Judgment Dated: 12-11-2026
WBCHCA0084292025

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

CORAM: THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 4255 OF 2025
WITH
CAN 1 OF 2025

SRI ASHOK KUMAR GHOSH .....PETITIONER

-VERSUS-

PUNJAB NATIONAL BANK & OTHERS .....RESPONDENTS

WITH

WPA 15541 OF 2025

PUNJAB NATIONAL BANK & ANOTHER .....PETITIONERS

-VERSUS-

THE STATE OF WEST BENGAL & OTHERS .....RESPONDENTS

Appearance:

For the Auction Purchaser (i.e., the Petitioner in WPA 4255 of 2025 and Respondent No.6 in WPA 15541 of 2025)	:Mr. Bikash Ranjan Bhattacharyya, Sr.Adv. Mr. Uday Sankar Chattopadhyay, Adv. Mr. Suman Sankar Chatterjee, Adv. Mr. Pronay Basak, Adv.
For Punjab National Bank and its Authorised Officer (i.e., the Respondent Nos.1 and 2 in WPA 4255 of 2025 and Petitioners in WPA 15541 of 2025)	: Mr. Saptanshu Basu, Sr. Adv. Mr. Abhishek Banerjee, Adv. Ms. Parna Roy Choudhury, Adv. Ms. Trisa Chanda, Adv.
For the Borrower, Guarantors and Mortgagors (i.e., the Respondent Nos.3,4 and 5 in WPA 4255 of 2025 and WPA 15541 of 2025)	: Mr. Siddhartha Banerjee, Adv. Mr. Debashis Karmakar, Adv. Mr. Satyam Ojha, Adv. Mr. Parikshit Lakhotia, Adv.
For the State Respondents in WPA 15541 of 2025	: Mr. Tapas Kumar Chatterjee, Adv. Mr. Sailen Naskar, Adv.

Hearing Concluded on : September 01, 2026

Judgment on : November 12, 2026

OM NARAYAN RAI, J.:-

1. Since both these writ petitions share the same foundational facts and involve the same parties (excepting the State Respondents in WPA 15541 of 2025), therefore the same are being dealt with by a common order.

2. WPA 4255 of 2025 has been filed by the auction purchaser of the immovable property that had been mortgaged with the Bank to secure the credit facilities availed of by Ambhi Impex Private Limited i.e. the respondent no.3 from the said Bank. He seeks refund of the consideration amount to the tune of Rs.5,53,22,000/- (Rupees Five Crore Fifty-Three Lakh Twenty-Two Thousand Only) paid by him to the Bank, along with interest on the ground that the Bank has failed to handover possession of the auctioned property to him despite a lapse of more than two years.

3. WPA 15541 of 2025 has been filed by the Bank seeking a direction on the District Magistrate to dispose of the Bank's application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[1], that is pending with the said District Magistrate.

FACTUAL MATRIX:

4. Shorn of meticulous details, the facts relevant for adjudication of the present writ petition, as may be gathered from the material on record, are as follows: -

a. The respondent no. 3 i.e. Ambhi Impex Private Limited had availed of certain credit facilities from the erstwhile Union Bank of India (presently Punjab National Bank[2]). An immovable property, being bastu land measuring about 10.42 decimals together with a six-storied building standing thereon having covered area of about 14,531 sq.ft., owned by the respondent nos. 4 and 5 was mortgaged with the Bank for securing the said credit facilities.

b. Upon the borrower allegedly defaulting in repaying the credit facilities, the loan account of the borrower was classified as a Non-Performing Asset[3], whereafter the Bank initiated proceedings under the 2002 Act. The respondent nos. 3 to 5 challenged the Bank's action under the 2002 Act, before the Debt Recovery Tribunal-II, Kolkata by filing S.A. 217 of 2021.

c. During pendency of the said application, the Bank put the said mortgaged property up for sale through auction in terms of the provisions of Section 13(4)

[1] **Hereafter "the 2002 Act"**
[2] **Hereafter "the Bank"**
[3] **Hereafter "NPA"**

of the 2002 Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rule, 2002[4].

d. The auction purchaser participated in the auction that was conducted on September 28, 2022 and was selected as the highest bidder. The property was ultimately sold to the auction purchaser upon payment of Rs.5,53,22,000/- (Rupees Five Crore Fifty-Three Lakh Twenty-Two Thousand Only) and a sale certificate was issued to him by the Bank on February 28, 2023.

e. The respondent nos.3 to 5 challenged the sale as well by filing an interlocutory application being I.A. 1605 of 2022 in the pending SARFAESI application being S.A. 217 of 2021 before the said Tribunal.

f. The Learned Tribunal dismissed both the said applications filed by the respondent nos.3 to 5 by an order dated January 10, 2023. Feeling aggrieved by the said order, the respondent nos. 3 to 5 approached this Court by way of revisional application under Article 227 of the Constitution of India, being C.O. 553 of 2023.

g. The said revisional application was initially entertained by a Co-ordinate Bench of this Court on May 17, 2023 when by an interim order the operation of the order dated January 10, 2023 passed by the Tribunal was stayed till the last week of July 2023 or until further orders whichever was earlier. Subsequently, on September 29, 2023 another Co-ordinate Bench of this Court passed an order directing the parties to maintain *status quo with regard the property in question* till disposal of the revisional application. It was observed that if the borrower and the guarantors (who were the petitioners in the said revisional application) were dispossessed during the pendency of the revisional application the situation would become irreversible.

h. The said revisional application remained pending before this Court and as such the auction purchaser made a representation to the Bank through an e-mail dated January 16, 2025 and requested for refund of the sale consideration. The Bank responded to the said representation by a letter dated January 27, 2025 expressing its difficulty in refunding any amount to the petitioner.

i. The auction purchaser thereafter, took out an application praying for vacating the said interim order of *status quo.* The said application was disposed of by an order dated February 14, 2025 by observing that even if the auction purchaser had a genuine grievance with regard to the pendency of the revisional application which had actually created a situation where the auction purchaser

[4] **Hereafter "the 2002 Rules"**

was not being able to enjoy the property, such issue could not be gone into by the Court in the said revisional application. The auction purchaser was left free to approach the appropriate forum for remedy.

j. Under such circumstances, the petitioner filed the writ petition being WPA 4255 of 2025 praying for issuance of a writ of mandamus commanding the Bank to refund the auction sale consideration of Rs.5,53,22,000/- (Rupees Five Crore Fifty-Three Lakh Twenty-Two Thousand only) along with 12% interest thereon.

k. The revisional application filed by the respondent nos.3, 4 and 5 was ultimately dismissed by an order dated May 19, 2025 with liberty to the said respondents to approach the Debts Recovery Appellate Tribunal.

l. After dismissal of the said revisional application the Bank made a representation before the District Magistrate to dispose of the Bank's application dated April 19, 2022 made under Section 14 of the 2002 Act. Although such representation was made on June 25, 2025, no step was taken by the District Magistrate and as such the Bank filed WPA 15541 of 2025 seeking directions on the District Magistrate to dispose of the Bank's said application under Section 14 of the 2002 Act.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

5. A brief summary of the submissions made by Mr. Bhattacharyya, learned Senior Advocate appearing for the petitioner, is as follows:-

a. Since the Bank has failed to deliver possession of the auctioned property despite payment of the entire consideration, the Bank is liable to refund the said consideration to the auction purchaser together with interest.

b. The Bank sold the property to the auction purchaser without disclosing the fact that a litigation was pending in respect thereof between the Bank and the respondent nos. 3, 4 and 5 before the Tribunal.

c. The sale certificate issued by the Bank would show that the Bank has stated that the property is not encumbered, however, the property was under litigation from the very inception. ***Mohd. Shariq vs. Punjab National Bank & Others***[5] was cited for the proposition that in a bidding process, the facts must be made clear to the bidders for the reason that there is always a high variance between the market realizable value and the distress value of the mortgaged property when put to public auction under the provisions of the 2002 Act.

