IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24462 of 2013

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Syndicate Bank through its Chief Branch Manager, Main Branch, Patna, namely Mr. Abhay Kumar Sinha, Son of Shri Dinesh Prasad. Resident of B/205, Shanti Vihar Apartment, Salimpur Ahra, P.S.- Gandhi Maidan, District- Patna.

.... Petitioner/s

Versus

1. The Debt Recovery Tribunal through its Registrar, Patna.
2. The Debt Recovery Appellate Tribunal through its Registrar, Allahabad.

……. Respondent 1st Set

3. Mansosor Ansari Asharfi, Son of Md. Kasim Ansari, Resident of 504 Maqbool Apartment, Exhibition Road, Patna.

…. Borrower/Respondent 2nd Set.

4. Harsh Chopra, son of Ashok Chopra, Resident of Sadar House, Gr. Floor, Brindavan Kunja, Exhibition Road, P.S.- Gandhi Maidan, Patna.

.... Auction Purchaser .... Respondent 3rd Set.

With

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Civil Writ Jurisdiction Case No. 64 of 2014

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Sri Harsha Chopra, S/o Sri Ashok Chopra, R/o Solar House, Ground Floor, Brindavan Kunj, Exhibition Road, P.S. Gandhi Maidan, District - Patna – 800001.

.... Petitioner/s

Versus

1. Syndicate Bank, a Govt. of India Enterprises having one of its Branches at Frazer Road, Patna trough its Branch Manager, Frazer Road, Patna.
2. Authorized Officer, Syndicate Bank, Frazer Road, Patna.
3. Shri Mansoor Ansari Ashrafi, Son of Md. Kasim Ansari, Resident of 2 and 2/A, Rani Plaza, Exhibition Road, Patna, presently residing At 504, Maqbool Apartment, Exhibition Road, Town and District - Patna – 800001.
4. Presiding Officer, Debt Recovery Tribunal, 34 Bank Road, Opp. New Police Line, Lodipur, Patna.
5. Chairperson, Debt Recovery Appellate Tribunal, 147-A-58/1, Jawahar Lal Nehru Road, Ragore Town, Allahabad.

.... Respondent/s

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Appearance:

(In CWJC No.24462 of 2013)

For the Petitioner/s : Mr. Siddharth Harsh

For the Respondent/s : Mr. Kaushalendra Kumar Sinha

(In CWJC No.64 of 2014)

For the Petitioner/s : Mr. Arbind Kumar Jha

For the Respondent/s : Mr. Sanjiv Kumar
Mr. Siddharth Harsh
Mr. Kaushalendra Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 10-08-2016

The petitioner in CWJC No. 24462 of 2013 is the Syndicate Bank and who has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, to question the order dated 03.10.2013 passed by the Chairperson, Debt Recovery Appellate Tribunal, Allahabad (hereinafter referred to as the 'Appellate Tribunal'), in Miscellaneous Application No. 345 of 2013 whereby the 'Appellate Tribunal' has reduced the balance outstanding against the respondent no. 3 by near about Rs. 22 lakhs. The bank in the process has also questioned the order dated 26.3.2012 passed by the Presiding Officer, Debt Recovery Tribunal, Patna (hereinafter referred to as the 'Tribunal') in S.A. No.133 of 2011 whereby the 'Tribunal' has set aside the auction held under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') and the Rules framed thereunder.

The petitioner in the second writ petition arising from CWJC No. 64 of 2014 is the auction purchaser and who has also prayed for issuance of a writ in the nature of certiorari for quashing the order dated 03.10.2013 passed in Miscellaneous Application No. 345 of 2013 arising from Appeal (T) No. 1 of 2013 by the 'Appellate Tribunal' and while questioning the same the said petitioner also seeks a declaration that the initiation and continuance of proceedings under Sections 17 and 18 of the 'SARFAESI Act' is without jurisdiction in view of the statutory provisions as well as the law laid down by the Supreme Court in the case of **Mardia Chemicals Ltd. Vs. Union of India** since reported in **(2004) 4 SCC 311**.

Since the writ petitioner in each of the two writ petitions seeks to question the order passed by the 'Appellate Tribunal' hence the two writ petitions have been heard together and with the consent of the parties are being finally disposed of at the stage of admission itself.

