that if the Petitioner had failed to deposit the amount within the stipulated time even though he claims that he had deposited a total sum, the Petitioner having not exercised its right to set aside the sale of the property within the stipulated time then, the auction purchaser was entitled to have the sale certificate".

51.The Learned counsel for the Petitioners cites the order of the Division Bench of this Court dated 10.07.2008 in W.P.Nos.570 & 2656 of 2008 in CDJ 2008 MHC 3004 [Adhimoolam & others V. Indian Bank & others] wherein it was inter-alia held that "the third respondent being a stranger and auction purchaser, having purchased the property in the recovery proceedings by paying a sum of Rs.23.05 crores, is entitled to the confirmation of sale in his favour".

52.Apart from the above, the Learned counsel for the Petitioners cites the judgment of the Division Bench of this Court in

W.A.Nos.1222 & 1223 of 2005 in CDJ 2005 MHC 1328 [K.Kandasamy & another V. The Authorised Officer, State Bank of India and another] wherein in para 9 among other things it was held that "the provisions of Tamil Nadu Transparency in Tenders Act are not applicable to the sale of secured assets of both movable and immovable under the provisions of the Securitisation Act".

53.The Learned counsel for the Petitioners relies on the order of the Division Bench of this Court dated 03.02.2015 in W.P.No.31904 of 2014 between Mohd. Ismail Harron and The Debts Recovery Appellate Tribunal rep. by its Registrar & another in CDJ 2015 MHC 923 wherein in para 26 it was among other things observed that "after the sale, the right of the person questioning the sale thereby claiming title is only by way of projecting an application either under Rule 60 or 61 of II Schedule of Income Tax Act, seeking to set aside the sale of the property by depositing the money and in fact, the Writ Petitioner has not availed this remedy".

The First Respondent/Borrower's Submissions:

54.According to the Learned counsel for the First Respondent/Borrower, the Debts Recovery Tribunal-I, Chennai passed an ex-parte interim order of status quo on 29.07.2004 in S.A.No.20 of 2004 and without filing any application to vacate the said order, the Bank filed an appeal in M.A.(SA) No.120 of 2004 against the said ex-parte interim order and on 12.08.2004, at the admission stage itself, the appeal was allowed thereby, the interim order passed by the Debts Recovery Tribunal-I, Chennai was set aside by the Debts Recovery Appellate Tribunal in M.A.(SA) No.120 of 2004.

55.The Learned counsel for the First Respondent contends that on 13.08.2004, the sale was conducted, but the order of Debts Recovery Appellate Tribunal in M.A.(SA) No.120 of 2004 passed on 12.08.2004 was set aside by the Division Bench of this Court on 13.09.2004 in W.P.No.24814 of 2004 whereby and where under the matter was remitted back to the Debts Recovery Appellate Tribunal, Chennai with a direction to issue notice to both the parties and to dispose of the matter afresh. Further, it is represented on behalf of the First Respondent/ Borrower that the Debts Recovery Tribunal-I, Chennai passed orders on 24.02.2005 making the status quo order absolute and as such, the sale which took place on 13.08.2004 was an illegal one and to lend support to the said contentions, the Learned counsel for the First Respondent/ Borrower cites the following decisions.

56(i).In the decision of Century Flour Mills Limited V. S.Suppiah and Others reported in AIR 1975 Madras at Page 270 and at Special page 272 wherein in para 9 it is held as follows:-

"...9. In our opinion, the inherent powers of this Court under Section 151 CPC are wide and are not subject to any limitation. Where in violation

of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to go to that extent as we hold that the power is available under Section 151, C.P.C...."