[5] **2023 SCC OnLine SC 392**

d. The Bank has in effect committed fraud on the auction purchaser in selling a litigated property without disclosing the pending litigation. A judgment of the Hon'ble Supreme Court in the case of ***Viney Kumar Sharma vs. The Improvement Trust & Another***[6] was relied on to contend that the Bank is legally obliged to disclose all pending litigations in the sale notice and non-disclosure thereof would amount to practising fraud upon the auction purchaser.

e. Another judgment of the Hon'ble Supreme Court in the case of ***Delhi Development Authority vs. Corporation Bank & Others***[7] was relied on to contend that an innocent auction purchaser who has *"neither breached the covenant nor failed in diligence"* should not be made a scapegoat to suffer the consequences of an undisclosed litigation between the Bank on the one hand and the borrowers, guarantors and mortgagors on the other.

f. The petitioner got knowledge of the litigation between the borrower, guarantor and mortgagors (i.e. the respondent nos. 3 to 5)[8] on the one hand and the Bank on the other for the first time when the revisional application being C.O. 553 of 2023 was filed by the said respondents against the Bank challenging the order dated January 10, 2023 passed by the Tribunal.

g. The auction purchaser has borrowed money for the purpose of purchasing the property in auction and the auction purchaser is having to pay interest thereon without he himself being able to use the property in any manner.

h. A Co-ordinate Bench of this Court had by an order dated June 17, 2025 directed the Bank to either deliver possession or to refund money with interest but the Bank has done neither.

i. The auction purchaser cannot be asked to wait indeterminately for getting possession of the property. The petitioner should now be refunded the entire consideration money as the petitioner is not interested in taking the property anymore.

SUBMISSIONS ON BEHALF OF THE BANK:

6. A brief summary of the submissions made by Mr. Basu, learned Senior Advocate appearing for the respondent Bank, is as follows:-

a. The auction purchaser has sought refund of the sale consideration without challenging the sale. Such relief cannot be granted without setting aside the

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[6] **SLP(C) No. 24811 of 2025, decided on January 16, 2026**

[7] **2025 SCC OnLine SC 2071**

[8] **Hereafter "the borrowers"**

sale. Even in a suit a Civil Court would not grant a relief of setting aside a sale unless a specific prayer therefor is made by amending the plaint.

b. A concluded sale, where sale certificate has been issued, cannot be set aside in a writ proceeding. The auction purchaser's remedy lies either before the Tribunal by way of an appropriate application under Section 17 of the 2002 Act or before the competent Civil Court. ***Celir LLP vs. Bafna Motors (Mumbai) Private Limited & Others***[9] was cited to assert that the High Court should not entertain a petition under Article 226 of the Constitution of India if an effective remedy is available to the aggrieved person under the 2002 Act and that High Court should not apply equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the 2002 Act.

c. ***PHR Invent Educational Society vs. UCO Bank & Others***[10] was pressed in support of the contention that a confirmed auction sale can be interfered with only when there is fraud or collusion.

d. ***Sanjay Sharma vs. Kotak Mahindra Bank Limited & Others***[11] was relied on to contend that a sale by way of public auction cannot be set aside until there is any material irregularity and/or illegality committed in holding the auction or if such auction was vitiated by fraud or collusion.

e. The auction purchaser cannot argue that the Bank has committed fraud or misrepresentation or suppression as there is no pleading to such effect in the writ petition. There is no allegation of either fraud or suppression or misrepresentation in the writ petition. ***Afsar Sheikh & Another vs. Soleman Bibi & Others***[12] was relied on in support of the contention that fraud and misrepresentation must be pleaded with specificity, particularity and precision.

f. ***Bachhaj Nahar vs. Nilima Mandal & Another***[13] was pressed into service to demonstrate that a Court cannot make out a case not pleaded and no amount of evidence can be looked into, upon a plea which was never put forward in the pleadings.

g. ***Ishwar Dutt vs. Land Acquisition Collector & Another***[14] and ***Anathula Sudhakar vs P. Buchi Reddy***[15] were also cited for the same purpose.

h. ***Allahabad University & Others vs. Geetanjali Tiwari (Pandey) & Others***[16] was relied on in support of the contention that that a Writ Court should not

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[9] **(2024) 2 SCC 1**
[10] **(2024) 6 SCC 579**
[11] **2024 SCC OnLine SC 4589**
[12] **(1976) 2 SCC 142**
[13] **(2008) 17 SCC 491**
[14] **(2005) 7 SCC 190**
[15] **(2008) 4 SCC 594**

make out a third case not pleaded by the parties based on arguments advanced in course of hearing and that the Court's enquiry must be restricted to the case pleaded and the evidence placed before it by the parties.

i. ***ITC Limited vs. Blue Coast Hotels Limited & Others***[17] was cited to demonstrate that since the Bank remained a secured creditor even after issuance of sale certificate, it was entitled to take police assistance under Section 14 of the 2002 Act in order to deliver possession of the auctioned property.

SUBMISSIONS ON BEHALF OF THE BORROWERS:

7. Mr. Banerjee, learned Advocate appearing for the borrowers made the following submissions: -

a. The Bank has committed fraud on law and as such this Court should take note thereof if the same is apparent from the record, irrespective of the pleadings.

b. The Bank has suppressed the fact that a Receiver has been appointed over the property by the Tribunal on the Bank's application being O.A.133 of 2016 who is collecting rent from the tenants. Since the property is *custodia legis* therefore, such property could neither have been put up for sale nor taken possession of under Section 14 of the 2002 Act.

c. A chart of the alleged misstatements made by the Bank was handed up to Court and the Court was taken through the writ petition filed by the Bank to demonstrate the alleged suppressions and misstatements. The content of the chart is reproduced hereinbelow:-

Sl.	*REFERENCE OF INCORRECT STATEMENT*	*REFERENCE OF CORRECT STATEMENT*	*SUMMARY*
1.	*Page 44, Sl.10* *Page 47* *Sl.viii of Writ*	*Page 21, Para 5 of Writ*	*In the Section 14 application the bank has falsely stated on oath that an amount of loan taken by the borrower of Rs.7,50,00,000/-. However in reality only a sum of Rs.4.50 Crore was disbursed in favour of the borrower.*
2.	*Page 43 of Writ*	*Page No.21, Para 5 of Writ*	*In the Section 14 application the bank has sought to take physical possession of property under SARFAESI Act, however the bank has itself choose not to proceed under the SARFAESI Act, 2002.*