Before I proceed to consider the arguments advanced on behalf of the parties I deem it necessary to place on record the relevant events leading to the final order under challenge. For the sake of convenience I shall be referring to the pleadings and Annexures as occurring in CWJC No.24462 of 2013 unless clarified with specific reference to the 2nd writ petition.

2000

The respondent no.3, the sole proprietor of M/s Maruti Automobiles approached the Syndicate Bank who is the petitioner in CWJC No. 24462 of 2013 (hereinafter referred to as the 'first writ petition') for sanction of a loan of Rs.21 lakhs which was duly sanctioned. The respondent no. 3 executed an equitable mortgage in favour of the bank by deposit of title deeds dated 15.5.2000 and 16.5.2000 in respect of the Shop No. 2 admeasuring 458 sq. feet and Shop No. 2A admeasuring 100 sq. feet situated at Rani Plaza, Exhibition Road in the town and district of Patna.

: In the same year the wife of respondent no. 3 Smt. Desu Praveen, the proprietor of M/s Maruti Stores also sought a loan of Rs. 20 lakhs from the same bank. The respondent no. 3 again executed an equitable mortgage by deposit of his title deed dated 15.5.2000 in respect of Shop No.21, Abhishek Plaza, Exhibition Road in the town and district of Patna.

03.3.2003

The loan account of M/s Maruti Stores became a non performing asset ('N.P.A.' for the sake of brevity).

29.8.2003

The loan account of M/s Maruti Automobiles also became 'N.P.A.'.

02.2.2005

A notice was issued under Section 13(2) of the 'SARFAESI Act' to M/s Maruti Automobiles for recovery of Rs. 24,37,233/- (Annexure-1 page 23). The details of property mentioned in the notice include Shop Nos. 2 and 2A at Rani Plaza, Exhibition Road, Patna.

16.2.2007

The respondent no. 3 approached the bank for one time settlement for all the three accounts at Rs. 25 lakhs and deposited a sum of Rs. 2.50 lakh as up front amount (Annexure-C page 110).

25.8.2007

The bank agreed for settlement at Rs. 28.50 lakhs for all the three accounts collectively but the respondent no. 3 failed to comply (Annexure-D page 112).

14.9.2009

The process of one time settlement was cancelled on the default by the petitioner and as a consequence the notice under Section 13(2) issued under the 'SARFAESI Act' present at Annexure-1 revived (Annexure-D page 113).

13.10.2009

Possession notice was issued for the property mortgaged in respect of both the Loan accounts (Annexure-E page 114).

02.2.2010

The respondent no. 3 deposited four lakhs and prayed for time for deposit of the balance amount of Rs. 22 lakhs (Annexure-F page 116).

22.12.2010

The respondent no. 3 at the same time also questioned the possession notice before this Court in CWJC No.12640 of 2010. An undertaking was given by the petitioner that he will deposit the entire due amount by 31st of January, 2011.

The writ petition was disposed of with a direction to the respondent no. 3 to fulfill his undertaking and until then the coercive action initiated against him was stayed only until 31.1.2011 and in case the petitioner failed in his undertaking then the bank was given liberty to take coercive measures (Annexure-3 page 26).

27.1.2011

The respondent no. 3 filed MJC No. 428 of 2011 for extension of time granted by this Court in the order passed in CWJC No. 12640 of 2010.

24.2.2011

The bank responded that they have filed LPA No. 748 of 2011 and thus the request cannot be considered.

23.3.2011

This Court extended the time until 15.4.2011 with identical protection and stipulations present in the order dated 22.12.2010 passed on the writ petition (Annexure-4 page 28).

The respondent no. 3 deposited two cheques as per his undertaking but the same were dishonoured.

18.4.2011

The bank took over the physical possession of the mortgaged property (Annexure-G page 118).

<u>19.4.2011</u>

An offer was made to settle the amount by the respondent no. 3 with request to unseal the shop.

<u>30.4.2011</u>

Sale notice was published (Annexure-5 page-30).

<u>31.5.2011</u>

Sale was concluded in favour of the respondent no. 4 who is also the writ petitioner in CWJC No. 64 of 2014 (hereinafter referred to as the 'second writ petition') at Rs. 66.75 lakhs.

<u>02.8.2011</u>

The respondent no. 3 had questioned the sale notice dated 30.4.2011 (Annexure-5) through CWJC No. 9135 of 2011 but after some argument the writ petition was sought to be withdrawn to move before the authority concerned and which prayer was allowed together with the liberty prayed for.

