IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9523 OF 2023

Bafna Motors (Mumbai) Pvt. Ltd. & Anr. .. Petitioners

Versus

Union Bank of India .. Respondent

WITH
INTERIM APPLICATION (ST.) NO. 21706 OF 2023
IN
WRIT PETITION NO. 9523 OF 2023

CELIR LLP .. Applicant
IN THE MATTER BETWEEN

Bafna Motors (Mumbai) Pvt. Ltd. & Anr. ..Petitioners

Versus

Union Bank of India .. Respondent

Mr. Mayur Khandeparkar a/w Omkar Kanegaonkar & Vikramjit Garewal i/b. Vivek Phadke *for the Petitioners.*

Mr. Nishit Dhruva a/w Prakash Shinde, Niyati Merchant, Bhavesh Poojari i/b. MDP & Partners *for the Respondent No.1.*

Dr. Birendra Saraf, learned A.G. and Mr. Ashish Kamat, Senior Counsel a/w Kunal Mehta, Robin Fernandes, Sukrit Parashar, Hussain Haji & Adrianna Lillyan Thangkhiew i/b. Vesta Legal *for Successful Auction Purchaser.*

CORAM : B. P. COLABAWALLA &
M. M. SATHAYE, JJ.

DATE : AUGUST 17, 2023

P. C.

1. The above Writ Petition is filed seeking a Writ of Certiorari for calling upon the papers and proceedings of Securitization Application No. 46 of 2022 pending before the DRT-1, Mumbai and after examining the legality, validity and propriety thereof, allow the Petitioners to redeem the mortgage as per the schedule provided in Interim Application No. 2339 of 2023 in Securitization Application No. 46 of 2022 filed before the said DRT.

2. The facts in this case are rather peculiar. In the present case, the 1st Respondent Bank had issued a notice under Section 13(2) on 7th June, 2021, calling upon the Petitioners to pay an aggregate sum of Rs. 107.11 crores, which was due as on 31st May, 2021. Though a lot has been said in this Petition with reference to the validity of the actions taken by the Respondent Bank for the sale of the secured asset, the Petitioners have, before the DRT, made an application for the

redemption of its mortgage of the secured asset, which is the piece and parcel of leasehold land to the extent of 16200 sq.mtrs, buildings & ancillary structures situated at amalgamated plot Nos. D-105, D-110 & D-111, Trans Thane Creek Industrial Area, MIDC, Village Shirwane, Thane, Belapur Road, Nerul, Navi Mumbai, Thane, Maharashtra 400906 (for short **"the secured asset"**). This Interim Application for Redemption (Interim Application No. 2339 of 2023) was opposed by the Respondent Bank by filing an affidavit in reply. The DRT heard the said Interim Application and reserved it for orders. Apprehending that the redemption request made by the Petitioners would be rejected by the DRT, especially considering that the Respondent-Bank had opposed the same, the Petitioners have approached this Court under Article 226 of the Constitution of India.

3. When this matter had come up before us on 1st August 2023, Mr. Khandeparkar, the learned Advocate appearing for the Petitioners, submitted that the Petitioners dues to the Bank, and which, if calculated with interest up to 31st August 2023 comes to Rs. 129 crores (rounded up), would be paid to the Respondent-Bank on or before 31st August 2023. He submitted that he already had a Demand Draft to the extent of Rs. 25 crores which he was in a position to hand over to the

Respondent-Bank. Mr. Khandeparkar stated on instructions that in the event the balance amount of Rs. 104 crores was not paid by 31st August 2023, then the amount of Rs. 25 crores can be appropriated by the Respondent Bank towards the outstanding dues of the Petitioners and the sale conducted in favour of the Auction Purchaser (the Intervener before us) can be confirmed for the price of Rs. 105.05 crores and a sale certificate can be issued in their favour.

4. When this offer was put forth by Mr. Khandeparkar [on 1st August 2023], Mr. Shinde, the learned Advocate appearing for the Respondent Bank, sought time to take instructions. Therefore, in these peculiar circumstances, we had directed the DRT not to pass any orders in the Interim Application filed by the Petitioners seeking redemption of their mortgage. The matter was thereafter placed on board on 2nd August 2023, 3rd August 2023, 7th August 2023, and 9th August 2023. Finally, the matter has now come up before us today.