[16] **(2024) 20 SCC 23**
[17] **(2018) 15 SCC 99**

3.	*Page 48 & Page 45, Point No.22 & Page 48 of Writ*	*Page 30 Para 46 of Writ*	*In the Section 14 application the bank has stated on oath that there is no tenancy lying in the mortgaged property. Whereas the true fact is that in the Section 19 proceeding even a Receiver is appointed who is even collecting rent from the tenant. Even 20% reduced the price of the property by the Valuer in his Valuation Report for tenancy.*
4.	*Page 50, Sl.18 of Writ* *Page 47, Sl. viii of Writ*	*Page 34, para 71 of Writ*	*It is falsely by the bank that after issuance of 13(2) notice, no amount is paid by the borrower, but in reality the borrower has paid huge amount. Even the DRT order it is recorded that an amount of Rs.35 Lakh was paid by the borrower.*
5.	*Page 47, SI No.iii* *Page 50, SI.No.8 of Writ*	*Page 32, para 56 of Writ* *Page 75 of Writ*	*In the Section 14 application the bank has sought to take possession of G+5 storied building, whereas the bank has itself stated that the entire 5th floor is illegal and 50% of 4th Floor is also illegal. Such encumbrances were also not stated in the sale notice.* *Further in the Section 14 application the details of property are incorrect. The Section 14 application records 3000 sq.ft. in each floor whereas judgement of DRT records that 2390 sq.ft. in each floor.*
6.	*Page 5, 6, 17, 19 of Writ*	*Page No.21, para 5 of Writ*	*In the entire Writ petition the petitioner bank has sought reliefs on the basis of Notice under section 13(2) dated 1st September 2014 and possession notice dated 8th January 2015. However such 13(2) notice long withdrawn by the petitioner bank.*
7.	*Page No.45, Sl.21 of Writ*	*Short list of dates in Writ.*	*Section 17 application was pending before the Learned Debts Recovery Tribunal at the time of filing of the Section 14 application.* *Section 14 application is filed on 19.04.2022 and Section 17 application was decided by DRT on 10.01.2023*

8.	*Page No.50, Sl.11 of Writ*		*By leaving the said information empty the petitioner bank has suppressed facts before the said Magistrate. That after issuance of the said 13(2) and also the Section 14 application time and again the borrowers have made payments to the bank.*
9.	*Page 10 to 12, ground stated in SI.I to SI.IX of Writ* *Page 43 of Writ petition i.e. prayers of Section 14 application i) to iii)*	*Page 21, Para 8 and Page No.22, Para 9 of Writ* *Page No.27 of Affidavit-in-Opposition filed by Respondent No.3, 4 and 5.*	*Petitioner not entitled to any reliefs from the District Magistrate and the said Section 14 application is liable to be rejected as the petitioner has suppressed several facts from magistrate with regard to filing of previous Section 14 applications:* *a) 1st Section 14 application, order already passed by the District Magistrate, but petitioner bank undertaken not to execute the DM's order.* *b) Petitioner bank choose not to proceed under SRAFAESI Act, 2002 and choose to appoint of Receiver under RDDBFI Act, 2002 in OA proceeding.* *c) 2nd Section 14 application filed before the Learned Chief Judicial Magistrate, but bank choose not to proceed with such application;* *d) 3rd Section 14 application, being the subject matter in the instant Writ petition;* *Hence, Section 14 application barred by 'res judicata' as order already passed by DM in 1st Section 14 proceeding.* *Also, Res sub-judice is application as Section matter of adjudication is already pending before the Chief Judicial Magistrate in the 2nd Section 14 application.*
10.	*Page No.47, Sl. ix. of Writ*	*Page No.28 of Affidavit-in-Opposition filed by*	*The petitioner has not complied with the statute while taking steps under the said Act, 2002. That the*

		Respondent No.3, 4 and 5.	*respondent borrowers challenging the all the actions of bank have preferred an Appeal before the Hon'ble Chairperson, Debts Recovery Appellate Tribunal, Kolkata and the date of hearing is fixed on 11th August 2026.*
11.	*Page 51, Para 19(B) of Writ*	*Page 29, para 40 of Writ*	*In the said Section 14 application the petitioner bank has stated 'YES' which means that the bank has accepted the contents of representation made by the borrower U/s.13(3A). The same is a false statement.*
12.	*Page 5 para 5 of Writ* *Page 51, Para 23*	*Page 21, Para 5 of Writ*	*Contrary statement is made in the Writ Petition and the Section 14 application. The petitioner bank is seeking relief in the Section 14 application on the strength of possession notice dated 20.07.2021 and the Writ petition is filed on the basis of possession notice dated 8th January 2015.*
13.	*Page 45, para 14 of Writ*	*Page 19 of Writ*	*No demand made to individuals in 13(2) notice i.e. Sri Manoj Kumar Agarwal and Sri Binod Kumar Agarwal. Only demand was made upon the borrower company. Property owned by the Sri Manoj Kumar Agarwal and Sri Binod Kumar Agarwal.*
14.	*Page 43, last para of Writ*		*In the Section 14 application the petitioner bank has sought for assistance in taking over possession. The petitioner bank cannot seek "assist us to take possession" of the property, which is in violation of law. Section 14 of the SARFAESI Act, 2002 does not permit the bank to take physical possession U/s.14 of the Act.*

d. Courts have increasingly applied the doctrine of *caveat venditor*, moving away from the traditional rule of *caveat emptor* in matters concerning auction sales conducted under the 2002 Act and the Rules framed thereunder.

e. The Bank has suppressed the fact that during pendency of the present Section 14 application, expeditious disposal whereof is being sought, the Bank has filed

another application under Section 14 of the 2002 Act before the Chief Judicial Magistrate which amounts to withdrawal of the present application.

f. ***K.D. Sharma vs. Steel Authority of India Limited & Others***[18] was relied on to demonstrate that a Writ Court would certainly bear in mind the conduct of a party who invokes the jurisdiction of the Court and if such applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone.

g. ***Prestige Lights Limited vs. State Bank of India***[19] was also cited for the same purpose and it was highlighted that if there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Writ Court, the Court may refuse to entertain the petition and dismiss it without entering into the merits of the matter.

h. ***Union of India & Others vs. Bali Ram No. 850808321***[20] was pressed for the proposition that if the opponent is seeking to use a procedural technicality as a shield for its own statutory breach then the Court, in an appropriate case, may in its discretion, grant such relief as the suitor is found entitled. The said judgment was also relied on to assert that waiver, in law, is an intentional relinquishment of a known right or advantage by a person which, but for the waiver, he would have enjoyed.

i. There cannot be any waiver against law. If known encumbrances are not disclosed but the records reveal the same, then the Court must take note thereof and pass appropriate directions.

REJOINDER OF THE AUCTION PURCHASER:

8. Mr. Bhattacharyya, learned Senior Advocate appearing for the petitioner made the following rejoinder submissions: -

a. Lack of pleadings should not prevent this Court from passing appropriate orders for refund in the wake of the admitted documents like the sale notice and the sale certificate which reveal that a litigated property was sold to the petitioner without mentioning the same in either the sale notice or the litigation.

b. ***Maria Margarida Sequeira Fernandes & Others vs. Erasmo Jack De Sequeira (Dead) Through LRS***[21] was cited to assert that the truth should be the guiding star in the entire judicial process and that Judges at all levels have to seriously engage themselves in the journey of discovering the truth.

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[18] **(2008) 12 SCC 481**
[19] **(2007) 8 SCC 449**
[20] **2026 SCC OnLine SC 1319**
[21] **(2012) 5 SCC 370**

c. ***Mohd. Abdullah Azam Khan vs. Nawab Kazim Ali Khan***[22] was relied upon to demonstrate that the purpose of the Evidence Act is to prove and disprove the existence of facts in issue and to find out the truth of the facts asserted by the parties as the decision of the case lies upon the truthfulness of those facts.