2) In the decision of Keshrimal Jivji Shah and another V. Bank of Maharashtra and others reported in 2004(3) Mh.L.J at Page 893 and at Special Page 902 wherein in paragraphs 24 and 25, it is observed and held as follows:-

"...24. We cannot be unmindful and ignorant of the importance of this aspect, which has been repeatedly emphasised by the Supreme Court. We would be failing in our duty if, we do not abide by the ratio laid down in the aforesaid decisions. That part, in the case of Ramchandra Ganpat Shinde v. State of Maharashtra and others reported in AIR 1994 SC 1673 the Supreme Court in paras 12 and 13 has observed as under:-

"12. Mr. Justice Arthur, J. Venderbilt in his "The Change of Law Reforms 1955" at pages 4 and 5 stated that:-

"..... It is the Courts and not in the legislature that our citizens primarily feel the keen, the cutting edge of the law. If they have respect for the work of their Courts, their respect for law will survive the shortcomings of every other branch of the Government; but if they lost their respect for the work of the Courts, their respect for the law and order will vanish with it to the great detriment of society."

13. Respect for law is one of the cardinal principles for an effective operation of the Constitution, law and the popular Government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication - be it judicial, quasi-judicial or

administrative as hallmark, the faith of the people in the efficacy of judicial process would be disillusioned, if the parties are permitted to abuse its process and allowed to go scot free. It is but the primary duty and highest responsibility of the Court to correct such orders at the earliest and restore the confidence of the litigant public, in the purity of fountain of justice; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the Courts and take recourse to extra-constitutional remedies which is a death-knell to the rule of law"

In the case of Satya Brata Biswal V. Kalyan Kumar Kisku and others reported in AIR 1994 SC 1837 while outlining the importance of rule of law, administration of justice and the role of Courts, the Supreme Court has observed.

"29. Apart from the fact whether A.K.Ghosh had a legal authority to sub-lease or not it was not open to him to grant a sub-lease in violation of the order. It is no use contending as Mr.Chidambaram, learned Counsel for the respondents does, that there was a bar to such a sub-lease under the terms of the status quo order. It has the effect of violating the preservation of status of the property. This will all the more be so when this was done without the leave of the Court to disturb the state of things as they then stood. It would amount to violation of the order. The principle contained in the maxim: Actus Curiae Neminem Gravabit has no application at all to the facts of this case when in violation of status quo order a sub-tenancy has been created. Equally, the contention that even a trespasser cannot be evicted without recourse to law is without merit, because the state of affairs in relation to property as on 15-9-1988 is what the Court is concerned with. Such an order cannot be circumvented by parties with impunity and expect the Court to confer its blessings. It does not matter that to the contempt proceedings Somani Builders was not a party. It cannot gain an advantage in derogation of the rights of the parties, who were litigating originally. If the right of subtenancy is recognised, how is status quo as of 15-9-1988 maintained? Hence, the grant of sub-lease contrary to the order of status quo is clearly illegal. All actions including the grant of sub-lease are clearly illegal."

25. In our view, therefore, if the facts in the present case are appreciated in the light of the decisions of the Supreme Court (supra), it is clear that during the pendency of the order of injunction issued by this Court on 6th March 1998, respondent no.2 has created sub-lease in favour of petitioners herein. It is of considerable significance that respondent no.2 to 4 did not appear either to oppose the O.A. or during the proceedings, initiated by petitioners herein. Their silence on the material aspect of violation of injunction order is eloquent enough. We cannot hold that conclusion of the Courts below to the effect that power to transfer the said property was subject to the injunction order issued by this Court, in any way vitiated by error of law or is in any way perverse. In the light of the decision of the Supreme Court, the transfer was clearly illegal if not void..."1997 (3) SCC 443 para 28 wherein it is held as follows:

3) In the decision of Hon'ble Supreme Court in Satyabrata Biswas and Others V. Kalyan Kumar Kisku and others reported in AIR 1994 Supreme Court at Page 1837 and at Special Pages 1842 and 1843 at Para 23 it is held as follows:-

"...23. Thirdly, more than above all this, when the right of sub-tenancy was sought to be founded on an agreement dated 10th May, 1993, it should have occurred to the learned Single Judge that such a creation of sub-tenancy was clearly violative of the order of status quo passed as early as 15th of September, 1988. It is extremely unfortunate that the learned Judge had not even cared to bestow thought and entertained an oral application at the instance of a person who had nothing to do till then with the application for contempt. He had not even taken out an application to implead himself as a party. If mere oral mention could be enough to direct a Special Officer to remove the padlock, one has to put aside the law of procedure altogether and render justice as the court conceives, conferring benedictions on parties who cannot have any legal basis to found their claim..."

