

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 1779 OF 2014

GAJANAN HIGHRISE PRIVATE LIMITED

VS

UCO BANK & ORS

For the Petitioner : Mr. Pratyush Patwari, Adv.

**For the Opposite
Party/Bank : Mr. Soumen Das, Adv.
Mr. Sourjya Roy, Adv.**

Last heard on : 06.11.2025

Judgement on : 09.12.2025

Uploaded on : 09.12.2025

CHAITALI CHATTERJEE DAS, J. :-

- 1.** This revisional application is filed challenging an order and judgment dated 7th May, 2014 passed by the Learned Debt Recovery Appellate Tribunal at Calcutta whereby the appeal No. 75 of 2012 presented by the petitioner under Section 28 of SARFAESI Act 2002 has been dismissed.

2. Brief Fact of the case of the petitioner

2.1. Opposite Party No 3 Bank issued the possession cum sale notice by inviting tender dated 30.12.2009.

2.2. The petitioner submitted his bid of Rs. 70,00,000/- and deposited the Earnest Money of Rs. 6,30,000/- to pay via pay order (HDFC ---UCO Bank)

2.3. Petitioner declared successful bidder for 56.97 cottah of land with building shed at situated at village Mirhati. P.S Amdamga, District- 24 Parganas (North).

2.4. Petitioner deposited a total amount of RS 17,50,000/- being the 25% of the total Bid and (including) the earnest Money of Rs. 6,30,000/- as per terms and paid the remaining amount of Rs. 11,20,000/- via pay order.

2.5. After waiting for sale confirmation, petitioner approached bank in April 2010 2.7 As advised by OPNO 3 petitioner paid Rs. 52, 50,000/- on 7.4.2010 by a cheque no 405785 dated 7.4.2010 towards the balance bid amount for purchasing the property.

2.6. On 13.4.2010, Opposite Party No 1 acknowledged the receipt but refused to confirm the sale.

2.7. The Bank disclosed for and first time informed that a pending proceeding before the DRT which directly affected the right of the petitioner.

2.8. The petitioner discovered O.P. No. 4 to 7 had filed OA/SARFAESI Act/7/2010.

2.9. On 09.02.2010 DRT had ordered:

a) Opposite Party No. 4 to 7 to deposit at least a sum of Rs. 8 lakhs by 11 A.M. on 15.02.2010 to the Bank .

b) If defaulted the Bank could proceed with Sale but could not confirm the sale without further orders.

2.10. Bank informed the petitioner that Opposite party no 4-7 failed to deposit Rs 8 lakh therefore the Bank proceeded with Sale

2.11. The petitioner filed an application;

a) For impleadment (addition as party)

b) For confirmation of sale in his favour

c) For a direction upon the bank to hand over the possession of the said property to the petitioner.

2.12. On 11th May, 2010 the Counsel for OP No. 4& 7 offered Rs. 10 lakhs Learned Tribunal .

2.13. The Opposite Party No. 1 to 3 refused to receive the said cheque with the reason that the property had been sold to the petitioner.

2.14. On 18th May, 2010 the Opposite Party No. 4 to 7 admitted non-payment of the amount of Rs. 8 lakh in terms of the order dated 9th February, 2010.

2.15 The matter was fixed repeatedly but no final order was passed.

2.16 A writ petition was filed being W.P. No. 1297 of 2010 before this Court for an expeditious disposal which was dismissed with liberty to the petitioner to approach appropriate forum.

2.17 On 6.10.2010 DRT passed the order of status quo extended on 11.11.2010 continued till 7.9.2011.

2.18 On 2.11.2011, the opposite Party No. 4 to 7 W.P. No. 13912 (W) of 2007 decided by a co-ordinate bench of this Court where the present petitioner was not a party .

2.19 The petitioner filed an appeal being MAT No. 1705 of 2011.

2.20 On 22.11.2011 the Division Bench held the previous order of the Single Bench did not effect the rights of the writ petitioner therein nor it causes any prejudice to the petitioners.

2.21 On 21st December, 2011 the Opposite Party No. 4 to 7 sought withdrawal of SARFAESI proceeding due to settlement.

2.22 The petitioner sought for continuation of the order of status quo till disposal of the said proceeding.

2.23 On refusal he filed an appeal before the Learned Appellate Tribunal (DRAT and the same was disposed on 13.10.12 with a request to the tribunal to expediate the proceeding preferably within a period of 2 weeks.

2.24 During final hearings OP No 1' s AGM allegedly issued a returning Rs. 70,00,000 to the petitioner on the pretext that Opposite Party no. 4 to 7 had redeemed the property under Section 13 (8) SARFAEST Act 2002 and liquidated the entire outstanding of the bank .

2.25 The petitioner denied receiving any such letter from Opposite Party No 1 to 3 and denied the receipt of any alleged payment.

2.26 On 20.04.2011 DRT rejected the application filed by the petitioner on 6.5.2010 for impleadment and allowed the application filed by the Opposite Party No. 4 to 7.

2.27 Petitioner appealed before the Debt Recovery Appellate Tribunal and vide an order dated 7.5.2014 such Appeal was dismissed.