REJOINDER OF THE BANK:

9. Mr. Basu, learned Senior Advocate representing the Bank re-joined while submitting as follows:-

a. The borrowers' assertion that non-disclosure of tenancy in the Section 14 check-list renders the Bank's Section 14 application impeachable is baseless. The authority under Section 14 of the 2002 Act is only required to get satisfied with the nine points mandated to be mentioned in the affidavit which is to be submitted before the said authority. None of the said nine points require the Bank to mention anything as regards tenancy or encumbrance over the mortgaged property.

b. ***S.J.S. Business Enterprises (P) Limited vs. State of Bihar & Others***[23] was cited to demonstrate that in order to sustain the charge of suppression, it must be shown that there was suppression of a material fact which, if disclosed, would have affected the merits of the case.

c. An unreported decision of the Hon'ble Division bench of this Court in the case of ***Mr. Binay Chaudhary & Others vs. AU Small Finance Bank Limited & Others*** [24] was relied on to contend that the Section 14 authority performs only a ministerial function and not an adjudicatory one.

d. The allegation that there are discrepancies as regards the statutory demand notice under Section 13(2) of the 2002 Act is equally unfounded. The Tribunal has already dealt with the said point and has upheld the Bank's action under the 2002 Act. The said order has been challenged before the DRAT and any observation made by this Court would be an impermissible pre-emptive decision on a point involved in the pending appeal.

e. The second application under Section 14 of the 2002 Act had been filed before the Chief Judicial Magistrate by mistake and the same has in any case been withdrawn.

ANALYSIS & DECISION:

10. The material on record reveals that the following facts are undisputed.

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[22] **(2022) 20 SCC 233**
[23] **(2004) 7 SCC 166**
[24] **MAT 6 of 2026, decided on March 17, 2026**

a. An application being S.A. 217 of 2021 challenging the steps taken by the Bank under Section 13(4) of the 2002 Act was pending before the Tribunal at the time when the sale notice was issued and published by the Bank.

b. The auction sale notice mentioned that the Bank was in symbolic possession of the mortgaged property but it did not indicate anything about the pending litigation. The notice rather indicated that there was no encumbrance known to the Bank.

c. The borrowers took out an interim application being IA 1605 of 2022 in the pending SA before the Tribunal thereby challenging the sale notice.

d. The bidding took place on November 28, 2022 and the auction purchaser was declared as the highest bidder.

e. Both the SA as well as the IA were dismissed by the Tribunal on January 10, 2023. The order passed by the Tribunal, in paragraph 51 thereof (at page 31 of the Bank's writ petition) records that *"……. tenancy from before the equitable mortgage of the secured asset is admitted as it reflects from the loan sanction letter dated 16.03.2013 …".*

f. The auction purchaser deposited the entire consideration amount on February 28, 2023, however, the Bank has not been able to deliver physical possession of the property to the auction purchaser as yet.

g. The Bank filed the application under Section 14 of the 2002 Act in the year 2022 but the same remains pending since then.

11. The undisputed facts, thus establish that the Bank has not disclosed known encumbrances and litigation. It has been vociferously argued by the Bank that as the writ petition is bereft of any prayer for setting aside the sale and any pleading that the auction purchaser was, in any manner, misled by the Bank's sale notice into purchasing a litigated or otherwise encumbered property therefore he is not entitled to any relief.

12. It would be evident from the narration of the facts of the case in the beginning that this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India had on September 29, 2023 passed an interim order in C.O. 553 of 2023 directing the parties to maintain status quo with regard to the property in question till disposal of the revisional application. The auction purchaser had then filed an application CAN 2 of 2024 seeking vacation of the said interim order which was disposed of by the Court on February 15, 2025.

13. The stand taken by the auction purchaser before this Court during the hearing of the said application has been recorded in the order dated February 14, 2025, whereby this Court disposed of the said application. The same deserves notice:-

"Mr. Bhattacharya, learned senior advocate for the opposite party no. 3, submits that unless the said interim order is vacated, the purchaser who has invested huge sum of money upon obtaining loan from a bank, will suffer irreparable loss and injury. He is not in a position to enjoy the property he has purchased. He further submits that the Court must direct refund of the sale consideration along with interest as the property was sold at a time when the dispute had not been resolved between the borrower and the creditor and the creditor could not have sold the property which was encumbered. On the basis of a misrepresentation, the purchaser invested money and is now not in a position to enjoy his property in view of the pending litigation."

(Emphasis supplied)

14. This clearly reveals that it was the auction purchaser's stand in Court that he was misrepresented by the Bank. However, the auction purchaser has not mentioned the same in his present writ petition. Would that disentitle him from claiming refund even when it is evident that the auction sale notice breaches mandatory requirements? The answer, in the facts of this case, would be in the negative for at least two reasons:-

a. Firstly, there is nothing on record to convince this Court, with any degree of certainty, that the auction purchaser was aware of either the pending litigation or the existing tenancy. It is noticed that in paragraph 11 of the affidavit-in-opposition filed by the Bank, the Bank has asserted that the auction purchaser "*was always aware of the pending litigation and the limited scope of his rights under the SARFAESI framework".* However, there is no evidence in support of such assertion. On the contrary, the silence of the auction sale notice screams of a fatal non-disclosure. In the wake of such factual position knowledge of the auction purchaser cannot be presumed.

b. Secondly, mentioning only "symbolic possession" in the sale notice without indicating either the pending litigation or an existing tenancy amounts to material irregularity and misrepresentation to the public at large. Such principle is well established and has been strongly reiterated by the Hon'ble Supreme Court in the case of ***Viney Kumar Sharma*** (supra) following words:-

*"**6.** It was the legal duty on the part of the Trust to have made it clear in the auction notice itself that the subject plot is a subject matter of litigation. Authorities (such as banks, recovery officers, or state bodies) conducting public auctions are legally required to disclose all known encumbrances and litigation relating to the property, as failure to do so invalidates the sale. Suppressing such material facts renders the auction fraudulent or vitiated by material irregularity.*

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9. *Public auction is one of the modes of sale intending to get highest competitive price for the property. Public auction also ensures fairness in actions of the public authorities and their officers who should act fairly and objectively. Their actions should be legitimate. Their dealing should be free from suspicion. Nothing should be suggestive of bias,*

favouritism, nepotism or beset with suspicious features of underbidding detrimental to the legitimate interest of the stakeholders."

(Emphasis supplied)

15. The Bank had sought to distinguish the aforesaid judgment in the case of ***Viney Kumar Sharma*** (supra) by contending that the same was rendered in a situation where the sale was not yet complete and the auction purchaser had pleaded ignorance of the litigation. The objection is well taken, but it fails to buttress the Bank's case here.

16. This Court is cognizant of the legal position that a judgment is an authority for what is actually decides and not what logically follows therefrom and that a little difference in facts may lead to a different conclusion[25]. However, it is equally well settled that in order to derive the *ratio decidendi* of a case one would have to ascertain the principle on which the case was decided inasmuch as it is the principle on which the case was decided that binds as a precedent[26].

17. A reading of the judgments rendered in ***Mohd. Shariq*** (supra), ***Delhi Development Authority*** (supra) and ***Viney Kumar Sharma*** (supra) would reveal that all of them have been decided on the principle that it is the duty of the auctioneer-bank (or auctioneer-public authority) to ensure a fair, open and competitive bidding process *inter alia* by disclosing all known encumbrances and litigation concerning the property before the auction takes place and that failure to do so would invalidate the sale entitling the auction purchaser to claim refund of the consideration paid.