5. Today, Mr. Shinde, the learned Advocate appearing for the Respondent Bank, on instructions, has stated that if the Petitioners are willing to pay the entire amount of Rs. 129 crores on or before 31st August 2023 and subject to them paying over to the Bank a sum of

Rs. 25 crores today [by Demand Drafts], they have no difficulty in allowing the Petitioners to redeem the mortgage. The further condition that Mr. Shinde put forth for accepting this offer was that the Securitization Application filed before the DRT would stand dismissed on the passing of this order, and if the payment is not made by 31st August 2023, possession of the secured asset would be handed over by the Petitioners to the Auction Purchaser on 5th September 2023.

6. Mr. Khandeparkar, on taking instructions, has fairly stated that in the event the entire amount of Rs. 129 crores is not paid by the Petitioners on or before 31st August 2023, then the Petitioners shall voluntarily hand over vacant, peaceful, and quiet possession of the secured asset to the Auction Purchaser on or before 5th September 2023.

7. We find that once this is the position between the Respondent Bank and the Petitioners, there would be no problem in directing the Petitioners to make the payment of Rs. 129 crores to the Respondent-Bank on or before 31st August 2023 and on this payment being made, without any default, the mortgage would be redeemed.

8. However, the Auction Purchaser being, represented by Dr. Saraf, opposed this course of action. According to Dr. Saraf, the Petitioners cannot be permitted to redeem the secured asset in this fashion. He submitted that even today, there is no tender of the mortgage debt by the Petitioners to the Respondent Bank. There is no provision in law which can permit the Petitioners to redeem the mortgage in instalments as is sought to be done in the present case. This apart, Dr. Saraf submitted that this Petition itself is an abuse of the process of the Court because the Application of the Petitioners for redemption is pending before the DRT and the DRT has not pronounced any orders on that application. He submitted that this Petition is filed by the Petitioners apprehending that the impending order which would be passed by the DRT would be adverse to them. In such a situation, Dr Saraf submitted, that entertaining this Petition would not only be an abuse of the process of the Court but would set a wrong precedent. He submitted that it is not the Petitioners' case that the DRT, Pune had no jurisdiction to entertain the application filed by the Petitioners, and therefore, they have approached this Court. He submitted that, admittedly the DRT has jurisdiction to entertain the application filed by the Petitioners for redemption and which is pending. Once this is the

case, it would not be proper to scuttle those proceedings by approaching this Court under Article 226 of the Constitution of India.

9. Lastly, Dr. Saraf submitted that in the present case, when one looks at the provisions of Section 13(8) of the SARFAESI Act, 2002, it is clear that the borrower has a right to redeem his secured asset at any time before the date of publication of notice for public auction, or inviting quotation or tender, from the public or private treaty for transfer by way of lease, assignment or sale of the secured asset. If the borrower does not tender the amount due under the mortgage debt before the date of publication of notice for public auction, or inviting quotation or tender from the public, or private treaty, the borrower loses his right of redemption. He submitted that in the present case, admittedly, no tender has been made before the date of publication of notice for sale of the secured asset, and hence the Petitioners have lost their right of redemption. If this be the case, today, there is no question of permitting the Petitioners to redeem the mortgage.

10. In the alternative, Dr. Saraf submitted that even apart from Section 13(8), in the facts of the present case, considering that the auction has proceeded and the entire amount has been deposited by the

Auction Purchaser with the Respondent Bank, under the provisions of the Security Interest (Enforcement) Rules, 2002 and more particularly Rule 9(2) read with Rule 9(6) of the said Rules, it is obligatory on the part of the Respondent Bank to issue a sale certificate in favour of the Auction Purchaser once he has deposited the entire monies for the purchase of the secured asset. For all the aforesaid reasons, Dr. Saraf submitted that the above Writ Petition ought not to be entertained and ought to be dismissed.