2.28 Being aggrieved this revisional application is filed for setting aside such order of the appellate Tribunal.

3. Argument Advanced by the Learned Advocate of the petitioner

3.1. The right of the petitioner is required to be crystalized as on 6.5.2010 that is when the application for addition of party and for completion of sale was presented before the Tribunal.

3.2. The petitioner was not given any opportunity to deal with the same in the said proceeding since he was neither provided with the copy of SARFAESI application as presented by the Opposite Party No. 4 to 7 nor the petitioner was provided with

the copy of any pleadings presented by the Opposite Parties in the said proceeding.

3.3. Inordinate delay on the part of the Learned Tribunal in not passing order on the application presented by the petitioner on several dates cannot prejudice the right of the petitioner being the auction purchaser.

3.4. Section 13 (8) of the SARFAESI ACT, 2002 do not authorise the Opposite Party No. 1 to 3 to enter into any compromise /settlement with the borrower and or guarantor.

3.5. The Opposite Party No. 3 being creature of statute as defined in Rule 2 (a) Security Interest Rules 2002 cannot act in manner dehors the statute and is required to perform all acts strictly within the corners of the statute. Therefore, the compromise /settlement, made between the bank and the borrower/guarantor in November, 2010 violates order of statute passed by the Learned Tribunal.

3.6. On failure of the Opposite Party no. 4 to 7 to deposit the sum of Rs. 8 lakhs in terms of the order dated 09.02.2010 passed by DRT, the bank proceeded with the sale of the said property on 15.02.2010

3.7. The Petitioner/auction purchaser was found to be the successful highest bidder cum purchaser of the property and after depositing the entire consideration amounting the

petitioner had acquired right title and interest on property sold to it in auction and thus was the necessary party in the proceeding SA/07/2010.

3.8. The Opposite Party No. 4 to 7 never filed of any application for setting aside the said sale not the dues of the Opposite Party No. 1 to 3 had been cleared upon Opposite Party No. 4 to 7 within the statutory period of 60 days and hence the Opposite Party No 1 to 3 had no alternative but to confirm the sale of the said property in favour of the petitioner.

3.9. The Opposite Party No 1 to 3 by their act ruled out ,that cheque of Rs. 10 lakhs when tendered by the borrowers /guarantor in course of the proceeding before the Learned DRT on 11.05.2020 and had made the petitioner believed that the bank shall be taking steps to protect the right of the petitioner in the property and thereby the bank was estopped from making any settlement in respect to the said property with the borrower and guarantor which would affect the petitioner's right over the said property.

3.10. Lastly the borrower and guarantor that is the Opposite Party no 4 to 7 in conspiracy with bank Opposite Party No 1 to 3 should not be permitted to withdraw the said proceedings, without following due process of law to frustrate the entire proceeding with motive to cause serious prejudice to the rights of the auction purchaser.

4. Prayed for ;

To set aside the impugned order;

to direct the bank to take steps to complete the sale of the property in favour of the petitioner;

To hand over the possession of the said property to the petitioner; alternatively to refund the deposited amount with interest;

To direct the borrower/guarantor to compensate such amount.

5. The decisions relied upon

- 1) *Atma Ram Mittal Versus Ishwar Singh Punia (1988) 4 SCC 284, Paragraph No. 6,8.***
- 2) *Satyabrata Biswas and Ors. Versus Kalyan Kumar Kisku & Ors. 1994 (2) SCC 266, Paragraph No. 25,26,27,31.***
- 3) *Shri Khereswar Mahadev Va Dauji Maharaj samite Versus The State of Uttar Pradesh & Ors. 2025 INSC 362, Paragraph No. 15.***
- 4) *Suresh Chandra Biwas Versus State Bank Of India (2009) 3 CHN 465, Paragraph No. 37 to 44.***
- 5) *K. Chidambara Manickam Versus Shakeena & Ors. AIR 2008 MAD 108, Paragraph No. 10.4, 10.9,10.11,10.19,12.5***
- 6) *M/s Gaurav Enterprises, Gwalior Versus State Bank of India & Ors. AIR 2012 Madhya Pradesh 35, Paragraph No. 13,14 and 15.***
- 7) *Janak Raj Versus Gurdial Singh & Anr. AIR 1967 SC 608 ,1967 SCR (2) 77, Paragraph 4, 524.***
- 8) *Janatha Textile & Others. Appellant Versus Tax Recovery Officer & Another (2008) 12 SCC 582, Paragraph 18 to 26.***

9) *Sm. Bhabassundari Dassi. Appellant Versus Gopeswar Auddy & Ors.*

Respondent AIR 1941 (Cal) 159. Paragraph No. 5

10) *Sadhashiv Prasad Singh Versus Harendar Singh & Ors.*

Respondents AIR 2014 (SC) 1078, Paragraph No. 12,13 and 15.

11) *Lakhinder Samaddar & Ors. Versus State of West Bengal & Ors.*

2010 (1) CHN 132, Para: 7,9,10,11 & 12

12) *Surinder Pal Singh Versus Vijaya Bank & Ors. Civil appeal No. 6843*

of 2023 (arising from SLP (C) No. 16771/2018, Para: 12 to 14.