4. In the decision of the Hon'ble Supreme Court in Tayabbhai M. Bagasarwalla and another V. Hind Rubber Industries Pvt., Ltd., and others reported in 1997 (3) Supreme Court Cases at page 443 and at Special Page 460 at Para 28 it is held as under:-

"...28. The correct principle, therefore is the one recognised and reiterated in Section 9-A- to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any

interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the Court should, while holding that it has no jurisdiction to entertain the suit, put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction."

57. The Learned counsel for the First Respondent invites the attention of this Court to the fact that the Petitioner in W.P.No.28915 of 2014 was not a participant in auction proceedings and one Krishnamurthy was the bidder (as per I.A.No.142 of 2007 in S.A.No.57 of 2007) appears to have filed subsequently by way of real estate transaction nominated the Petitioner Gnanavadiyu and the sale certificate was issued by the Bank in his favour and the said auction of the Bank is an illegal one as per the following decisions:

- 1) The Authorised Officer, Indian Bank, Mylapore V. Tetrahydron Ltd., & Others [2013 (1) LW 711]
- 2) Hemalatha V. The Authorised Officer, Indian Bank [2012 (5) CTC 1].

At this stage, the Learned counsel for the First Respondent/Borrower apprises this Court that the Indian Bank had preferred an appeal

before the Hon'ble Supreme Court.

58.The Learned counsel for the First Respondent/Firm submits that the sale conducted in favour of the Writ Petitioners in W.P.No.17203 of 2015 is an illegal one because of the reason that the auction sale was conducted on a date without any information or notice to the borrower. Expatiating his submission, the Learned counsel for the First Respondent/Borrower strenuously submits that by means of a sale notice dated 26.09.2008, the property was proposed to be sold on 05.11.2008 by virtue of tender cum auction sale and that the Fourth Respondent/Debts Recovery Tribunal had granted an interim order of status quo in I.A.No.1995 of 2008 in RA (SARFAESI) No.60 of 2008 (SA.15 of 2007, Debts Recovery Tribunal-III, Chennai) on 23.10.2008 and further, it was directed that tenders if any, were directed to be kept in abeyance till 07.11.2008. Moreover, the Debts Recovery Appellate Tribunal, Chennai directed the First Respondent/Borrower to pay the costs and expenditure of the sale to be held on 04.11.2008 by the Bank.

59.The Principal stand of the First Respondent is that without issuing any further auction notification or notice to the borrower, on 09.04.2009, the sale took place even without any auction and sale certificates were issued to the Petitioners and the same was clearly in violation of Rule 8(5) of the SARFAESI Rules and further, the same was covered by the decision of the Hon'ble Supreme Court in Mathew Varghese V. M.Amritha Kumar and Others reported in 2014 (5) SCC 610 wherein it was held that "no sale or transfer of secured asset to be made on any subsequent date without notifying borrower afresh with 30 days clear individual notice of the fresh date of sale or any sale or transfer of secured assets under SARFAESI Act in violation to any of the above mandatory requirements would be invalid". In short, the Hon'ble Supreme Court had observed that the provisions of Rule (8) of 2002 Rules and Rule 15, Schedule II Pt. I of Income Tax Act, 1961 by virtue of Section 29 of RDDB Act, 1993 and Section 37 of SARFAESI Act, 2002 are to be strictly followed in sale of secured assets under SARFAESI Act, 2002.

60.The Learned counsel for the First Respondent contends that in the present case, 13(2) notice under SARFAESI Act was not served on all the guarantors/mortgagors and in fact, Section 2(f) of the SARFAESI Act clearly includes the guarantors also within the definition of 'Term' borrower and as per Rule 3 of the Security Interest (Enforcement) Rules, mere sending of notice is not enough. Further, if the notice was not received, it was to be served by affixture, admittedly in the present case, it was not done.