18. The facts of the present case invite the direct application of the aforesaid principle on which the Hon'ble Supreme Court decided the aforesaid cases. In the case at hand too, it is undisputed that the Bank's sale notice did not mention the pending litigation. The SA pending before the Tribunal was a material litigation where not only the measures taken by the Bank under Section 13(4) of the 2002 Act were challenged but a subsequent challenge, to the very sale notice (which formed the basis of the relevant auction) was also introduced by way of an IA, after the publication thereof. Thus, it cannot be the case that the litigation was either immaterial or unknown to the Bank.

19. Furthermore, the notice explicitly represented that no encumbrance was known to the Bank, when the factual position was precisely the opposite. The order dated January 10, 2023 passed by the Tribunal while dismissing the borrowers' SA, reveals that the auctioned property was tenanted. Such fact, therefore, constituted

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[25] **Union of India vs. Chajju Ram; (2003) 5 SCC 568**

[26] **Punjab Land Development and Reclamation Corpn. Ltd. vs. Labour Court; 1990 (3) SCC 682**

a known encumbrance and accordingly, the same ought to have been mentioned in the sale notice.

20. There is nothing on record to establish that the auction purchaser was aware of the litigation and the encumbrances. Absence of appropriate pleading on the part of the auction purchaser would not cure such a fundamental defect in the sale notice that has been termed as a *"material irregularity"* by the Hon'ble Supreme Court.

21. Auction sales under the 2002 Act read with the 2002 Rules must strictly comply with the provisions contained therein. The proviso to Rule 8(6) read with Appendix IV-A thereof and Rule 8(7) of the 2002 Rules, which are relevant for the present purpose, read in absolute mandatory terms. The statutory requirement of disclosure of encumbrances and other material in the public sale notice is aimed at protecting the intending purchasers. Any violation thereof would thus operate to the severe detriment of the intending purchasers and would be a valid ground to entertain the aggrieved purchaser's claim for a full refund of the sale consideration paid by it.

22. There is another way to look at the matter. Rule 9(6) of the 2002 Rules mandates that the Authorized Officer shall on confirmation of sale and compliance with the payment terms issue a certificate of sale in the form provided in Appendix V of the 2002 Rules. The form of sale certificate provided in Appendix V indicates that such certificate should mention that *"The sale of the scheduled property was made free from all encumbrances known to the secured creditor listed below on deposit of the money demanded by the undersigned*" and that the secured creditor "*has handed over the delivery and possession of the scheduled property*." Thus, delivery of possession is an inseparable part of the sale process. That being so, the Bank remains obliged to take appropriate steps to ensure expeditious delivery of possession of the auctioned property to the auction purchaser. This would include steps for the Bank itself taking actual physical possession of the property

23. The Bank filed its application under Section 14 of the 2002 Act before the District Magistrate as far back as on April 19, 2022. There is no document on record to show that the Bank took any proactive step to get the same disposed of after filing.

24. The property was put up for auction in November 2022 and sale certificate was issued in February 2023. The first interim order that was passed in C.O. 553 of 2023 on May 17, 2023 actually did not prevent the Bank from taking steps for getting its Section 14 application disposed of inasmuch as the said order only stayed the operation of the order dated January 10, 2023 passed by the Tribunal whereby the borrowers' SA and IA were dismissed. The said order dated May 17,

2023 does not, in any manner, inhibit the possession taking process. The order that actually prevented the Bank from taking possession came to be passed only on September 23, 2023 which is about seven months after the issuance of sale certificate. Taking the most conservative view too, three months had already elapsed by the time even the first order dated May 17, 2023 was passed in the revisional application. Nothing appears to have been done by the Bank in the meantime. The Bank having realized the sale consideration from the auction purchaser could not have wasted even a single day without taking appropriate steps to get its Section 14 application disposed of.

25. While it is true that disposal of the application under Section 14 of the 2002 Act is not in the hands of a Bank but nothing stops the Bank from pursuing its application in the manner known to law. That would show its *bona fide*. The situation in the present case is to the contrary. Records before this Court reveal an order dated February 08, 2024 passed in the Section 14 proceeding (page 40 of the Bank's writ petition) which records thus:-

> *"Today was fixed for 3rd hearing i.e. 08.02.2024.*
>
> *…… The Ld. Advocate of Secured Creditor stated that the borrower is a willful defaulter and he neither paid any amount nor submitted any proposal for One Time Settlement against his loan amount.*
>
> *The Borrower prayed for some time as another chance for repayment of the said loan and the Ld. Advocate of the Secured Creditors allowed him his prayer as last chance.*
>
> *Hence it is ordered.*
>
> *It is hereby directed the respondent borrower for amicable settlement as early as possible from the communication of this order and in the meantime, both the parties are directed to submit the outcome of the amicable settlement happened if any.*
>
> *Fixed on 15/04/24 at 2.00 p. m for further hearing.*
>
> *Let the copy of the order be served free of cost to the both side accordingly."*

26. It is significant to note that the secured asset had been sold to the auction purchaser and sale certificate had been issued in his favour one year prior to the said date. Such being the situation, there could have been no reason for the Bank to agree to a postponement and allow the borrowers a *"last chance"*. The Court is alive to the fact that an interim order of *status quo* passed by a Co-ordinate Bench of this Court in C.O. 553 of 2023 was in operation at the said time but then that was not the ground on which the hearing was postponed. This borders on a clear breach of confidence and trust reposed by an auction purchaser in a Bank which is duty bound to deliver possession of the auctioned property to the former.

27. The Bank has thus consistently failed in its duty as a secured creditor to deliver possession of the auctioned property to the auction purchaser and this fact alone would, in the facts of the present case, entitle the auction purchaser to refund of

the sale consideration. An auction purchaser under the framework of the 2002 Act cannot be expected to wait indefinitely when the 2002 Act itself aims at expeditious recovery of the financial asset upon sale of the secured asset which in turn includes appropriate delivery of possession by the secured creditor to the auction purchaser. In paragraph 46 of ***ITC Limited*** (supra), the Hon'ble Supreme Court considered the provisions of Section 13(6) of the 2002 Act, which provides that any transfer of the secured asset after taking possession thereof by the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if transfer had been made by the owner of the secured asset and then in paragraph 48 thereof held as follows:-

> *"**48.** In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction-purchaser under the agreement. [Dated 25-2-2015] Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction-purchaser and thus remained a secured creditor in the Act."*

28. The said judgment was clarified by the Hon'ble Supreme Court later on in the case of ***Hindon Forge (P) Ltd. vs. State of U.P.***[27], by observing that *a secured creditor remains a secured creditor even after possession is taken over as the fiction contained in Section 13(6) does not convert the secured creditor into the owner of the asset, but merely vests complete title in the transferee of the asset once transfer takes place in accordance with Rules 8 and 9 of the 2002 Rules.* It, thus needs to be noted that complete title vests in the transferee only if the *transfer takes place in accordance with Rules 8 and 9 of the 2002 Rules*. Since the Bank has failed in its duty to effect transfer of the auctioned property in accordance with law, refund of the sale consideration remains the only option.