6. Case of The Bank /Respondent no1 to 3

6.1. The Samadhan Mercantile Private Limited /Respondent No 4 was a constituent of UCO bank the respondent No 1 herein and was enjoying credit facilities with its India Exchange Place Branch qua against personal guarantee of the Respondent No.5 and 6 herein .

6.2. The said credit facility was also secured by equitable mortgage of an immovable property standing in the name of Parashnath Resorts Hotels (P) Ltd/borrower.

6.3. The said borrower failed and neglected to operate its account maintained with the bank and as a result it slipped into NPA and the Bank initiated an action under Section 19 of the Recovery of Debts due to Banks and Financial Institution Act 1993 before the Kolkata Debt Recovery Tribunal 1 which was registered as O.A NO 195 OF 2009 claiming a sum of Rs 37,96,903 /-.

6.4 A proceeding under section 13 of the SARFESAI Act was also initiated by the Bank during pendency of the above proceeding.

6.5 Issued a notice under section 13 (2) of the said Act in the name of said borrower being Respondent no.4 to 7.

6.6. The borrower did not comply and accordingly the Bank took the possession of its secured asset that is the mortgaged property standing in the name of Respondent no 5.

6.7. The same property was also mortgaged by the Respondent no 4 to secure the credit facility standing in the name of M/S Third wave Distributors private limited . After taking possession the Bank issued a possession -cum-sale notice in the newspaper inviting tenders on 30.12.2009 from the intending purchasers .

6.8. On February 2010 the Respondent nos.4 to 7 herein filed an application under section 19 of the SARFAESAI Act before DRT being O.A NO.7 of 2010.

6.9. On 9.2.2010 an order was passed by the Learned Tribunal to maintain status quo as on date over the property and directed the borrowers and guarantors to deposit at least Rs. 8 lacs by 11 a.m on 15.2.2010 with the Bank.

6.10. Direction given by the Tribunal that in case of failure to deposit the sum accordingly the Bank will be at liberty to

proceed with the Sale of the said property with a rider not to confirm the sale until further orders passed by the Tribunal.

6.11. On 10.2.10 the petitioner submitted the bid in response to the said notice offering Rs. 63 Lakhs .

6.12. On 15.3.10 the petitioner/auction purchaser participated in a sale meeting organized by the Bank and its officers and the appellant was found to be the highest bidder to purchase the said property at a highest bid at the highest amount of the bid of Rs. 70, 00., 000/- and in terms of the sale notice deposited 25% of the Bid amount of Rs. 17, 50,000/- with the Bank.

6.13. On 7.4.2010 the Auction purchaser through its letter to the Authorised officer ,UCO Bank had made payment of Rs. 52,50,000/- by cheque dated 7.4.2010 bearing no.4045785 drawn on HDFC Bank towards the balance bid amount to purchase the said property with a request to the Bank to take necessary steps to issue certificate of sale .

6.14. This fact was confirmed in writing on 13.04.2010 and also appraised the petitioner about the pending proceeding before the DRT .

6.15. On 6.5.2010 the petitioner made an application before the DRT to add him as a party in the O.A 7/2010 and also seeking for a direction to the officers of the Bank to complete the sale process.

6.16. Then on 11.5.2010 the Bank before the DRT refused to accept the payment .

6.17. On 14.5.2010 a proposal submitted on behalf of the Parashnasth Resorts and Hotels (P) Ltd. For compromise settlement with the Bank in respect of the account of Samadhan and M/S Third wave Distributers Private Limited

6.18. On November 2010 the competent Authority after considering the offer made by the Borrower /guarantor approved the compromise proposal for acceptance of Rs 97 lacs in full and final settlement for both the accounts and it was decided that out of said 97 lacs the accounts of M/S Samadhan shall be liquidated in full against the outstanding balance plus interest and charges without any actual sacrifice.

6.19. On 28.12.2010 intimation was given to the petitioner that the captioned borrowers guarantors have exercised their right under section 13 (8) of the SARFAESI Act and liquidated the entire outstanding of the Bank .

6.20. By a Banker's Cheque /Pay order for Rs. 17.50 lacs deposited by the petitioner being the 25% of the bid amount of Rs. 70 lacs together with un-encashed cheque bearing 405785 dated 7.4.2010 for Rs. 52.50 lacs drawn on HDFC Bank deposited by the petitioner was returned and it was delivered to the petitioner .

6.21. The SARFAESI no. 7 of 2010 was finally disposed of whereby two application I.A 113 OF 2012 and 114 of 2012 were allowed and the application by the intervenor dated 6th May, 2010 was dismissed. There remains nothing for adjudication by

this Court. It is further submitted the petitioner despite receiving the letter with the cheque are intentionally denying the same and pursuant to the direction passed by this court on previous occasion the Bank affirmed an affidavit with the letter of the postal authority to prove that such letter was delivered to the present petitioner. Hence this revisional application is liable to be dismissed.

7. Argument by the opposite parties no 1 TO 3 /Bank

7.1. The Learned advocate representing the opposite parties no.1 to 3 argued that Opposite Party No.1 /Bank accepted the offer of redemption in view of the lawful right exercised by the Borrower and adjusted the outstanding in full in respect of the said account of Samadhan Mercantile and released the original Deed with possession to the Borrower /Guarantor.