11. We have heard the learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. It is not in dispute that the Petitioners have approached the DRT by filing an application for redemption of the mortgage. As mentioned earlier, this application is an Interim Application filed in Securitization Application No. 46 of 2022 and which is also pending. Considering these facts, under normal circumstances, we would not have entertained the above Writ Petition. However, in the peculiar facts and circumstances of the present case, we are of the opinion that considering stand taken by the Respondent Bank [and which is accepted by the Petitioners without any conditions or reservations], it would be in the interest of all concerned if the consensus reached between the

Respondent Bank and the Petitioners is taken cognizance of by us. We say this because in the present scenario, by 31st August 2023, the Respondent Bank will receive its entire dues one way or the other. In the event the Petitioners adhere to its promise to pay the entire dues [of 129 crores] by 31st August 2023, then naturally, the Bank will receive its entire money. In contrast, if the Petitioners default in making payment of the entire sum of Rs.129 crores, the sum of Rs. 25 crores to be paid over to the Respondent Bank today, would be appropriated by the Bank towards the outstanding dues of the Petitioners, and the balance Rs.105.05 crores would be received from the Auction Purchaser who has already deposited the entire sale consideration with the Respondent Bank. It is taking these circumstances into consideration that the Respondent Bank has changed its stand from the stand it took before the DRT when it opposed the Petitioners' application for redemption. Another reason why the Respondent Bank has changed its stand is because the entire litigation will come to an end on the passing of this order. In other words, on the passing of this order itself, the entire challenge laid by the Petitioners to the actions of the Bank [under the provisions of the SARFAESI Act, 2002] comes to an end. Therefore, even if the Petitioners default in making payment by 31st August 2023, no challenge can be laid to the sale of the secured asset to the Auction

Purchaser. Further, as per the statement of Mr. Khandeparkar, in the event the Petitioners fail to pay the entire dues of Rs.129 crores to the Respondent Bank by 31st August 2023, vacant, quiet, and peaceful possession of the secured asset would be handed over by the Petitioners to the Auction Purchaser and the Bank would then issue a sale certificate in favour of the Auction Purchaser. When one looks at all these facts, we find that the arrangement referred to above is in the interest of all, including the Auction Purchaser. We say this because, by 31st August 2023, the Auction Purchaser will either get the secured asset free from litigation or will get a refund of the entire amount paid by it to the Respondent Bank for agreeing to purchase the secured asset.

12. Be that as it may, this course of action was vehemently opposed by Dr. Saraf for reasons best known to him. In these circumstances, we have to deal with the arguments canvassed by Dr. Saraf. Firstly, in our opinion, all the arguments canvassed by Dr. Saraf are those that the Respondent Bank can canvass and not the Auction Purchaser. To our mind, the Auction Purchaser today has no locus to oppose the redemption of the mortgaged property when the same is agreed to between the Petitioners and the Respondent Bank. We say this because in our opinion, there is no crystallized right in favour of the

