



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 22<sup>ND</sup> DAY OF JANUARY, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**WRIT PETITION NO. 467 OF 2024 (GM-DRT)**

**R**

**BETWEEN:**

SRI ANIL H. LAD  
AGED ABOUT 50 YEARS,  
S/O. LATE SRI. HEEROJI LAD,  
RESIDING AT NO.12,  
1<sup>ST</sup> MAIN, 1<sup>ST</sup> CROSS,  
NTI LAYOUT, DOLLARS COLONY,  
RMV 2<sup>ND</sup> STAGE,  
BENGALURU – 560 094.

...PETITIONER

(BY SRI K.SUMAN, SR. ADVOCATE FOR  
SRI. JAYANTH V., ADVOCATE)

**AND:**

1. AUTHORISED OFFICER  
PUNJAB NATIONAL BANK  
LARGE CORPORATE BRANCH,  
CENTENARY BUILDING,  
NO. 28, M. G. ROAD,  
BENGALURU – 560 001.
2. M/S. UNIVERSAL BUILDERS  
PARTNERSHIP FIRM  
NO. 418/9. 1<sup>ST</sup> FLOOR,  
GREENLEAF LAYOUT,  
80 FEET ROAD,  
4<sup>TH</sup> BLOCK, KORAMANGALA,

Digitally signed by  
PADMAVATHI B K  
Location: HIGH  
COURT OF  
KARNATAKA



BENGALURU – 560 034,  
REPRESENTED BY ITS  
MANAGING PARTNER,  
SRI. DINESH RAMACHANDRA.

3. M/S. PROJPIN PROJECTS PVT. LTD.,  
A COMPANY REGISTERED UNDER  
THE COMPANIES ACT  
NO. 427, 80 FEET ROAD,  
6<sup>TH</sup> BLOCK, KORAMANGALA,  
BENGALURU – 560 095,  
REPRESENTED BY ITS DIRECTOR,  
SRI. DINESH RAMACHANDRA.

...RESPONDENTS

(BY SRI. VIGNESH SHETTY, ADVOCATE FOR R1;  
VIDE ORDER DATED 10.01.2024 NOTICE TO R-2 AND  
R-3 IS NOT ISSUED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO a) QUASH THE SALE CERTIFICATE DATED 16 SEPTEMBER 2015 (I.E. ANNEXURE-A) ISSUED BY R1 IN FAVOUR OF R2 REGISTERED IN THE OFFICE OF THE SUB-REGISTRAR, GANDHINAGAR AS BK I 3793/15-16; b) QUASH THE ORDER DATED 13 MAY 2015 IN SA 502/2014 PASSED BY THE HONBLE DEBT RECOVERY TRIBUNAL, BANGALORE (I.E. ANNEXURE-B).

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner is before this Court calling in question a sale certificate dated 16-09-2015 and the order of the Debts Recovery Tribunal, Bengaluru (hereinafter referred to as 'the Tribunal' for short) passed in S.A.No.502 of 2014 dated



13.05.2015. Therefore, in effect the petitioner seeks to call in question proceedings/orders of nine years vintage.

2. Shorn of unnecessary details, facts in brief, germane are as follows:

The petitioner is a guarantor to a credit facility availed by one M/s.V.S.Lad and Sons from the 1<sup>st</sup> respondent/Punjab National Bank (hereinafter referred to as 'the Bank' for short) in a sum of ₹12.67 crores on 17-07-2008. The property of the petitioner was offered as security to the loan availed by the borrower. It appears that the credit facility granted to the borrower was modified and the modified sanction letter depicts that the value of the property offered for mortgage to the Bank was assessed at ₹8/- crores. The loan becomes sticky. The Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI' for short) by issuing a notice under Section 13(2) thereto. Payments do not come about. The Bank then issues a possession notice on 21-10-2013. Even then, payments do not come about. The Bank then puts the property to auction to be held on 08-03-2014 by issuing a