61.The Learned counsel for the First Respondent forcefully contends that Rule (6) of the SARFAESI Rules clearly envisages publication of possession notice in vernacular language also which was not done by the bank and in fact, the bank had published the notice only in English daily. Also, it is the plea of the First Respondent/Borrower that as per Rule 8(5) of the SARFAESI Rules, the bank cannot effect sale of the immovable properties without obtaining valuation from the approved valuer which is not done in the present case.

62.Continuing further, in terms of Rule 9(1), the sale notices are to be served on all the guarantors/mortgagors which was not done by the bank, the Learned counsel for the First Respondent/Borrower contends that soon after receipt of sale notice, the First Respondent/Borrower deposited a sum of Rs.25 lakhs which was strangely returned by the bank and the bank decided to proceed with the auction etc.

63.The Learned counsel for the First Respondent adds to state that in between Section 13(2) notice and 13(4) proceedings, an one time settlement offer was made to deposit a sum of Rs.55 lakhs where under, it was mandated that a sum of Rs.10 lakhs was to be deposited within 10 days and the balance of Rs.45 lakhs to be deposited within 30 days. The said offer was made by the Borrower because its factory was gutted down in a fire and the insurance amount was directly paid to the Bank.

64.The Learned counsel for the First Respondent informs this Court that the Borrower paid a sum of Rs.10 lakhs within 10 days and the balance could not be paid only because there was a gruesome incident in the borrower's family involving the death of the son in law of the borrower and son of the borrower was injured seriously. Finally, the borrower deposited the balance of Rs.45 lakhs with a delay of 18 months and another sum of Rs.10 lakhs was deposited by it towards interest as there was a delay which was not taken into account by the Bank although the said offer was granted pursuant to the direction of the Reserve Bank of India and the same offer had been repeatedly extended upto five to six times in respect of many other borrowers.

65.The Learned counsel for the First Respondent/Borrower refers to the Division Bench of this Court in Hanu Reddy Realty India Pvt. Ltd., rep. by its Director, Mr.C.Suresh Reddy, New No.18, Bishop Wallers Avenue East, Mylapore, Chennai-4 & others V. Jignesh and others reported in 2008 (1) CTC 721 wherein it was inter-alia observed that the Recovery Officer should give enough publicity to

get better offers and for attracting more purchasers etc.

Discussions and Findings:

66. At the outset, it is to be pointed out that the First Respondent/Borrower is a registered partnership firm, engaged in the manufacture and distribution of tobacco and allied products had took a loan of Rs.7.5 lakhs during the year 1990 and cash credit and guaranty facility of Rs.30 lakhs from the year 1990-92, aggregating to Rs.37.5 lakhs. In fact, the First Respondent was unable to repay the loan and resultantly, its account was classified as 'Non Performing Asset' from 1995. The Third Respondent/Bank caused a notice under Section 13(2) of the SARFAESI Act, 2002 on 21.10.2002 claiming a sum of Rs.1,24,27,587/-.

67. It is well settled that for issuance of notice under Section 13(2) of the SARFAESI Act, two conditions are to be satisfied:

- 1) A borrower under a liability to a secured creditor under a security agreement should be in default in repayment of secured debt.
- 2) As a sequel, his/its 'Account' in respect of such 'Debt' is classified as 'Non Performing Asset' or 'Stressed Asset' as the case may be.

68. If the aforesaid two conditions are fulfilled then, the secured creditor is at liberty to issue notice under the sub-section and in that context, it is for the borrower to discharge its liabilities within 60 days from the date of such notice. The fulfillment of conditions is mandatory as qualified by the word 'then' found in such-section as per decision of Core Ceramics V. Union of India [AIR 2008 (Calcutta) at page 88 and at page 92].

69. It is not in dispute that the First Respondent approached the Third Respondent/Bank for one time settlement through letter dated 24.02.2003 offering to accept to pay Rs.55 lakhs in respect of full and final settlement of the claim. In terms of OTS offer, the First Respondent/Borrower paid Rs.10 lakhs immediately but had not paid the remaining sum of Rs.45 lakhs within period of 30 days.