Auction Purchaser until a registered sale certificate is issued in his favour. This view that we have taken is supported by a decision of the Hon'ble Supreme Court in the case of ***Mathew Varghese Vs. M. Amritha Kumar & Ors. [(2014) 5 SCC 610]***. After considering the provisions of Section 13(8) [before amendment] read with the Rules [and more particularly Rule 8 and Rule 9 of the Security Interest (Enforcement) Rules, 2002], the Hon’ble Supreme Court inter alia held that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle is that the mortgagor's right to redeem will survive until there has been a completion of sale by the mortgagee by a registered deed. Therefore, until the sale is complete by registration of the sale, the mortgagor does not lose the right of redemption. The Hon’ble Supreme Court came to this conclusion after relying upon its own decision in the case of ***Narandas Karsondas Vs. S. A. Katkam and Anr. [(1977) 3 SCC 247],*** and which was considering rights of the Mortgagor under Section 60 of the Transfer of Property Act, 1882. The Hon’ble Supreme Court in ***Mathew Varghese’s*** case *inter-alia* held that applying the principles stated with reference to Section 60 of the Transfer of Property Act, 1882, in respect of the secured assets in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant rules applicable, a free hand has been given to the secured creditor to sell the secured asset without the intervention of the Court or Tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor i.e., borrower who is called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale of transfer. In fact, in the case of ***Narandas Karsondas (supra)*** the Supreme Court, whilst interpreting Section 60, came to the conclusion that the right of redemption, and which is embodied in Section 60 of the Transfer of Property Act, is available to the mortgagor unless the act of the parties has extinguished it. The Supreme Court *inter-alia* held that the combined effect of Section 54 of the Transfer of Property Act, 1882 and Section 17 of the Registration Act, 1908 is that a contract for sale in respect of the immovable property of the value of more than a hundred rupees without registration cannot extinguish the equity of redemption. In India, it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by a registered instrument that the mortgagor's right of redemption will be extinguished, was the finding of the Supreme Court. It was held that the conferment of power to sell without the intervention of the Court in a mortgage deed by itself will not deprive the mortgagor of his right to redemption. The right of redemption is not extinguished at the expiry of the period mentioned in the mortgage deed, and a mere contract for sale does not extinguish the equity of redemption. In other words, whilst interpreting provisions of Sections 54 and 60 of the Transfer of Property Act, 1882 read with Section 17 of the Registration Act, 1908, the Hon'ble Supreme Court came to the conclusion that the equity of redemption persists until a registered deed is entered into with the purchasers. The relevant portion of the decision of the Hon'ble Supreme Court in the case of ***Mathew Varghese (supra)*** reads thus:

> "37. Mr Shyam Divan, learned Senior Counsel relied upon the decision in *Narandas Karsondas* [(1977) 3 SCC 247] , in which the right of a mortgagor as prescribed under Section 60 of the TP Act has been spelt out. Under Section 60 of the TP Act, at any time after the principal money fell due, there is a right in the mortgagor on payment or tender at a proper time and place of the mortgage money, to require a mortgagee to restore the property to the mortgagor with all rights prescribed as it stood prior to the mortgage. Under the proviso, the only impediment would be that if such a right of a mortgagor stood extinguished by the act of the parties or by the decree of a court. Certain other conditions are also stipulated in the said provision for the mortgagor to seek for redemption of the mortgaged property. Dealing with the said provision, this Court held as under in paras 34 and 35. Paras 34 and 35 are as under: (SCC p. 254)
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>> *"34. The right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties. The combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act is that a contract for sale in respect of immovable property of the value*

of more than one hundred rupees without registration cannot extinguish the equity of redemption. In India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. The conferment of power to sell without intervention of the court in amortgage deed by itself will not deprive the mortgagor of his right to redemption. The extinction of the right of redemption has to be subsequent to the deed conferring such power. The right of redemption is not extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for sale.

35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further Section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption."

(emphasis added)

38. <u>On a reading of the above paragraphs, we are able to discern the ratio to the effect that a mere conferment of power to sell without intervention of the court in the mortgage deed by itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the</u>

expiry of the period, that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The ratio is also to the effect that the power to sell should not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. The above proposition of law of course was laid down by this Court in *Narandas Karsondas* [(1977) 3 SCC 247] while construing Section 60 of the TP Act. But as rightly contended by Mr Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the SARFAESI Act, read along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying Section 60 of the TP Act, this Court has envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed. It was also stated that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property.

39. When we apply the above principles stated with reference to Section 60 of the TP Act in respect of a

secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Under sub-section (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said sub-section also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the TP Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the abovestated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

40. Reliance was also placed upon the decision in *Mardia Chemicals Ltd.* v. *Union of India* [(2004) 4 SCC 311] . In para 54, while dealing with the contention raised on behalf of the secured creditor that the right of redemption would be available to the mortgagor only if the amount due according to the secured creditor is deposited, this Court held as under: (SCC p. 350)

"*54*. … Shri Sibal, however, submits that it is the amount due according to the secured creditor which shall have to be deposited to redeem the property. Maybe so, some difference regarding the amount due may be there but it cannot be said that right of redemption of property is completely lost. In cases where no such dispute is there, the right can be exercised and *in other cases the question of*

> *difference in amount may be kept open and got decided before sale of property*."
>
> **(emphasis supplied)**
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> 41. Here again we find that even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of."