7.2. It is the specific contention of the Learned Advocate that on the date of the sale the purchaser was well aware about the order of the tribunal directing to maintain status quo of the property as on 9.2.2010 and on the date of redemption of the mortgage by accepting the offer of the guarantor the said property was never transferred nor it was confirmed by issuing any Sale Certificate in favour of such purchaser .So no right title or interest was ever accrued in respect of the mortgaged property Accordingly submitted that there is no

merit in the application and the same is liable to be dismissed.

7.3. The order dated 9.2.10 was well within the knowledge of the petitioner but he never challenged the same and he voluntarily deposited the balance amount being appraised of the entire situation. The Bank duly informed the compromise entered into by way of subsequent development on 28.12.11 by way of a communication and further returned cheque but the petitioner despite receiving the same denied to have received any such information.

7.4. Pursuant to section 13(8) of the SARFAESI ACT 2002 the borrower is entitled to redeem the account till the sale certificate is issued and such proposition of law has been discussed in the Judgement relied upon by the Learned advocate of the petitioner. That apart in the decisions relied upon nowhere any judicial order was passed which restrained the Bank from confirming the Sale and therefore those decisions are inapplicable in the facts and circumstances of this case. Lastly there remains nothing for adjudication by this court as the deed has been released on settlement of the entire amount. Accordingly prayed for dismissal of the appeal.

8. Analysis

In this case despite giving an opportunity none appeared to argue the matter finally on behalf of the opposite party nos. 4 to 7 and also did not submit the written Notes of argument. In fact it is detected that pursuant to the direction of a co-ordinate Bench they were directed to deposit an amount of Rs. 50,000/- however nothing can be found that such amount was deposited.

9. The genesis of this entire case is rooted into the failure on the part of the borrower to repay the loan of Rs. 65 lacs within time resulted in landing up before the Debt recovery Tribunal and further failure on the part of the borrower in gross violation of the direction of the Tribunal in depositing an amount of Rs. 8 lacs followed by a further direction upon the bank to proceed with the sale in case of noncompliance but not to confirm the sale until further order. The matter further get complicated when pursuant to auction notice the petitioner participated and became the highest bidder and deposited the earnest money as well as 25% of the total sale amount. The Bank further recognised him as the highest bidder but could not confirm the sale.

10. The factual matrix of this case manifests, the auction purchaser was aware of the property's legal status during auction but later learned about the order of Tribunal and then tried to get impleaded in the said proceeding.

He sends the remaining amount of Rs. 52 lacs by a cheque to the Bank when he filed the application to be impleaded. The case further unfold the inordinate delay by the tribunal in taking up the said application and the plight of the petitioner/auction purchaser who was moving like a shuttle cock

from tribunal and Higher forum and the Bank who on the other hand could not confirm the sale on account of the interim order of tribunal .

11. The settlement arrived at between the Bank and the borrower was not communicated to the petitioner despite he deposited the earnest money and the balance amount hence the petitioner's rights and interest might have been affected by the lack of intimation . Question arises should the bank informed the informed the petitioner about the settlement which however was accepted by the Tribunal .The Bank thereafter returned the amount paid as earnest money and returned the unencashed cheque of Rs. 52.50 lacs .

12. The matter was again challenged by the petitioner but not entertained on account of pendency of the original petition was before the tribunal and lastly after almost 2 years the Tribunal disposed of such application of the petitioner refusing his prayer and taking into consideration the settlement arrived at the petitioner challenged such order of tribunal before this court by filing this revisional application. The petitioner further denied of receiving any cheque as alleged by the Bank and is still fighting for his due.

13. It is pertinent to mention herein that in this case by filing an affidavit in reply in reply the petitioner contended that admittedly the opposite party no4 to7 had failed to deposit a sum of Rs 8 lacs by 11 A.M on 15.2.2010 in terms of the order dated 9.2.2010 and the Bank consequently proceeded with the sale where the petitioner participated by placing his bids and declared as the highest bidder. At no point of time he was informed about the order of Tribunal by OP no.1 to 3 nor they were aware of the said order and on 13.4.2010 he received the confirmation and the Bank acknowledged the receipt of balance consideration amount of Rs. 52, 50,000/-and vide such letter the Bank

expressed their inability to confirm the sale in view of the order of tribunal and then for the first time came to learn about the said order.

14. The petitioner has denied of receiving the banker's cheque dated 28.12.11 amounting Rs. 17.50 lacs or any cheque no 405785 dated 7.4.2010 of Rs. 52.50 lacs. The Bank has confirmed before the Court on 14.11.2014 that it still retains the money

15. In the light of the aforesaid factual matrix the seminal issue falls for consideration is that whether **i)** the borrower can retain such right of redemption when the Auction proceeding commenced and after the highest bidder has been selected and deposit the required amount **ii)** after the Bank acknowledging the highest bidder and during pendency of an adjudication pending before DRT can enter upon a compromise beyond the knowledge of the said Highest bidder who participated the Auction sale after following all the formalities and **iii)** whether the Tribunal has rightly passed the order refusing the prayer to be impleaded as a party .

16. Taking note of the fact that the purpose of incorporating the Special Act 2002 is to accelerate loan recovery and to strengthen the financial sector by facilitating faster debt recovery by allowing the financial institutions to auction properties and other collateral with an aim to protect the interest of the depositors and borrowers however the procedure should always be fair reasonable and valid and not in derogation of the rights enshrined under the constitution.