70. It comes to be known that after disposal of the W.P.No.8929 of 2003 filed by the First Respondent/Borrower challenging the constitutional validity of the provisions of the SARFAESI Act on 01.07.2004, the Third Respondent/Bank issued a Possession notice as per Section 13(4) and sale notice dated 09.07.2004 bringing for auction sale on 12.08.2004. Soon after receipt of the notice, it transpires that the First Respondent/Borrower got in touch with the Third Respondent/Bank and expressed its willingness to satisfy the earlier conditions of the agreement which was accepted by the bank. As a matter of fact, the Third Respondent/Bank directed the First Respondent/Borrower to deposit some sum and accordingly, the First Respondent/Borrower deposited a sum of Rs.25 lakhs on 14.07.2004,

which was returned by the Bank on 16.07.2004.

71.Proceeding further, the First Respondent/Borrower filed S.A.20 of 2004 (later renumbered as S.A.No.15 of 2007) on the file of the Debts Recovery Tribunal under Section 17 of the SARFAESI Act and on 29.07.2004, an 'Ex-parte Order of Status Quo' was ordered, which was communicated to the Bank and the same being received on 31.07.2004. At this stage, it is to be relevantly pointed out that the First Respondent/Borrower caused a public notice on 06.08.2004 in Tamil daily viz., 'Dina Thanthi' intimating the orders passed by the Tribunal and being aggrieved about the same, the Third Respondent/Bank filed M.A.(SA)No.120 of 2004 on the file of the Fourth Respondent/DRAT assailing the Ex-parte Interim Order passed by the DRT-I, Chennai in S.A.No.20 of 2004. The DRAT (in-charge) Mumbai allowed the S.A.No.20 of 2004 on 12.08.2004 by setting aside the order of status quo passed by the DRT, Chennai. Moreover, the DRAT (in-charge) Mumbai also permitted the Third Respondent/Bank to proceed with the sale but stayed the confirmation of sale.

72.Added further, the Third Respondent/Bank proceeded further in regard to the sale of items of properties on 13.08.2004, the First Respondent/Borrower as an aggrieved person against the order dated 12.08.2004 in M.A.No.120 of 2004 passed by the DRAT, filed W.P.No.24814 of 2004 before this Court and this Court while setting aside the order of DRAT, remitted the matter back for afresh disposal after hearing both the parties. The Fourth Respondent/DRAT by virtue of the order dated 14.10.2004, disposed of the appeal by directing the Bank to approach the DRT.

73.Apart from that, the DRT-I, Chennai on 03.12.2004 heard the subject matter and continued the interim order on condition by directing the First Respondent to deposit a sum of Rs.45 lakhs as one time settlement scheme within 30 days from the date of receipt of the order. The said interim order was made absolute when the First Respondent/borrower deposited the amount pending disposal of the Securisation Application. Later, the Tribunal directed the First Respondent to submit a representation to the Third Respondent/Bank to accept the offer as full and final settlement and also the First Respondent was directed to provide interest for the belated payments. However, the Third Respondent/Bank had rejected the representation of the First Respondent/Firm (Borrower).

74.The principal grievance of the First Respondent/Borrower is that the sale of four items of properties is an erroneous one. In this connection, it cannot be brush aside that this Court on 07.08.2009 in the final orders passed in W.P.8004 of 2009 had given opportunity to the First Respondent/Borrower to approach the DRT under Section 17 of the SARFAESI Act to agitate all the issues which were raised before this Court within two weeks from the date of

receipt of copy of the order etc., and disposed of the writ petition. In reality, this Court had not set aside the final order passed in S.A.15 of 2007 by the DRT and the final order passed by the DRAT in RA (SA) No.60 of 2008.

75.In the instant case on hand, the First Respondent/Borrower had not exercised its right of redemption under Section 13(8) of the SARFAESI Act as there was no impediment at all on the part of the First Respondent/Borrower to settle its dues since after the issuance of sale notice dated 09.07.2004 which was duly served, affixed on the secured assets etc., as such, when the First Respondent/Borrower had not approached the Third Respondent/Bank in regard to the repayment of due amount to redeem the mortgaged sale of four mortgaged properties, on 13.08.2004, it had certainly lost its right of redemption in the eye of law in the considered opinion of this Court.