<u>10.8.2011</u>

The Letters Patent Appeal filed by the bank was dismissed (Annexure-U page 194).

<u>15.9.2011</u>

The respondent no. 3 filed an appeal under Section 17 of the

'SARFAESI Act' giving rise to S.A. No. 133 of 2011 which is stated to be within 45 days of disposal of CWJC No. 9135 of 2011.

26.3.2012

S.A. No. 133 of 2011 was disposed of with a direction to the respondent no. 3 to pay the entire dues of the bank as per Income Tax Schedule and in case any development has been done in property then the cost of the same was also to be paid by the respondent no. 3. A cost of Rs. 10 lakhs was also allowed to be paid to the auction purchaser. The borrower was directed to pay 9 per cent interest and 5 per cent penalty on the auction amount together with cost of publication, legal expenses etc. (Annexure-6 page 31)

2012

The respondent no. 3 filed statutory appeal before the 'Appellate Tribunal' under Section 18 of the 'SARFAESI Act' giving rise to Appeal No. 68 of 2012 together with a deposit of Rs. 50 lakhs.

2013

The appeal was transferred to the Allahabad Bench and was re-numbered as Appeal (T) No. 1 of 2013.

08.7.2013

The appeal was disposed of with a direction to the bank to intimate the full amount recoverable from the respondent no. 3 which was to be calculated on the basis of contractual rate of interest. The amount deposited by the respondent no. 3 was to be adjusted against the total dues which were to be reduced. The amount of Rs. 50 lakhs deposited with the ‘Appellate Tribunal’ at Calcutta was directed to be refunded. It was specifically mentioned that in case the respondent no. 3 as an appellant did not deposit the amount within 60 days of the communication then the bank would be free to auction sale the property. Upon payment made, the possession of the property is to be returned to the appellant. (Annexure 7 page 35).

03.10.2013

A Miscellaneous Application bearing No. 345 of 2013 was filed by the respondent no. 3 for seeking certain clarification as to the amount outstanding and which has been disposed of by the impugned order calculating the total dues at Rs. 76 lakh and which was in relation to the account for which the notice under Section 13(2) of the ‘SARFAESI Act’ was given and not in respect of default to any other account since according to the ‘Appellate Tribunal’ no notice under Section 13(2) of the ‘SARFAESI Act’ was given by the Bank in respect of the 2nd Loan account and which could not be clubbed with the notice issued under Section 13(2) present at Annexure-1 which was exclusively in relation to the Loan account of Maruti Automobiles. (Annexure-9 page 67).

Being aggrieved the bank and the auction purchaser are before this Court through separate writ petitions.

Mr. Siddharth Harsh has appeared for the bank, Mr. Kaushalendra Kumar Sinha has appeared for the borrower and Mr. Arbind Kumar Jha has appeared for the auction purchaser in the two writ petitions.

Mr. Harsh while briefly enumerating the sequence of events which already stand discussed hereinabove has submitted that the conduct of the respondent no. 3 did not warrant any kind of indulgence in his favour. He submits that not only the respondent no. 3 defaulted in repayment of loan rather he has also defaulted in abiding by the directions of this Court and even an extension of time did not give any better result. He submits that such is the conduct of the respondent no. 3 that even the cheques deposited by him got dishonoured. It is the argument of Mr. Harsh that since the very conduct of the borrower was not bona fide, inasmuch as he did not abide by the directions of this Court, there was no occasion for the Tribunal to grant any indulgence in the appeal filed by the borrower. On a query as to why the bank never questioned the proceedings initiated at the instance of the respondent no. 3 under the 'SARFAESI Act' before the competent forum, he responded that since the interest of the bank as well as the auction purchaser was protected under the order of the Tribunal, there was no occasion to question the same. It is the argument of Mr. Harsh that the respondent no. 3 even failed to comply with the judgment and order of the Tribunal placed at Annexure-6 rather went in appeal which was registered as Appeal No. 68 of 2012 and on transfer was re-numbered as Appeal (T) No. 1 of 2013. In reference to the order passed by the 'Appellate Tribunal' on 08.7.2013 present at Annexure-7 he submits that the order of the 'Tribunal' present at Annexure-6 was affirmed and a direction was given to the borrower to make payment of the dues within 60 days of the communication by the bank regarding the current status of the loan. According to Mr. Harsh the dues outstanding against the respondent no. 3 were calculated and communicated but instead of discharging the onus of repayment, the respondent no. 3 instead moved a Miscellaneous Application seeking a clarification of the 'Appellate Tribunal' and which has been allowed under the impugned order quantifying the outstanding against the respondent no. 3 at Rs.76 lakhs. It is the argument of Mr. Harsh that neither the Miscellaneous Application is maintainable under the provisions of the 'SARFAESI Act' or the 'Rules' framed thereunder nor the exercise of jurisdiction by the 'Appellate Tribunal' is within the parameters of law. According to learned counsel the order passed by the 'Appellate Tribunal' on the Miscellaneous Application is in excess of jurisdiction and no such power is vested in the 'Appellate Tribunal'. According to