17. Before delving deep into the other aspects of the case it is now necessary to discuss the legal frame work in this regard Section 13 (8) of the SARFAESI ACT 2002 is to be look into since the foundation of the dispute sands on that

provision. Section 13 of the SARFAESI ACT of 2002 deals with enforcement of security interest and section 13 (2) speaks of NPA when the any borrower defaulted in repayment of a secured debt or any instalments thereof and section 13 (8) reads as ;

13[(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him 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 public or private treaty for transfer by way of lease,

assignment or sale of the secured assets,—

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secure creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.]

18. So this provision enables the borrower to redeem the property given in security to the secured creditor by paying the dues on or before the date fixed for sale .In the instant case the chronology of events manifests that notice of sale inviting tender was published on 30.12.2009 and immediately thereafter the borrowers approached the Tribunal by filing an application under section 17 of the Act of 2002. Section 17 of the Act reads as ;

17. *[Application against measures to recover secured debts.]*

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed,] [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10, for "may prefer an appeal" (w.r.e.f. 21.6.2002).] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.] [Inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10 (w.e.f. 21.6.2002).]

19. In this case the Debt Recovery tribunal Unit-1 in the said proceeding passed the order to maintain status quo on 9.2.2010 as on date, over the property and directed the borrower to deposit at least a sum of Rs. 8 lacs by 11 a.m on 15.2.2010 with the Bank and in case of failure the liberty was given to the Bank to proceed with the sale of the property but with a rider not to confirm the sale till further order. The borrower never bothered to deposit such amount. The Bank proceeded with the Auction purchase and published the notice on 30.12.2009.

20. On 10.2.2010 the petitioner gave the bidding offer and in terms of the Sale Notice, send the Banker's cheque of Rs. 6,30,000/- vide cheque no. 024092. Later on again on 7.4.2010, in terms of the sale notice intimated that they have deposited a sum of Rs. 17,50,000/- being the 25% bid value. They further informed that as per the meetings held they are paying the balance amount of Rs. 53.50, 000/- and this letter was received by the Bank.

21. It is evident from the letter dated 13.4.10 that the Bank through their reply intimated the petitioner about the order dated 9.2.10. On 11.5.2010 the Bank refused to accept further amount of Rs. 10 lacs before the DRT where the petitioner approached to be added as a party and a settlement arrived with the borrower on 14.5.2010. The petitioner then approached the High Court for passing necessary directions upon the DRT to pronounce order in respect of his application to be impleaded as a party and such prayer was not considered as the next date was fixed for passing order.

22. On October 2010 the DRT took note of the fact the borrower did not deposit the amount as directed and further considered that the Applicant wanted to settle the matter and accordingly observed that it is between the Bank and the borrower to settle the matter and the DRT extended the status quo order till 8.11/2010. Therefore till 8.11.2010 a restrain order was in force on the bank to confirm the sale however discretion was given to the Bank whether to effect the settlement or not.

23. In view of the admission made by the petitioner, he was informed on 13.4.2010 about the DRT proceeding on the strength of which he wanted to be added as party so his knowledge about the pending litigation is

undisputed. That apart the Tribunal was also informed about the proposal and intention of the settlement but the Tribunal never expressed any adverse opinion about the settlement to be arrived at despite the fact the borrower did not comply with the direction of the Tribunal. Meantime the Borrower filed a writ petition in the year 2007 challenging the sale notice on the ground that no notice was actually issued. The said writ petition was heard on 15.9.11 and on the basis of the submission advanced by the Bank about receiving the entire amount the said writ petition was disposed of being infructuous since the petitioner was not a party to the said proceeding. The said order was challenged by filing an appeal but withdrawn on 22.11.11 with the liberty to prosecute the remedy available to him under the law.

24. The fact of settlement was acknowledged by the division Bench with specific observation that the order of the Learned Single Bench does not in any manner determine the right of the writ petitioner nor it caused any prejudice to the applicant in the matter pending before the Tribunal. The prayer of the petitioner made under section 18 of the Act of 2002 was also turned down holding him not a borrower. Lastly DRT passed the order regarding the application filed by the petitioner to intervene and dismissed such prayer on 20.4.2012.

25. It was specifically observed by the Tribunal that the borrower exercised their right pursuant to the provision of Section 13(8) as by virtue of the order dated 9.2.2010 the Bank was restrained to confirm sale and the Bank though proceeded with the Auction process could not confirm the sale and hence the

Borrower's power to exercise the redemption under Section 13 (8) remained opened.

The stand of the borrower as can be gathered from the affidavit in opposition filed on their behalf that they refuted the contentions of the petitioners on the score that pursuant to the order of the Learned Tribunal dated 9.2.2010 it was beyond the powers of the respondents 1 to 3 herein to confirm sale of the property to the petitioners and further it is evident that the Respondent Bank refused to accept the cheques issued by the respondent no.4 to 7 on 11.5.2010. Furthermore the petitioner is not the necessary party in the writ petition and therefore was not made a party therein .A writ petition was filed being W.P NO.13912(W)OF 2007 by them and a co-ordinate Bench held that the subject matter of dispute is already decided and an appeal was filed being No MAT 1705 OF 2011 and vide an order dated 22.11.2011 the Hon'ble Division Bench held as the order of the writ court did not determine the rights of the parties as no prejudice has been caused to the petitioner .