29. It was argued by the Bank that as no challenge has been thrown to the sale, refund of the sale consideration cannot be granted. In the instant case, since there is an evident breach of the mandatory requirements of Rule 8(7) it cannot be said that transfer has taken place in accordance with the 2002 Rules. The sale certificate issued by the Bank would therefore be of no consequence. A similar objection as the one raised by the Bank in the present case had also been raised by another Bank in the case of ***Ku Chih Choi vs. Central Bank of India***[28] where a Co-

[27] **(2019) 2 SCC 198**
[28] **2023 SCC OnLine Cal 136**

ordinate Bank of this Court had brushed aside such objection in the wake of the Bank's unpardonable conduct in the following words:-

> *"**15.** The other point raised on behalf of the Bank through learned counsel is directed against the concerned District Magistrate for failing to act under section 14 of the SARFAESI Act, 2002 and the Rules thereunder. Counsel has attributed knowledge on the part of the petitioner of the nature of the possession of the property on the date of sale. Counsel also urges that the money cannot be refunded to the petitioner in the absence of a challenge to the sale certificate issued by the Bank. None of these points offer a satisfactory answer to the irresponsible and fraudulent conduct on the part of the Bank in persuading the petitioner to part with Rs. 35 lacs in July and September, 2014, for executing a Sale Certificate of the secured asset in favour of the petitioner on 29th September, 2014 but failing to deliver the property to the petitioner for eight years thereafter. The Bank has also attempted to frustrate the recourse taken by the petitioner by filing a subsequent writ petition with reliefs which are clearly an afterthought and vexatious with reference to the conduct of the Bank in the interregnum."*

(Emphasis supplied)

30. In any case once the Court finds that the sale notice itself is invalid, the entire action on the basis of such notice would fall and a further challenge to the sale certificate would be unnecessary. Furthermore, in the present case the sale certificate is also equally discrepant, in that it discloses "NIL" encumbrances.

31. The Bank's assertion that the auction purchaser must approach either a Civil Court or the Tribunal to seek annulment of the sale is legally sound and it could, therefore, have persuaded this Court to direct the auction purchaser to take the Tribunal route if there was any disputed question of fact that required decision on evidence. However, when it is not in dispute that the sale notice lacks the mandatory disclosures and is consequently violative of Rule 8(7) of the 2002 Rules and where it has been established from the sequence of events and the material on record that the Bank's conduct, as a public authority, is not above board and it does not meet the standards of fairness expected of an instrumentality of the State, there is no reason to send the auction purchaser to the alternative forum and prolong the litigation. In fact, in ***Mohd. Shariq*** (supra) the Hon'ble Supreme Court considered the same objection and rejected the same in the following words:-

> *"**25.** We are of the considered view that once there is no dispute on the facts that came on record, there appears no reason for the appellant to be relegated to avail other remedial mechanisms for recovery of the undisputed amount and the Division Bench has committed a manifest error in the facts and circumstances in not exercising its power under Article 226 of the Constitution and instead of resolving the dispute, the Division Bench under the impugned judgment has kept the issue alive, permitting the parties to have a second innings in reference to the dispute which stands crystallised/settled."*

(Emphasis supplied)

32. Both ***PHR Invent Educational Society*** (supra) and ***Celir LLP.*** (supra) cited by the Bank reiterate and instruct that High Courts should not entertain petitions under Article 226 of the Constitution if effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act. The salutary legal principle reiterated by the Hon'ble Supreme Court in the said cases cannot come to the aid of the Bank in the facts of the present case where, as already indicated above, the now incurable defect in the sale notice is undisputed and the Bank's conduct has been found to have fallen short of all the standards of fairness and transparency. Furthermore, it must also be noticed that in none of the said cases refund was sought by an auction purchaser, who is a third party stranger to the main loan-transaction between the Bank and the borrower, which conversely was the case in ***Mohd. Shariq*** (supra). In fact, in both ***PHR Invent Educational Society*** (supra) as well as ***Celir LLP.*** (supra) writ petitions had been entertained by the respective High Courts at the instance of the borrowers which adversely affected the interests of the auction purchasers.

33. The Bank had vociferously argued that this Court should not entertain the petitioner's prayer for refund in the absence of pleadings as regards lack of knowledge and fraud or misrepresentation. In ***Baliram*** (supra), the Hon'ble Supreme Court has held that substantive justice cannot be allowed to be trumped by technicalities if the record before the High Court clearly evinces entitlement of the suitor to a wider relief, than what is claimed. Paragraphs 43 and 44 of the said judgment are especially relevant in the facts of the present case:-

> *"**43.** One of the exceptions is when the court is convinced that the petitioner is legally entitled to more than what has been claimed, but might have claimed less due to ignorance or bona fide mistake or inelegant drafting of the writ petition by his lawyer. Since substantive justice cannot be allowed to be trumped by technicalities, if the record before the high court clearly evinces entitlement of the suitor to a wider relief than what is claimed, the opponent is put on notice and he/it has no answer, much less adequate answer, and thereby, no prejudice is caused to him/it, and it is found that the opponent is seeking to use a procedural technicality as a shield for its own statutory breach, the court in an appropriate case may, in its discretion, grant such relief as the suitor is found entitled.*
>
> ***44.** However, there is a need to sound a word of caution. While the high courts are expected to stick to the pleadings and the prayers, and not wander beyond, by observing the rule of discipline that exists to prevent judicial overreach and surprise, the exception to the rule of doing justice despite deficient pleadings in a writ petition ought to be sparingly invoked and judiciously applied where the law and the record disclose a clear entitlement of the suitor and the court is convinced that upholding the plea raised by the opponent, based on technicality, would defeat the right. A judge who ignores both the rule and the exception, ends up either shackled by technicality or exposes himself to be accused of judicial activism."*

(Emphasis supplied)

34. The present case is clearly one where the Bank which acted in clear breach not only of the mandate of Rule 8(7) but also of the auction purchaser's trust and confidence, as already discussed hereinabove, is *seeking to use a procedural technicality as a shield for its own statutory breach.* The auction purchaser has not been able to get possession of the auctioned property till today, i.e., even after elapse of almost three years despite having paid the entire sale consideration. Although the auction purchaser had taken a specific stand before this Court, during the hearing of CAN 2 of 2024 filed in connection with C.O. 553 of 2023, that he was misrepresented by the Bank and had sought for refund of the sale consideration, the said pleading is not there in the writ petition, which persuades this Court to believe that the writ petition is a product of "*inelegant drafting*". The very fact that the Bank has taken a specific stand (albeit without any supporting evidence) in its affidavit in opposition that the auction purchaser was aware of the pending litigation hints that the Bank knew the pith of the case run by the auction purchaser. There is no answer forthcoming from the Bank as to why has the sale notice been published in abject defiance of Rule 8(7) of the 2002 Rules.

35. It cannot be lost sight of that the sale notice published by the Bank, a public authority, is a notice to the public at large. The very opening words of the notice in Appendix IV-A of the 2002 Rules i.e. *"Notice is hereby given to the public in general and ...."* make it evident that the notice is meant for the public in general. Public authorities being custodians of public trust cannot be permitted to act unfairly or play truant with the Rules. It is precisely for such reason that the Hon'ble Supreme Court expressed its displeasure in paragraph 5 of ***Viney Kumar Sharma*** (supra) in the following words:-

> *"**5.** We are very much disturbed to note that when the plot in question was put to auction by The Improvement Trust, Ludhiana (for short "the Trust"), the fact about pendency of litigation was not disclosed before the parties who offered their bids in the public auction."*

(Emphasis supplied)

36. In the considered view of this Court, the facts of this case fully satisfy the conditions mentioned by the Hon'ble Supreme Court in paragraph 43 of ***Bali Ram*** (supra). Consequently, the auction purchaser's prayer for refund cannot be declined on the ground of lack of appropriate pleadings.