Mr. Harsh the total outstanding against the respondent no. 3 as on 08.7.2013 which is the date of the final order passed by the 'Appellate Tribunal' is to the tune of Rs. 2,36,11,095/- but it has been incorrectly modified by the 'Appellate Tribunal' in the impugned order dated 03.10.2013 passed in Miscellaneous Application No. 345 of 2013 to read as Rs.76 lakhs. The order passed by the 'Appellate Tribunal' on the Miscellaneous Application of the respondent no. 3 has been contested by Mr. Siddharth Harsh on merits as well as on exercise of jurisdiction.

Mr. Arbind Jha has appeared for the auction purchaser who is the writ petitioner in the second writ petition and has while questioning the impugned order passed on 03.10.2013 in Miscellaneous Application No. 345 of 2013, also questioned the very initiation of the proceedings under the Act. According to Mr. Jha the sale notice dated 30.4.2011 annexed at Annexure-5 was published under Rule 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules') and which is appealable under Section 17 of the 'SARFAESI Act' but such appeal can only be preferred within 45 days of the action complained of. According to Mr. Jha the bank took possession of the property in question on 13.10.2009 under Section 13(4) of the 'SARFAESI Act' but such action was not challenged by the borrower respondent no. 3 under

Section 17. Instead the respondent no.3 preferred a writ petition and despite indulgence granted by this Court the onus was not discharged by the borrower. He submits that it is thereafter that the sale notice was issued on 30.4.2011 which again has not been challenged before the statutory forum prescribed under the Act rather a second writ petition was filed bearing CWJC No.9135 of 2011 and which was dismissed as withdrawn to approach the correct forum. According to Mr. Jha a certificate of sale was issued on 16.6.2011 and it is thereafter that the appeal was filed by the petitioner under Section 17 of the 'SARFAESI Act' being SARFAESI Appeal No.133 of 2011 which was filed on 15.9.2011, much beyond the prescribed period of 45 days. According to Mr. Jha neither the resumption of possession by the bank was questioned by the respondent no. 3 before the statutory forum nor did he question the sale notice or the sale certificate. According to Mr. Jha the conditions stipulated under Section 17 are mandatory and the limitation of 45 days is to be statutorily followed.

Questioning the jurisdiction of the 'Tribunal' to entertain the appeal preferred by the respondent no. 3 it is submitted that the jurisdiction of the 'Tribunal' stands discussed in Section 17(2) of the 'SARFAESI Act' and it is to be exercised only to satisfy itself that the prescribed procedure has been followed. He submits with reference to Section 17(3) of the 'SARFAESI Act' that it is only where the

'Tribunal' is satisfied that the prescribed procedure has been violated that it can order for restoration of possession and in no other circumstances. The other argument advanced by Mr. Jha is that any such option is available to a borrower only until the issuance of auction notice and not after the auction is completed. In support of his submission learned counsel has referred to the judgment of the Supreme Court in **Mardia Chemicals Ltd** (supra) more particularly paragraph-80 (2). Learned counsel has also referred to the judgment of the Supreme Court reported in **(2013)9 SCC 620 (Standard Chartered Bank vs. V. Noble Kumar & ors.)** and with reference to paragraph 37 it is stated that no sooner a sale certificate is issued that the jurisdiction of the 'Tribunal' gets ousted. It is submitted that it is only where a proceeding is initiated under the 'SARFAESI Act' prior to auction that any sale or possession thereof can be set aside but no proceedings would lie after the sale is complete on the issuance of sale notice. Mr. Jha has also questioned the jurisdiction exercised by the 'Appellate Tribunal' on the Miscellaneous Application filed by the respondent no. 3 to submit that it is contrary to the statutory provisions. According to learned counsel the entire proceedings initiated at the instance of the respondent no. 3 in the circumstances discussed is illegal and is fit to be set aside.