26. The point boils down in this such situation whether such act on the part of the Bank Authority , to proceed with the Sale can be said to be illegal or not. In the decision of **K. Chidambara Manickam vs Shakeena and ors. (supra)** as relied upon by the petitioner in almost identical situation arose where the borrower defaulted in repayment of the loan amount a notice under Section 13 (2) of the SARFAESI Act was issued which was not complied by the borrower then interest was imposed giving further opportunity to clear the loan ,after which the borrower prayed for one time settlement and invoked Section 17 of the Act of 2002 challenging the notices but that was dismissed . Subsequently

the Bank after taking possession put the property for public auction. The Borrower approached the Bank and deposited the cheque to discharge the amount due when they were informed the assets have already been sold and sale was confirmed and accordingly returned the cheque .The attempt made by the borrower to stay of the confirmation of sale was dismissed by the tribunal.

In the writ appeals filed by the appellants the points arose for consideration whether sale of the secured assets in public auction u/s 13(4) which ended in issuance of sale certificate under the provision of Rule 9(7) of the Security Interest (Enforcement) Rules 2002 is a complete and absolute sale for the purpose of Act of 2002 or whether the sale would become final only on the registration of the sale certificate .Furthermore Whether the action of the Bank in not accepting the amounts paid by the borrowers and refused to cancel the sale certificate before registration of sale is in derogation of Section 60 of the Transfer of property Act ,in view of Section 37 of SARFAESI Act or whether Section 35 of SARFAESI Act has an overriding effect on Section 37 of the said Act.

27. The writ Court accepted the argument of the borrower and allowed the writ petition against which the appeals were preferred .The Hon'ble Appellate court discussed the scope and ambit of section 13 (8) and the conduct of the parties and held that the borrower should have approached the secured creditor or the authorised officer before the date of sale and not after the sale and if they tendered to pay all the dues then the section creates a bar on the secured creditor to further proceed with the sale .In paragraph 10.9 it was held :

10.19. *If the argument of the borrowers that even after the issuance of the sale certificate, prior to registration, they are entitled to redeem the property is accepted, it would make the provisions of the SARFAESI Act redundant and the very object of the SARFAESI Act enabling the Banks and Financial Institutions to realise long term assets, manage problems of liquidity, asset liability mismatch and to improve recovery of debts by exercising powers to take possession of securities, sell them and thereby reduce non-performing assets by adopting measures for recovery and reconstruction would fail and would open a pandoras box for the litigations upsetting the sale confirmed in favour of the bona fide auction purchasers, who invested huge money.*

In paragraph 12.5 it was held that ;

12.5. *On behalf of the borrowers it is contended that a right of redemption available to them before the sale is completed by way of a registered deed under the Transfer of Property Act, a law for the time being in force, is not taken away by the introduction of the SARFAESI Act, by virtue of Section 37 of the SARFAESI Act, as the provisions of the SARFAESI Act and the Rules framed there under shall be in addition to and not in derogation of the right of redemption conferred under the Transfer of Property Act. But, we have already rendered a finding that the registration of sale certificate as per Section*

17(2)(xii) of the Registration Act is not mandatory for the completion of the sale pursuant to the public auction and issuance of the sale certificate under the scheme of the SARFAESI Act. Assuming, the right of redemption conferred under the Transfer of Property Act is protected under Section 37 of the SARFAESI Act, and independently available without reference to the registration of the sale certificate under Section 17(2)(xii) of the Registration Act, the sale already effected satisfying the conditions contemplated under Section 13(8) of the SARFAESI Act, shall, by virtue of Section 35 of the SARFAESI Act, prevail over such other rights, much less the right of redemption conferred under Transfer of Property Act, which is protected under Section 37 of the SARFAESI Act, in view of the non obstante clause provided under Section 35 of the SARFAESI Act, because a non obstante clause provided under Section 35 of the SARFAESI Act makes it clear that even though there are inconsistencies to such other rights conferred under any other law for the time being in force that are protected under Section 37 of the SARFAESI Act, the action initiated under the provisions of the SARFAESI Act shall have the overriding effect as per Section 35 of the SARFAESI Act, because SARFAESI Act is a Special Act which aims to accelerate the growth of economy of our country empowering the lenders, namely Nationalised Banks, Private Sector Banks and other Financial Institutions to realise their dues from the

defaulted borrowers who are very lethargic in repayment of the loans borrowed by them, by exercising their right of expeditious attachment and foreclosure for the enforcement of security and therefore, Sections 35 and 37 of the SARFAESI Act have to be read conjointly to achieve the object of the SARFAESI Act, but not to defeat the same and therefore, we do not see any conflict between them.