76.It is to be noted that the Third Respondent/Bank conducted the sale on 13.08.2004 pursuant to the sale notice dated 09.07.2004. Moreover, when the third respondent/Bank sold four mortgage properties pursuant to the sale notice dated 09.07.2004 the order of status quo was not in existence. Besides the First Respondent/Borrower had not obtained any pinpointed direction from this Court in W.P.No.24814 of 2004 as regards the sale of the said properties on 13.08.2004. Likewise, the DRAT also had not dislodged the sale conducted by the Third Respondent/Bank on 13.08.2004 at the time of passing final orders in M.A.(SA) No.120 of 2004 dated 14.10.2004. Viewed in that perspective, this Court comes to an inescapable conclusion that the sale of four mortgaged properties on 13.08.2004 when the order of status quo is not in existence is a valid one in the eye of law.

77.In the case on hand, the First Respondent/Borrower had not repudiated the possession notice dated 27.05.2008. As a matter of fact, the First Respondent/Borrower projected the I.A.No.1995 of 2008 in S.A.No.446 of 2008 before the Fourth Respondent/DRAT, Chennai soon after receipt of sale notice dated 26.09.2008, seeking the order of stay proceedings pursuant to the sale notice dated 09.07.2004 published in newspaper English daily dated 02.10.2007 and therefore, it is latently and patently evident that the First Respondent/Borrower had knowledge of the sale notice dated 26.09.2008 issued by the Third Respondent bank and then, it had not focused in any petition in terms of Section 17(1) of the SARFAESI Act within 45 days from the date of receipt of copy of this sale notice. In effect, it is held by this Court that the First Respondent had lost its opportunity to question the issuance of sale notice dated 26.09.2008 issued by the Third Respondent/bank.

78.It is to be borne in mind that the RA(SA) 60 of 2008 filed by the First Respondent/Bank was dismissed by the Fourth Respondent/DRAT

on 08.04.2009, then the interim order earlier passed would not survive when that be the fact situation, the Third Respondent/Bank had not committed any error when it opened the sealed tenders received from the intending purchasers as held by this Court and to proceed with the auction. Looking that from that angle, the sale conducted by the Third Respondent/Bank in regard to the sale of four properties mentioned in the sale notice dated 26.09.2004, on 09.04.2009, of course after the dismissal of the Appeal projected by the First Respondent/Borrower is a valid one and is in tune with the ingredients of SARFAESI Act, 2002 and the rules made thereunder.

79. In regard to the plea of the First Respondent/Borrower that the prospective purchasers submitted that the auction tenders scheduled on 05.11.2008 and in the absence of any notice issued by the Third Respondent/Bank determining new date of auction, the sale dated 09.04.2009 is per se illegal. The candid fact is that 33 sealed covers were received by the bank. However, by virtue of the order of Debt Recovery Appellate Tribunal, the same was not held on 05.11.2008. It is to be noted that three bidders withdrew their offer in lieu of the Status Quo Order passed by the Appellate Tribunal on 23.10.2008 and only after dismissal of Appeal by the Appellate Tribunal on 08.04.2009, the sale took place on 09.04.2009 and 30 bids were opened. Really speaking, 30 bidders were waiting in the wings till the outcome of the Appeal focused by the First Respondent/Firm. Soon after the dismissal of the Appeal, the bids were opened and auction was held by the Third Respondent Bank. As such, this Court unhesitatingly holds that no infirmities relating to the opening of bids on 09.04.2009 and selling the properties to the concerned parties. Consequently, the contra plea taken on behalf of the First Respondent/Borrower is outrightly rejected by this Court.