Mr. K.K. Sinha has appeared for the respondent no. 3

borrower and has taken this Court through the list of dates once again. With reference to Rule 2(6) of the 'Rules' it is submitted that a notice on the borrower is mandatory before a proclamation of sale is brought out and which mandate has not been followed inasmuch as no notice has been given to the borrower thus violating the procedure of sale itself. According to Mr. Sinha there was no necessity for the respondent no. 3 to particularly question the sale notice since an appeal under Section 17 of the 'SARFAESI Act' is to be adjudicated like a suit where everything connected falls open for discussion. Mr. Sinha reverting to the notice issued under Section 13(2) of the 'SARFAESI Act' impugned at Annexure-1 has submitted that it is in respect of Maruti Automobiles and the action taken is in respect of Shop No. 2 and 2A, Rani Plaza Exhibition Road, Patna. It is his submission that no proceeding was initiated in respect of Shop No.21, Abhishek Plaza, Exhibition Road, Patna which was mortgaged in respect of loan advanced to M/s Maruti Stores. Learned counsel has referred to a judgment reported in **2006(4) PLJR 626 (Santosh Kumar Sah vs. Union of India & ors.)** to submit that such infirmity in the notice issued under Section 13(2) of the 'SARFAESI Act' is fatal and the Shop No. 21 situated at Abhishek Plaza which was mortgaged in respect of loan advanced to M/s Maruti Stores could not have been included in the advertisement which has proved fatal.

Mr. Sinha has referred to a decision of the Supreme Court reported in **(2013) 9 SCC 460 (C.N. Paramasivam & Anr. vs. Sunrise Plaza & Ors.)** and with reference to paragraph 27 and 28 of the judgment it is argued that although the sale is to be carried out as per the procedure prescribed under the Income Tax Act and the Rules framed thereunder and although Rule 57 and 58 of the Rules framed under the Income Tax Act requires a deposit within the prescribed period but in the present case the sale price has been deposited by the auction purchaser belatedly and which again is fatal. According to Mr. Sinha though the sale was effected on 31.5.2011 but the money was deposited by the auction purchaser only on 01.8.2011 which is beyond the prescribed period of 15 days in terms of Rule 9(4) of the Rules. He thus submits that the sale stands vitiated.

Learned counsel has also referred to a judgment(s) of the Supreme Court reported in **(2014) 5 SCC 610 (Mathew Verghese vs. M. Amritha Kumar & Ors.)** and rendered in the case of **Vasu P. Shetty vs. Hotel Vandana Palace** reported at **page 660** of the same volume, to submit that a right of redemption is vested in the mortgagor where the sale deed has not yet been executed and registered. According to Mr. Sinha there was no invalidation in the proceedings initiated by the borrower rather it is the action taken by the bank in collusion with the auction purchaser which stands vitiated.

Mr. Harsh appearing for the writ petitioner in the first writ petition and Mr. Jha appearing for the writ petitioner in the second writ petition have responded to the arguments of Mr. Sinha by way of rejoinder. While Mr. Harsh has reiterated the position and the argument advanced, it is submitted by Mr. Jha that following the sale notice possession was given to the auction purchaser on 31.5.2011 on deposit of 25 per cent of the sale amount and the balance has been deposited on 13.6.2011 whereafter the sale certificate has been issued on 16.6.2011 vide Annexure-P to the counter affidavit at page 183.

Mr. Jha contesting the argument of Mr. Sinha that the right of redemption still exists with the mortgagor until a registered sale-deed is executed, has submitted that a registration of sale is optional in between the parties and once the sale certificate is communicated to the Registrar then the formality of registration would not be required.

Learned counsel in support of his proposition that a relief not prayed for by party cannot be granted, has referred to the following judgments of the Supreme Court:

(1) **(2010) 11 SCC 557 (Manohar Lal vs. Ugrasen); paragraph 30 to 33;**

(2) **(2011) 3 SCC 436 (State of Orissa vs. Mamata Mohanty) ; paragraph-55;** and

(3) **(2013) 4 SCC 690 Rajesh Kumar Vs. State of Bihar); para 14 and 15**.

I have heard learned counsel for the parties and I have perused the records.