28. In the decision relied upon by the Learned advocate of the petitioner in the case of **M/S Gaurav Enterprise Gwalior vs State Bank of India**¹ the fact was during pendency of the writ petition the settlement arrived and subsequently the borrower failed to comply with the terms of the settlement and after confirmation of sale there was no occasion on the part of the Bank to accommodate the borrower and the Learned Judge considered the case **of K. Chidambara Manickom vs Shakeena (Supra)** was of the view after the Sale certificate is issued Section 13 (8) of SARFAESI Act does not permit the Bank to accept the amount from the borrower. In a decision of **Janatha Textiles & ors vs Tax recovery officer & anr (supra)** where the right of bonafide purchaser in an auction sale who purchased the property in a valid auction sale was discussed and the Hon'ble Supreme court took note of the decision reported in **Janak Raj vs Gurdial Singh & anr**² where it was observed

“ The policy of the Legislature seems to be that unless a stranger auction purchaser is protected against the vicissitudes of the fortunes of the suit sales in execution would not attract

¹ AIR 2012 Madhya Pradesh 35

² (1967) 2 SCR 77

customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified’.

The Hon’ble Supreme Court further held ‘*that law makes a clear distinction between a stranger who is a bonafide purchaser of the property at an auction sale and a decree holder purchaser at a court auction .The strangers to the decree re afforded protection by the court because they are not connected with the decree .Unless the protection is extended to them the court sales would not fetch market value or fair price of the property’* .

29. In the decision of **Surinder Pal Singh vs Vijaya Bank & ors. (supra)** the order of DRT allowed the appeal of the borrower and permitted redemption of mortgage property which was challenged by the auction purchaser who deposited the entire auction money of Rs 70,05,000/- on 31.3.2010 whereafter the sale was confirmed on 2.4.2010 and the Sale certificate was issued but it was not registered and the property was not handed over to the auction purchaser .The Hon’ble Supreme court took note of the decision **CELIR LLP vs Bafna Motors (Mumai) Pvt.Ltd & ors³** and held that the right of borrower to redeem would be available till the Sale certificate is registered and the possession is handed over after which the borrower will not have a right for redemption under the un-amended provision of Section 13(8) of the SARFAESI Act but was of the view that the borrower must pay a reasonable amount to

³ (2024) SCC Online SC 3727

the appellant/auction purchaser and accordingly directed the borrower to pay the entire auction money along with interest up to date within two weeks .

30. This petitioner being the Auction purchaser challenged before this court the order passed by the Learned Debt Recovery Tribunal on 7.5.14 whereby the application was filed seeking confirmation of sale, was dismissed and prayed for setting aside the same .The factual matrix as discussed above leaves no room to doubt the bona fide of the petitioner who participated in the Auction purchase on the strength of the notice published by the Bank and declared as the highest bidder and he duly paid the 25% of the total value .He was intimated about the pending proceeding and the order of the Tribunal restraining the Bank from issuing the confirmation of Sale,when he wanted to pay the rest of the amount and thereafter paid the balance amount. Despite being apprised about the same he voluntarily deposited remaining 75% on 7.4.2010.

31. So in view of the restrain order of the Tribunal the Bank could not confirm the sale up to this period and nothing can be said against the Bank. Dispute cropped up when the settlement arrived and the Bank accepted the offer made by the borrower without intimating the petitioner . The Bank settled the account which is more than the price paid by the auction purchaser . The Tribunal left the discretion to the Bank regarding the settlement and the Bank entered into such proposal with the borrower . In absence of any legal bar such discretion of the Bank cannot be said to be illegal or irregular excepting that before the settlement the Bank could have used the discretion

in favour of the petitioner being a bona fide auction purchaser instead of allowing a borrower .

32. The law as discussed above clearly speaks of the stage up to when the borrower could redeem its property in the unamended provision and in absence of any order of stay of the order of the Tribunal dated 9.2.10; the borrower had the opportunity to ask for settlement which was accepted by the Bank. The learned advocate representing the Bank drawn the attention of this court that since the highest amount came during auction was much higher than the original loan amount the Bank settled with the borrower only with such improved offer of Rs. 95 lacs.

33. On careful scrutiny of the decisions relied upon by the petitioner the law laid down before the amendment came in 2016, clearly manifest that till issuance of Sale certificate the borrower could redeem but the factual matrix in the present case is on different footing and therefore the above decisions are distinguishable.

34. So it is clear that settlement was accepted in the pending proceedings by the Tribunal took note by this court in the subsequent proceeding and in view of such fact practically there remains nothing for adjudication. In a very recent decision of Hon'ble Supreme Court ***in M. Rajendran & Ors. v. M/s. KPK Oils and Proteins India Pvt. Ltd. & Ors***⁴, the Hon'ble Supreme Court flagged inconsistency between Section 13(8) Act and Rules and has interpreted Section 13 (8) of the Securitisation and Reconstruction of

⁴ 2025 Live Law (SC) 931

Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002.

35. The Hon'ble Supreme Court discussed series of judgements delivered interpreting Section 13(8) of SARFESAI Act before amendment and post amendment. It is observed that Section 13(8) of the SARFAESI Act, prior to its amendment by Act 44 of 2016 (for short, the "2016 Amendment"), stipulated that, *'if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further steps shall be taken by him for transfer or sale of that secured asset.'* It was further held the position of law that prevailed, as per the decision of **Mathew Varghese versus M. Amritha Kumari**⁵, was that the principle underlying Section 60 of the T.P Act was extended and applied to Section 13(8) of the SARFAESI Act to hold that the borrower has absolute right to redeem the property by repaying the debt before the sale of such property.