80. In the instant case, one cannot remain silent to the fact that the First Respondent/Borrower pending mortgage, disposed of the properties to one Ramesh and not bringing this fact to the fore, has projected the S.A. 120 of 2009. When the First Respondent/Borrower had sold some of the properties to the aforesaid individual, it had lost its right of redemption in the considered opinion of this Court. In this regard, the Third Respondent/Bank rightly brought the mortgaged properties to sale by issuing the sale notice thereby, enforcing security in accordance with law. When the First Respondent/Borrower (Firm) had approached the Tribunal/DRAT/this Court with unclean hands, then, it is not entitled to seek equity and to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Also that, it was issued with the demand notice under Section 13 (8) of the SARFAESI Act on 21.10.2002 and again on 16.12.2006. Indeed, the First Respondent/Firm was provided with adequate opportunities to settle the dues and redeem the mortgaged properties, which was not availed off by it diligently (including the opportunity of exercising the

right of redemption as envisaged under Section 13(8) of the Act).

81. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in Janak Raj V. Gurdial Singh and another reported in AIR 1967 SC 608 wherein it is observed that "sale must be confirmed notwithstanding reversal of decree after sale". Also, it is held that "title of purchaser related back to the date of sale and not to that of its confirmation".

82. Ordinarily, before a sale can be set aside merely pointing out or establishing an irregularity will not do. A debtor or borrower who can further and prove to the subjective satisfaction of the Court of Law that the material irregularity or illegality had resulted in substantial injury to it.

83. As regards, the plea taken on behalf of the First Respondent/Firm as per Rule 9(1) of SARFAESI Rules, the sale notices have to be served on all the guarantors/mortgagors and the same was not followed by the Third Respondent/Bank. It is to be pointed out that Section 13(2) notice was served on the partnership firm namely, the First Respondent/Borrower and the firm was represented by the Managing Partner right from DRT, DRAT and in other proceedings as well. Also, a perusal of the notice of the intended sale dated 09.07.2004 issued by the authorised officer of the Third Respondent/Bank engaged that it was addressed to the First Respondent/Borrower and other partners. In fact, in law, the services of notice on partnership firm is deemed to be an effective service on all its partners as per decision of Re-coasters Ltd., (1911) 1 CH.86.

84. Further, as per Section 23 of the Indian Partnership Act, 1932 an admission or representation made by a partner concerning, the affairs of the firm would be evidence against the firm under Section 18 of the Indian Evidence Act, 1872 as per decision Sohanlal and others V. Gulab Chand reported in AIR 1966 Rajasthan 229 and at special page 231. Apart from that, Section 25 of the Indian Partnership Act provides that "every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner". Each partner shall be liable as if the debt of the firm has been incurred on his personal liability as per decision of the Hon'ble Supreme Court in Ashutosh V. State of Rajasthan reported in 2005 (7) SCC 308. Moreover, while the firm is incurring a liability and so the partners remain liable jointly or severally for all the acts of the firm as per decision of Dena Bank V. Bhikhabhai Prabhudas Parekh and Company [2000 (5) SCC page 694].

85. It is to be noted that in case whether all partners of the firm are capable of being sued and of being adjudged as judgment debtors, a suit may be filed and a decree may be obtained against a

firm under Order 30 of the Civil Procedure Code. Further, such a decree may be executed against the property of partnership and against all the partners by following the procedure of Order 21 Rule 50 of the Civil Procedure Code.

86. In the instant case, the auction sale notice was published on 09.07.2004 and in Tamil Daily 'Dina Thanthi' it was published on 10.07.2004. On 26.09.2008, the fresh auction sale notice was published in Indian Express. As such, there were no irregularities in conducting the sale by the Third Respondent/Bank. Also, it is to be noted that sale notice was sent to all the partners of the First Respondent Firm by the Third Respondent Bank through registered post and that apart, notice was affixed in the premises of the First Respondent and published in newspapers.

87. Dealing with the plea that the properties were sold by the Third Respondent/Bank without obtaining the valuation of the property from the 'Approved valuer', the plea of the Third Respondent/Bank is that it had taken the valuation from the 'Approved valuer' and on that basis only the 'Upset Price' was fixed. Therefore, the contra stand taken on behalf of the First Respondent/Borrower is not accepted by this Court.