37. The judgments in the case of ***Bachhaj Nahar*** (supra) and ***Anathula Sudhakar*** (supra) instruct that no amount of evidence can be looked into to grant any relief on a plea that is not put forward in the pleadings. The said principle is rooted in

fairness of the adversarial system. The same cannot help the Bank in the facts of the present case where the Bank being a public authority is itself at fault and is seeking to take advantage of its own wrong by hiding behind technicalities. Furthermore, as already discussed hereinabove, the gravely irresponsible conduct of the Bank alone entitles the auction purchaser to exit the sale transaction in the instant case.

38. In ***Allahabad University & Ors.*** (supra), the Hon'ble Supreme Court while taking note of several authorities including ***Bachhaj Nahar*** (supra) and ***Bharat Singh vs. State of Haryana***[29] held that it is well-nigh impermissible for the Writ Court to conjecture or surmise and make out a third case not pleaded by the parties based on arguments advanced in the course of hearing. The principle reiterated by the Hon'ble Supreme Court in the said judgment is salutary but the same does not come to the aid of the petitioner in the factual matrix of the present case as already discussed hereinabove, where the reprehensible conduct of the Bank itself, without anything more, would justify the auction purchaser's claim for refund of the sale consideration. Moreover, the auction purchaser has been found to be entitled to refund in terms of the dictum of the Hon'ble Supreme Court in the case of ***Bali Ram*** (supra).

39. For the same reasons as indicated in the immediately preceding paragraphs, the judgment in the case of ***Iswar Dutt*** (supra), which mandates that although the High Court has wide power in terms of Section 107 of the Code of Civil Procedure, 1908, it cannot go outside the pleadings and make out a new case, also cannot support the Bank's case.

40. In ***Afsar Sheikh & Anr.*** (supra) it was reiterated that undue influence, fraud, misrepresentation must be separately pleaded with specificity, particularity and persistence. The legal position on such score is very clear and the principle of law on this point is well settled but the same, again, would not assist the Bank in the present case since the materials on record demonstrate fatal non-disclosures in the auction sale notice which amounts to material irregularity as held by the Hon'ble Supreme Court in the case of ***Viney Kumar Sharma*** (supra).

41. In ***Sanjay Sharma*** (supra) it was asserted that sale by way of public auction cannot be set aside until there is a material irregularity or illegality committed in holding the auction or such auction was vitiated by any fraud or collusion. The said judgment thus recognizes that material irregularity or illegality are valid grounds to

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[29] **(1988) 4 SCC 534**

set aside an auction sale. Such illegality and material irregularity have been established in the present case.

42. Both ***Celir LLP.*** (supra) and ***PHR Invent Educational Society*** (supra) stress on the sanctity of the auction process and instruct that confirmed auction sale can be interfered with on limited grounds. The same does not aid the Bank in the present case since the Bank itself has been responsible for defiling the auction process in the case at hand by issuing an invalid sale notice and a discrepant sale certificate. The said judgments are aimed at protecting auctions conducted in accordance with the Rules. Such is not the case here.

43. In this context, the following observations of the Hon'ble Supreme Court in the case of ***Sterling Holiday Resorts Ltd. vs. P.M. Associates***[30], deserve notice:-

> *"**33.** We are conscious that this Court has repeatedly emphasised the sanctity of auction sales and has cautioned against lightly setting aside confirmed sales, lest public confidence in such sales be eroded. However, the principle of finality presupposes an auction conducted in accordance with law. The same line of authority recognises that a sale vitiated by material irregularity, fraud, or non-compliance with the mandatory statutory procedure does not attract that protection and may be set aside even after confirmation. Sanctity is the reward of legality, not a substitute for it. The decisions relied upon by the Purchaser concerned auctions, whose legality was not in doubt and are, therefore, of no assistance to it."*
>
> (Emphasis supplied)

44. Similarly in the case of ***E. Muthurathinasabathy v. Sri International*** the Hon'ble Supreme Court held as follows:-

> *"**40.** While the rights of a bona fide auction purchaser and the sanctity of a confirmed sale ordinarily merit protection, such protection is not absolute and must yield where the sale process itself is shown to be legally infirm or incongruous with the extant statutory framework. In the present factual milieu, where the completion of the sale was delayed beyond stipulated timelines due to judicial interventions and procedural constraints, and where such delay is not attributable to the borrowers, the mere factum of confirmation cannot preclude judicial scrutiny. The raison d'être of proceedings under the SARFAESI Act is not the mechanical completion of a sale, but the lawful realisation of the secured asset in a manner that is fair, transparent, and conducive to securing the best possible value while balancing the interests of all stakeholders involved. If the process suffers from material irregularities or fails to conform to mandatory requirements, thereby rendering the sale inchoate, the Court would be justified in intervening, particularly where the borrower has, in the interregnum, discharged the outstanding liability, so as to obviate disproportionate deprivation of property and uphold substantive justice."*
>
> (Emphasis supplied)

45. The auction purchaser will thus be entitled to refund of the entire sale consideration. The sale certificate dated February 28, 2023 shall lose all force and be of no consequence at all. The Bank shall, therefore, be entitled to put up the

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[30] **2026 SCC OnLine SC 2039**

secured asset for sale in accordance with law. However, insofar as the interest thereon is concerned, this Court is of the view that the auction purchaser's entitlement thereto is somewhat curtailed in equity, since the auction purchaser delayed seeking a refund on his own accord. The auction purchaser got clear knowledge of the litigation when the borrower's civil revisional application was served upon him. However, he filed the writ petition seeking refund only on February 20, 2025. He shall accordingly be entitled to simple interest on the sale consideration at the highest fixed deposit rate offered by the Bank from February 20, 2025 till the date of refund of the entire sale consideration to him by the Bank.

46. As regards, the writ petition filed by the Bank, this Court finds sufficient strength in the submissions of the Bank that the borrowers have no ground to stand and object to a writ petition seeking expeditious disposal of the Bank's Section 14 application. Indeed, when "*the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial steps and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets"* as held by the Hon'ble Supreme Court in the case of ***Balkrishna Rama Tarle vs. Phoenix ARC (P) Ltd***[31]., there can be no justification to allow the borrowers to object to the Bank's present writ petition for speedy disposal of its Section 14 application. However, since the borrowers have been impleaded as parties in the Bank's writ petition, this Court has heard them.

47. The objections taken by the borrowers are of little substance. The borrowers' objections that the Bank's pleadings in the writ petition are punctuated with misleading particulars and suffer from suppression (especially those indicated in serial nos.1, 4, 7, 8, 10, 11, 12 and 14) may appear to be substantial on surface but are actually of no consequence. The Bank's pleadings are defective in particulars but not in foundation. To wit, it is not in dispute that the Bank has classified the borrower's account as an NPA; it is not in dispute that the statutory notice of demand is in existence and it is not in dispute that the bank is in symbolic possession of the mortgaged property. What is in dispute is the legality of the statutory notice of demand, the quantum of loan repayable and the measures undertaken under Section 13(4) of the 2002 Act. The defect or omissions of particulars can be taken note of from the annexures and other material on record, especially when no decision on merits of the Section 14 application is to be taken by this Court. This is exactly where the instructive judgment of the Hon'ble

[31] **(2023) 1 SCC 662**

Supreme Court in the case of ***Bali Ram*** (supra) becomes the guiding light. The relevant paragraphs of the said judgment have already been extracted hereinabove.

48. As regards the borrowers' assertion that the property is under *custodia legis,* since a receiver has been appointed over the same by the Tribunal on the Bank's prayer in the OA filed by the Bank, in the considered view of this Court the same would also not stand in the way of the District Magistrate disposing of the application under Section 14 of the 2002 Act in accordance with law.