36. In the said decision of this Court, while construing the scope of the pre-amended Section 13 sub-section (8) of the SARFAESI Act, observed that

" any sale or transfer of a secured asset cannot take place without duly informing the borrower of the time and date of such sale or transfer, in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses; the erstwhile provision of Section 13(8), as it stood

⁵ (2014) 5 SCC 610

prior to the 2016 Amendment, clearly stipulates that the borrower 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; and the right of redemption, conferred under Section 13(8) of the SARFAESI Act, is to repay the entire debt due to the secured creditor. However, the amended provisions of Section 13(8) of the SARFAESI Act bring in a radical change, inasmuch as the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime stands drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till completion of the sale or transfer of the secured asset in favour of the auction purchaser. It is further relevant to note that this Court in **Dwarika Prasad [Dwarika Prasad v. State of U.P⁶, and in Shakeena [Shakeena v. Bank of India⁷, held that the right to redemption stands extinguished on the sale certificate getting registered”.**

In view of the above the other judgements relied upon on this issue becomes distinguishable.

⁶ (2018) 5 SCC 491

⁷ (2021) 12 SCC 761

37. Conclusion

Therefore in view of the above discussion and the law laid down and interpreted the right of redemption retained with the borrower till the Sale is confirmed which could not be done in this case view of the order of the Tribunal because here the cause of action arose prior to the amendment of the said Act. The petitioner cannot deny the knowledge of the pending litigation as he participated in an auction sale process which arose out of a pending proceeding and despite having such knowledge sent the cheque for further payment . Furthermore the borrower exercised their power to redeem on the strength of the statute. Hence this court cannot interfere with the order at this stage where nothing remained for adjudication. Therefore this revisional application is liable to be set aside.

38. So far non receipt of the cheque or the amount and the aspersion made regarding collusion of Bank with the Borrower by entering into the compromise behind the bank of the petitioner, an Affidavit was filed on November 14, 2014 when the Bank confirmed that though a cheque or pay order was posted to the petitioner the petitioner did not encash the same and the money is still retained by the Bank. As per direction of the co-ordinate Bench the detailed affidavit was filed by Bank declaring the compromise was entered into with the borrower and further disclosed that on 38.12.2011 information was given to the petitioner by the Bank and made over a pay order for Rs. 17.50 lakh and further returned the un encashed cheque for Rs. 52.50 lakh and the

confirmation of the postal Authority regarding delivery of such article to the petitioner was also filed.

39. The petitioner refuted that by filing the Affidavit in reply and further made communication with the postal authorities with a request for certified true copy but he was informed in reply to his application under Right to information Act that such information cannot be provided as the period for preservation of the record has expired.

The statutory appeal filed by the petitioner was not entertained followed by second appeal was filed and the same reply has been accorded .The complaint lodged by the petitioner against the Bank and Respondents No 4 to 7 alleging entering upon a compromise illegally, before the Hare street Police Station which ended in FRT being a dispute in civil nature closing all the avenues for the petitioner.

40. However the fact remains the bank by way of filing their affidavit substantiated their stand about return of cheque along with the reply of postal authority confirming delivery and hence the onus shifted upon the petitioner to discard them .Further this court while exercising the power under Article 227 of the constitution considering the propriety of the authority or cannot act as a fact finding authority to ascertain the genuineness of the communication of the postal authority.

41. It was trite that a borrower was given an unfettered right under the act of 2002 to redeem his property even after the property was put on auction and auction purchaser participated in the auction and became highest bidder after

complying with all the formalities and deposited the earnest money till the sale certificate is confirmed. The respondent / borrower equipped with this power not only flouted the order passed by the Tribunal but also of the co-ordinate Bench of this court when they were directed to deposit an amount of Rs 50,000/-(initially 2 lacs) and also did not bother to be present during hearing of the case and failed to file the written notes of argument after being asked by this court.

42. Be that as it may the specific contention of the Bank was since the cheque no 405785 of Rs 52.50lacs was not encashed by the petitioner they have retained the amount and from the letter dated 28.12,11. In the circumstances it is established that the said amount of Rs. 17.50 lacs so obviously the amount is still lying with the Bank.

43. Hence it is ordered;

a) The instant Revisional application stands allowed in part. All the connected applications are disposed of accordingly.

b) The Respondent/Opposite party No 1 to 3/ Bank is directed to transfer an amount of Rs. 17.50 lakhs along with an interest at the rate of 5% in the account of the petitioner within 2 months from this date in default the Bank will be further liable to pay an interest at the rate of 8% per annum till such transfer is made.

c) The borrower is directed to comply with the direction to pay the cost of Rs. 50,000/- to the SLISA positively within a period of one moth from the date of receiving the copy of this order and to file a compliance report before the

Learned Registrar General of this court in default they will be hauled up in contempt of Court.

44. In view of the above all other connected applications are hereby disposed of.

45. No order of cost

46. The urgent certified copy, if applied by any of the parties be supplied at an earliest, subject to fulfilment of all required formalities.

(CHAITALI CHATTERJEE DAS,J)