88. Insofar as the stand of the First Respondent/Borrower (Firm) is that the Third Respondent/Bank had published the Possession notice only in English Daily and not in Vernacular Language, hence, there is violation of Rule (6) of the Rules, it is to be pointed out that the Third Respondent/Bank in S.A.120 of 2009 before the Debts Recovery Tribunal-III, Chennai, in its order on 09.12.2011 in para 10.12 had stated that the possession notice thus issued by the First Respondent (bank) was served, affixed on the secured assets and also published in two daily newspapers as mandatorily required under Rules 8(1) and (2).

89. It appears that the Bank had filed the copy of Possession Notice dated 27.05.2008 and newspaper publication at pages 27 to 29 of the bank's typed-set as stated by the Debts Recovery Tribunal-III, Chennai in its order dated 09.12.2011 in S.A.120 of 2009. Further, in para 10.16, the Debts Recovery Tribunal-III, Chennai in S.A.120 of 2009 while passing the order had stated categorically that "a perusal of typed set of documents filed by the Respondent bank established the fact that sale notice dated 26.09.2008 was served on the applicant (borrower), affixed in secured assets and published in two daily newspapers. As such, contra plea taken on behalf of the First Respondent/Borrower in this regard is rejected by this Court.

90. It is to be pointed out that the sale of secured assets in public auction as per Section 13(4) of the SARFAESI Act which resulted in issue of sale certificate as per Rule 9(7) of the Rules is an absolute sale for the purpose of SARFAESI Act and the same need

not be registered.

91.It is to be pertinently recalled the words of Robert Frost who said "a bank is a place where they would lend you an umbrella in a fair weather and ask for it back when it begins to rain". At this stage, one cannot ignore a very vital fact that unless loans are repaid promptly, 'Money' will not be under circulation and in fact the Banks/Financial Institutions be in great difficulties. Recently, the members of the Public Accounts Committee of Parliament (Panel) were informed that public sector banks are dealing with 2.55 lakhs crores Non Performing Assets or bad loans which means to 5.2% of total gross advances and the members wanted quick action against defaulters. Also, it is represented on behalf of the Third Respondent/Bank, inspite of sale of properties, the First Respondent/Borrower still owe a sum of Rs.1,56,72,131.19/-.

92.Be that as it may, in the present case, after the confirmation of sale, in favour of the Writ Petitioners and issuance of sale certificates, in Law, the 'Right of Redemption' in favour of the First Respondent/Borrower is completely erased. Further, the third party 'bona fide auction purchasers' for valuable consideration in the eye of law are to be protected because of the primordial reason that they should not fall a prey to the vicissitudes of fortunes of the numerous proceedings initiated by the First Respondent/Borrower at all forums. As such, the sale of secured assets by the Authorised Officer of the Bank on 13.08.2004 and 09.04.2009, consequent to the issuance of sale notice dated 09.07.2004 and 26.09.2008 are held legally valid by this Court. Instead, the contrary views taken by the Fourth Respondent/Debts Recovery Appellate Tribunal in RA (SA) No.132 of 2012 by allowing the said Appeal through its order dated 22.08.2014 are not just, valid and legally tenable one as held by this Court and the same are set aside by this Court to prevent an aberration of justice and to promote substantial cause of justice. Consequently, all the Writ Petitions succeeds.

93.In the result, the Writ Petitions are allowed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

DP

To

1.The Chief Manager/
Authorised Officer,
Indian Bank,
TKM Complex, Katpadi Road,
Vellore-632 004.

2.The Branch Manager,
Indian Bank, Vellore Main Branch,
TKM Complex, Katpadi Road,
Vellore-632 004.

3.The Registrar,
Debts Recovery Appellate Tribunal,
Egmore, Chennai-600 008.

3 ccs to M/s. Ramalingam Associates, Sr. 37483

2 ccs to M/s. Ramalingam Associates, 37644

2 ccs to M/s. Sai Bharath and Ilan, Advocate, sr. 37558

2 ccs to M/s. Sai Bharath & Ilan, Advocate, Sr. 37559, 37560

18 ccs to Mr. R. Subramanian, Advocate, sr. 37585

1 cc to M/s. Aiyar and Dolia, Advocate, Sr. 37496

W.P.Nos.28915 to 28917, 30711/2014
& 17203 of 2015
and M.P.Nos.1, 1 & 1 of 2015

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