(emphasis supplied)

13. Faced with this situation, Dr. Saraf submitted that this judgment was passed prior to Section 13(8) being amended. Dr. Saraf submitted that the Supreme Court came to conclusions that it did by taking into consideration Section 13(8) [as it then stood] which stipulated that if the dues of the secured creditor, together with all costs, charges, and expenses are tendered to the secured creditor at any time before the date fixed for sale or transfer, then the secured asset would not be sold or transferred by the secured creditor, and he shall take no further steps for transfer of that secured asset. He submitted that with

effect from 1st September 2016 Section 13(8) was substituted, and now Section 13(8) stipulates that where the amount due to the secured creditor, together with all costs, charges, and expenses is tendered to the secured creditor at any time before the date of publication of notice for public auction, or inviting quotations, or tender from the public, or private treaty, for transfer by way of lease, assignment or sale of the secured asset, then (i) the secured asset shall not be transferred by way of lease, assignment or sale by the secured creditor; and (ii) in case any steps have been taken by the secured creditor for transfer of the secured asset by way of lease or assignment or sale before tendering of such amount under Section 13(8), such secured creditor shall take no further steps for transfer of the secured asset. He submitted that when one looks at the language of Section 13(8) as it stands now, the borrower loses his right of redemption on the date of publication of notice as stipulated in the said Section. If this be the case, the ratio of the judgment laid down by the Supreme Court in the case of ***Mathew Varghese (supra)*** would have no application, was the submission. *Prima facie*, this argument does not appeal to us for the simple reason that even if we were to assume [for the sake of argument] that the borrower loses his right of redemption on the date of publication of notice [as contemplated under Section 13(8)], even then, Section 13(8) does not in any way restrain the secured creditor from giving an opportunity to the borrower to redeem the mortgaged property after the publication of notice as contemplated under Section 13(8). Even if we were to assume that the argument canvassed by Dr. Saraf is correct, that would only mean that the borrower cannot claim redemption as a matter of right. However, that does not mean that the secured creditor cannot permit the borrower to redeem the mortgage after the publication of notice as contemplated under Section 13(8), so long as the borrower's title to the property is not transferred by the secured creditor. In other words, once the secured creditor transfers the title of the secured asset to a third party, only then the title of the borrower in the secured asset is extinguished.

14. Once this is the position, we are of the opinion that the argument of Dr. Saraf on the issue of Section 13(8) need not detain us any further. As far as abuse of the process of the Court is concerned, we do not think that in the peculiar facts and circumstances of this case, and which we have narrated above, the present Petition can be termed as an abuse of the process of the Court. In fact, if we were to accept the argument of Dr. Saraf, it would lead to a grave miscarriage of justice. In the present scenario, the Respondent Bank is getting its entire dues

irrespective of whether the Petitioners default in making the entire payment by 31st August 2023 or otherwise. If we were not to entertain this Petition, then the Bank at the highest would get an amount of Rs. 105.05 crores from the Auction Purchaser and would still suffer a loss of Rs.25 crores for which it would again have to litigate with the borrower (the Petitioners). Whether the Respondent Bank would be in a position to recover the balance due of Rs.25 Crores from the Petitioners, is a whole different matter and would be only in the realm of conjecture. Taking all these circumstances into consideration, we cannot lose sight of the fact that public money is involved, and our conscience does not permit us to stop the Respondent Bank from giving an opportunity to the borrower (the Petitioners) to redeem the mortgage, especially when the Bank would receive its entire dues by 31st August 2023, one way or the other. We, therefore, find that even the argument of abuse of process is of no merit and is hereby rejected.

15. In light of the foregoing discussion, the following order is passed: -

(a) The Petitioner shall hand over a sum of Rs. 25 crores to the Respondent Bank today. In compliance with this direction, Mr. Khandeparkar has handed over three Demand Drafts in the sum of Rs. 10 crores, 10 crores and 5 crores respectively to the learned Advocate appearing on behalf of the Respondent Bank which is duly acknowledged by him. The Bank is entitled to encash these Demand Drafts and appropriate the sum of Rs.25 crores towards the outstanding dues of the Petitioners.