Of the many issues raised and contested by the parties, the primary issues which falls for consideration is, whether the Appellate Tribunal has acted within the jurisdiction conferred upon it under the provisions of the 'SARFAESI Act' to entertain a miscellaneous application filed by the borrower. For the purpose I would be referring to some of the provisions of the 'SARFAESI Act' to see whether it does provide any answer to the issue raised by the two writ petitioners to question the impugned order on the anvil of jurisdiction.

Section 18 of the 'SARFAESI Act' deals with the Appeal to Appellate Tribunal and in its sub-section (2) further provides that the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'Act of 1993') and 'the Rules' framed thereunder.

While section 20 of the 'Act of 1993' provides for appeal to the Appellate Tribunal, section 22 thereof discusses the procedure and powers of the Tribunal and the Appellate Tribunal. Section

22(1) provides that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings. Sub-section (2) of section 22 provides that the Tribunal and the Appellate Tribunal shall have the same powers as vested in a Civil Court under the Code of Civil Procedure while trying a suit, for the purpose of discharging the functions under this Act which amongst other also includes power to review their decision.

Rule 22 of the Debts Recovery Appellate Tribunal (Procedure) Rule 1994 (hereinafter referred to as the 'Rules of 1994') empowers the Appellate Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.

My discussions on the statutory provisions aforementioned on the powers vested in the Appellate Tribunal is sufficient to hold that the Appellate Tribunal is not only vested with jurisdiction to review its decisions rather it is also empowered to pass such orders which may be necessary to give effect to its order or to prevent the abuse of process or to secure the ends of justice. There is thus no merit in the contention advanced by learned counsel for the petitioners questioning the order of the Appellate Tribunal dated 3.10.2013 on Miscellaneous Application No.345 of 2013 on jurisdictional infraction.

Mr. Jha appearing for the auction purchaser has raised an issue of limitation to submit that the SARFAESI Appeal instituted by the borrower bearing S.A. No.133 of 2011 was barred by limitation. It is rather surprising that although the auction purchaser represented by Mr. Jha, did register his appearance before the Tribunal at the stage of SARFAESI Appeal No. 133 of 2013 but did not bother to raise any such objection on the issue of limitation. Apart therefrom, it is the case of the borrower that it is following the liberty granted by this Court in CWJC No.9135 of 2011 as contained in the order dated 2.8.2011, that the borrower chose to file the appeal under section 17 of the SARFAESI Act' giving rise to S.A. No.133 of 2011 which was within 45 days of the disposal of the said writ petition.

Section 17 of the SARFAESI Act' provides for a right to appeal within 45 days from the date on which the measures referred under section 13(4) of this Act has been taken. Sub-section (7) thereof mandates disposal of such application in accordance with the provisions of the ‘Act of 1993’ and section 24 of the ‘Act of 1993’ extends the provisions of the Limitation Act to an application made to the Tribunal.

Considering the issue of limitation in the backdrop of the submissions advanced on behalf of the borrower, the statutory provisions discussed above coupled with the fact that the auction purchaser raised no such objection before the Tribunal, I am of the opinion that the matter having reached the Appellate Tribunal, the auction purchaser cannot be permitted to question the very initiation of the proceedings at the instance of the borrower more particularly where the auction purchaser has participated in the proceedings before the Tribunal without raising any such objection and has also not chosen to question the final order passed by the Tribunal under section 17 of the ‘SARFAESI Act’ passed on 26.3.2012. In fact the auction purchaser has also not chosen to question the final order passed by the Appellate Tribunal on the appeal preferred by the borrower bearing Appeal (T) No.1 of 2013/68 of 2012 passed on 8.7.2013 vide Annexure-7. In my opinion in the circumstances present, it is too late in the day for the auction purchaser to question the initiation of the proceedings at the instance of the borrower, either on merits or on limitation.

As I have mentioned above the auction purchaser neither chose to question the final order passed by the Tribunal on 26.3.2012 present at Annexure-6 nor did he choose to appear before the Appellate Tribunal nor has he questioned the final order passed by the Appellate Tribunal on 8.7.2013 present at Annexure-7. In fact the auction purchaser without questioning the proceedings at any stage has woken from deep slumber to question the order dated 3.10.2013 passed by the Appellate Tribunal on the Miscellaneous Application No.345 of 2013 arising from Appeal (T) No.1 of 2013 and in the process he has tried to open the Pandora Box by questioning the very initiation of the proceedings. The lax attitude of the auction purchaser in not questioning the proceedings at its initiation rather allowing it to reach a finality, he cannot turn around to raise such issues at such belated stage when even the appellate proceedings have come to a close and the order impugned in the two writ petitions, is only a clarification on the adjudication by the Appellate Tribunal.