49. It is the borrowers' own case as recorded in the order dated January 10, 2023 passed by the Tribunal in the borrowers' SA that the receiver has been collecting rent from the tenants at the mortgaged property. It is again the borrowers' own case in the affidavit in opposition to the Bank's writ petition that the borrowers are in occupation of the mortgaged property along with their family and other occupants. It is thus evident from the material on record that the receiver is only in symbolic possession of the property in question.

50. It is well settled that if the receiver is only in symbolic possession of a property and any action qua the property is taken, such action would not be treated as void or in breach of *custodia legis* unless the receiver himself takes an objection thereto after getting notice of the act. It is not for the borrowers to challenge the same. In such connection the following observations of the Hon'ble Division Bench of this Court in the case of ***Bengal Peerless Housing Development Co. Ltd. vs. Gopeswar Prasad Agarwal***[32], which were made after relying on the observations of the Hon'ble Supreme Court in the cases of ***Kanhaiyalal vs. Dr. D.R. Banaji***[33] and ***Anthony C. Leo vs. Nandlal Bal Krishnan***[34] deserve notice:-

> *"**32.** This brings us to the next question as to whether the leave of the Court was required to be taken by the State Government and its authorities before proceeding under section 3(1) and section 4 of Act II of 1948. The learned Single Judge has held that the proceedings taken for requisition and acquisition of the land without obtaining leave of the Court was contemptuous, and, accordingly, quashed the same. In arriving at the aforesaid conclusion the learned Single Judge relied on the two decisions of the Hon'ble Supreme Court in Kanhaiyalal's case (supra) and in the case of Anthony C. Leo (supra) referred to on behalf of the writ petitioner. In the first of the two cases a sale of a property in possession of the Receiver was under consideration and it was held that although such a course of action was illegal, in the absence of notice to the learned Receiver the sale would only be voidable and not void ab initio. In the second case the Hon'ble Supreme Court was called upon to decide the question as to whether a Receiver appointed by Court can interfere with the rights of a third party. While considering the above question, the Hon'ble Supreme Court went on to observe that where a Receiver appointed by the Court is in actual physical possession of the property, his possession cannot be disturbed without the leave*

[32] **2002 SCC OnLine Cal 227 : (2002) 2 CHN 522**
[33] **AIR 1958 SC 725**
[34] **(1996) 11 SCC 376**

of the Court. But it was also observed that the said Rule would not be applicable if the Receiver was not holding physical possession of the property.

33. *In Kanhaiyalal's case the Hon'ble Supreme Court was of the view that since the Receiver did not take any steps inspite of having notice of the outstanding Government dues and allowed the auction sale to be held for non-payment of such dues, the auction sale could not be said to be invalid.*

34. *In our view, the same principle would also apply in the instant case since the learned Joint Receivers claim to have taken possession of the property in question prior to the issuance and service of the order under section 3(1) of Act II of 1948. Having regard to the provisions of Rule 3(d) of 1948 Rules, it must be deemed that the Receivers had notice of the said order and did not raise any objection to the intended requisition and acquisition inspite of having notice of the same.*

35. *Applying the principles of Kanhaiyalal's case, we are inclined to hold that in the absence of any objection from the side of the Joint Receivers, the requisition and subsequent acquisition, without the prior leave of the Court, was not invalid. If, on the other hand, the learned Joint Receivers were not in actual physical possession of the land, the principles explained by the Hon'ble Supreme Court in Anthony C. Leo's case become applicable."*

(Emphasis supplied)

51. The other objections as regards an earlier Section 13(2) notice having been withdrawn and the Bank having dropped an earlier action under the 2002 Act are matters which have already been dealt with by the Tribunal in its order dated January 10, 2023 and it is neither for the District Magistrate to consider the same in a proceeding under Section 14 of the 2002 Act nor for this Court in the present writ petitions.

52. In ***Prestige Lights Limited*** (supra), the Hon'ble Supreme Court held that a party must place all facts before the Court without any reservation, and that if there is suppression of materials fact or twisted facts have been placed, the Writ Court may refuse to entertain the petition. The said judgment does not help the petitioner inasmuch as there is nothing so material that has been suppressed before this Court and which disclosed would have led to a contrary fate of the Bank's writ petition. The following observations in paragraph 13 of ***S.J.S Business Enterprises (p) Limited*** (supra) are particularly relevant in such context. The same are extracted hereinbelow:-

*"**13.** As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken [R. v. General Commrs. for the purposes of the Income Tax Act for the District of Kensington, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] . Thus when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact, the suppression of which disentitled her to the relief claimed [Ibid.] . Again when in earlier proceedings before*

this Court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court [State of Haryana v. Karnal Distillery Co. Ltd., (1977) 2 SCC 431 : AIR 1977 SC 781] . Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order [Welcom Hotel v. State of A.P., (1983) 4 SCC 575 : 1983 SCC (Cri) 872 : AIR 1983 SC 1015]."

(Emphasis supplied)

53. In ***K.D. Sharma*** (supra), the Hon'ble Supreme Court emphasized that the petitioner must approach the Writ Court with clean hands. The said judgment does not help the borrowers inasmuch as when the Bank has produced all the relevant records before this Court, discrepancies in pleadings especially with regards to the particulars of amount, date etc. would not be sufficient to drive home a charge of unclean hands.

54. As regards the borrowers' assertion that the Bank has made a wrong disclosure as regards the secured asset being tenanted, while this Court agrees with Bank that the statutory affidavit required to be affirmed by a secured creditor in a proceeding under Section 14 of the 2002 Act does not require the secured creditor to mention anything about tenancy or encumbrance, yet, when a check-list is being submitted by a public body like a nationalized Bank to a public authority or an executive authority the Bank should be cautious enough to ensure that the details provided are proper and accurate. The Bank shall therefore be at liberty to file an appropriate supplementary check list and/or affidavit before the District Magistrate detailing the correct factual position.

55. The District Magistrate, Purba Burdwan is directed to dispose of the Bank's application under Section 14 of the 2002 Act expeditiously but within a period not more than a month from date, strictly in accordance with law. The authorities under Section 14 of the 2002 Act should bear in mind that applications filed under the said provisions must be attended to and disposed of with utmost expedition and that the power exercisable by them under the said provision is ministerial and not adjudicatory as held in ***Balkrishna Rama Tarle*** (supra) and reiterated in ***Mr. Binay Chaudhary & Others*** (supra).

56. ***Maria Margarida Sequeira Fernandes & Others*** (supra) and ***Mohd. Abdullah Azam Khan*** (supra) cited by the auction purchaser instruct that the Courts should strive to find out the truth in order to dispense justice in accordance with law.

57. WPA 4255 of 2025 stands disposed of with a direction on the Bank to refund of the entire sale consideration to the auction purchaser together with simple interest on such sale consideration at the highest fixed deposit rate offered by the Bank from February 20, 2025 till the date of refund of the said sale consideration to him by the Bank. The sale certificate being of no consequence, the Bank shall be free to proceed for sale of the secured asset again, in accordance with law. No costs.

58. WPA 15541 of 2025 is disposed of by directing the District Magistrate, Purba Burdwan to dispose of the Bank's application under Section 14 of the 2002 Act expeditiously but within a period not more than a month from date, strictly in accordance with law, keeping in mind the dictum of the Hon'ble Supreme Court in the case of ***Balkrishna Rama Tarle*** (supra). No costs.

59. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(OM NARAYAN RAI, J.)