(b) The balance amount of Rs. 104 crores shall be paid by the Petitioners to the Respondent Bank on or before 31st August 2023 in the designated account below: -

Union Bank of India	**Stressed Asset Management Branch, Mumbai**
IFSC	UBIN0908703
A/c. No.	087021980050000

(c) If the amount of Rs. 104 crores are paid in the said account on or before 31st August 2023, the same shall be appropriated by the Respondent-Bank towards the dues of the Petitioners. The Bank shall then return the original title deeds of the secured asset to the Petitioners, execute all such documents for cancellation of mortgage, and issue a 'No Dues Certificate' to the Petitioners.

(d) Mr. Shinde, the learned Advocate appearing for the Respondent-Bank, has brought to our attention that out of the entire amount of Rs. 105.05 crores deposited by the Auction Purchaser, the Respondent-Bank has appropriated the sum of Rs. 63,50,45,000/- towards the loan amount of the Petitioners. We therefore direct that the Respondent-Bank shall reverse this entry and immediately keep the entire amount of Rs. 105.05 crores [deposited by the auction purchaser] in a No Lien interest bearing account. If the Petitioners pay the balance amount of Rs.104 crores to the Respondent Bank by 31st August 2023, then the Respondent-Bank shall refund the amount of Rs. 105.05 crores deposited by the Auction Purchaser together with accrued interest on or before 7th September 2023.

(e) In the event the balance amount of Rs. 104 crores are not paid by the Petitioners to the Respondent-Bank on or before 31st August 2023, the Respondent Bank shall then be entitled to appropriate the money from the No Lien interest bearing account towards the dues payable by the Petitioners and the sale of the secured asset shall be confirmed in favour of the Auction Purchaser and a sale certificate shall be issued in their favour. All formalities in relation to registration of that certificate shall also be done by the Respondent-Bank and the Auction Purchaser.

(f) In light of this order, Mr. Khandeparkar has stated that, nothing would survive in Securitization Application No. 46 of 2022 and/or the Interim Applications filed therein and seeks leave to withdraw the same within a period of one week from today. The said statement is accepted as an undertaking given to the Court. It is needless to clarify that even if the Petitioners do not withdraw the Securitization Application, the same shall stand dismissed in light of this order and the Petitioners will not be permitted to litigate any further with the Respondent Bank in relation to the secured asset. In other words, if the Petitioners default in making the balance payment of Rs.104 crores to the Respondent Bank by 31st August 2023, the Auction Purchaser shall get the secured asset free from litigation. As per the statement made by Mr. Khandeparkar, and which is accepted as an undertaking given to the Court, if the Petitioners default in making the balance payment of Rs.104 crores by 31st August 2023, physical, vacant, quiet, and peaceful possession of the secured asset shall be handed over to the Auction Purchaser on or before 5th September 2023.

16. We make it clear that if any loss is caused to the Auction Purchaser by any actions of the Bank allowing the Petitioners to redeem

the mortgaged property, the Auction Purchaser is free to initiate whatever proceedings in that regard. If such proceedings are filed, the same shall be decided on its own merits and in accordance with law. As agreed to between the Petitioners and the Respondent Bank if any such proceedings are filed by the Auction Purchaser, the Petitioners shall indemnify the Respondent-Bank in that regard.

17. The above Writ Petition and the Interim Application are disposed of in the aforesaid terms. However, there shall be no order as to costs.

18. For the purpose of reporting compliance, the above Writ Petition is kept on board on 1st September 2023.

19. At this stage, Dr. Saraf, the learned Senior Counsel appearing for the Auction Purchaser, requested for a stay of this order. Considering that time has been given to the Petitioners upto 31st August 2023 to make the balance payment of Rs. 104 crores, we do not see any reason to stay the operation of this order. This is more so, when we are of the opinion that the Auction Purchaser really has no vested right until

a sale certificate is issued in its favour. In these circumstances, the request for stay is rejected.

20. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M. M. SATHAYE, J.] **[B. P. COLABAWALLA, J.]**