Reverting to the order passed by the Appellate Tribunal put to question in the two writ petitions, the only aspect which requires to be seen is, whether it suffers from perversity requiring interference because the order is not found wanting on the issue of jurisdiction.

The facts are not in contest and it is also not in dispute that the proceedings under the 'SARFAESI Act' was initiated only in relation to the loan account of M/s Maruti Automobile and not in respect of M/s Maruti Stores as would be confirmed from the notice issued under section 13(2) of the 'SARFAESI Act' present at Annexure-1. It is a different matter that in the process initiated towards one-time settlement, the accounts were clubbed but since the borrower failed to satisfy the requirements of one-time settlement, it resulted in initiation of the proceedings in question. However, the fact remains that the proceedings initiated was only in relation to the loan account of M/s Maruti Automobiles and not M/s Maruti Stores. In fact this important issue was raised by the borrower even before the Appellate Tribunal as stands confirmed from the order present at Annexure-7 where the submission of the auction purchaser that the property which was not secured by the Bank had also been put to auction and an auction had taken place, was raised by the borrower, stands noted. Since the Appellate Tribunal while disposing of the appeal perhaps overlooked this relevant issue that it led to filing of the miscellaneous application in question giving rise to Miscellaneous Application No.345 of 2013 and it is when that the Tribunal clarified its order dated 8.7.2013 to hold that it did not adjudicate on any default in relation to any other account since no notice under section 13(2) of the 'SARFAESI Act' was given by the Bank to the borrower in respect of the said account.

Since the borrower had all along evinced his inclination to pay the outstanding amount and since notice under section 13(2) of the 'SARFAESI Act' was only in relation to the loan account of M/s Maruti Automobiles hence the Appellate Tribunal by the order passed on 3.10.2013 on Miscellaneous Appeal No.345 of 2013 has merely clarified the status of the outstanding in the loan account of M/s Maruti Automobiles to conclude at Rs.76,00,000/- as on 8.7.2013 i.e. the date on which the final order was passed on the appeal preferred by the petitioner bearing Appeal (T) No.1 of 2013.

Since the Bank had questioned this quantification on the basis of the records that this Court vide order passed on 5.1.2016 required the Bank to file an affidavit showing the outstanding against the loan account of M/s Maruti Automobiles which should be inclusive of interest calculated at the contractual rate as existing on the date of passing of the final order by the Appellate Tribunal on 8.7.2013. It is following the order passed by this Court that an affidavit has been filed by the Bank on 18.1.2016 and it is stated that the actual total outstanding against the loan account of M/s Maruti Automobiles as on 8.7.2013 comes to Rs.99,10,863/- which is inclusive of the auction sale amount of Rs.16,62,271.49; the total dues outstanding against the M/s Maruti Automobile as on 8.7.2013 after adjustment of the auction amount which comes to Rs.74,16,508.79 and the interest amount on the auction sale amount which is to the tune of Rs.8,32,083.35. The Bank has also enclosed the account statement of M/s Maruti Automobiles to support its contentions.

The details on the outstanding finds mention at paragraphs 4 to 6 of the supplementary affidavit filed on 18.1.2016 and which comes to Rs.99,10,863.63. Since Rs.50,00,000/- is already deposited by the borrower with the Debts Recovery Tribunal at Calcutta on 30.4.2012 and a further amount to the tune of Rs.6,00,000/- has subsequently been deposited by him hence the borrower would now be required to deposit a sum of Rs.43,10,863.63 and which would be towards the full and final settlement of the dues outstanding against M/s Maruti Automobiles. The borrower should deposit Rs.13,10,863.63 within one month from today and the remaining 30,00,000/- be deposited in equal monthly instalments in the next three months falling thereafter. The moment the borrower would deposit the entire outstanding amount that the Bank would take steps for restoration of the possession of the shops in question to the borrower.

The order passed by the Appellate Tribunal on the miscellaneous application stands modified only to the extent of quantification with no other infirmity found therein requiring any interference.

The two writ petitions are according disposed of.

(Jyoti Saran, J)

S.Sb/SKPathak

AFR/NAFR	AFR
CAV DATE	10-05-2016
Uploading Date	17-08-2016
Transmission Date	N.A.