notification on 04-02-2014. It appears that the auction failed on account of no bidders coming forward, which led the Bank to issue a second auction notice on 02-07-2014. The reserve price depicted in the second e-auction notice was ₹7.7 crores. The 2<sup>nd</sup> respondent is said to have participated in the bid. But, the auction appears to have fumbled again. On 22-09-2014, comes the third auction at a reserve price of ₹7/- crores. The 2<sup>nd</sup> respondent is declared to be the successful bidder. The petitioner then calls in question the auction sale before the Tribunal in S.A.No.502 of 2014. This comes to be dismissed on 13<sup>th</sup> May, 2015. The dismissal is not challenged further but the petitioner started corresponding with the Bank seeking information about the auction that has taken place. Certain electronic mails are communicated during 2016 and 2017 and again, after a gap of 6 years from 14-08-2023 to 29.08.2023. The Bank then communicates the sale certificate registered on 16<sup>th</sup> September, 2015. It is challenging the order of the Tribunal which dismissed the case of the petitioner and the sale certificate dated 16-09-2015, the petitioner is before this Court in the subject petition.



3. Heard Sri K.Suman, learned senior counsel appearing for the petitioner and Sri Vignesh Shetty, learned counsel appearing for respondent No.1 - Bank.

4. The learned senior counsel Sri K.Suman, representing the petitioner would strenuously contend that there is no delay attributable to the petitioner. The Bank never divulged as to when the sale took place and who was the successful bidder. It is only when the sale certificate is communicated to the petitioner, he comes to know that the property was sold. He claims to be in possession of the property even as on today and, therefore, the petition should be entertained without reference to any delay as right to property by the petitioner is clandestinely taken away by the Bank.

5. On the other hand, the learned counsel Sri Vignesh Shetty representing respondent No.1 - Bank would vehemently confute, contending that the petitioner at all times was aware that his property is being sold, goes before the Tribunal, challenges the sale notice dated 22-09-2014, fails in the challenge, does not take it further and after nine years, only



because he cannot knock at the doors of the Debts Recovery Appellate Tribunal as it is beyond limitation, is knocking at the doors of this Court in the subject petition. It is the case of the Bank that the petition should be dismissed with costs.

6. The learned senior counsel would join issue to contend that the Bank has played fraud. Therefore, when there is allegation of fraud, no ground of limitation can be projected. The fraud that he would seek to project is that, everything has happened without the knowledge of the petitioner. He would therefore, seek entertainment of the petition and consideration of the case, on its merit.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the only issue that falls for consideration is,

*"Whether the petition is entertainable notwithstanding the fact of gross delay and laches in approaching this Court?"*



8. The land of the petitioner which was the subject matter of mortgage with the Bank is not in dispute. The loan that was availed on 17-07-2008 as modified on 26-02-2010 becomes sticky in the year 2013. The borrower and the petitioner default in making any payment. The property is then brought to auction. The first auction is held on 08-03-2014 but no bidders come forward. The second auction was held on 02.07.2014 and the 3<sup>rd</sup> auction on 27-10-2014. The learned senior counsel projects that the auction notification was never made known to the petitioner as it is his case that no paper publication was issued and has no knowledge of the same, but alas, it is farther from truth.

9. The auction notification is dated 22-09-2014. The petitioner claims to be kept in the dark *qua* the said auction notification. The submission runs contrary to the facts. The petitioner himself files an application before the Debts Recovery Tribunal, Bangalore in S.A.No.502 of 2014, which comes to be dismissed on 13-06-2015 by the order of the Tribunal. It becomes germane to notice what is called in question as recorded by the Tribunal. It reads as follows:



*"The present SARFAESI application has been filed by guarantor (hereinafter referred to as appellant/applicant) under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the 'SARFAESI' Act) **seeking to set aside sale notice dated 22-09-2014 issued by the Bank pertaining to the property in question.**"*

*(Emphasis added)*

The petitioner calls in question a sale notice dated 22-09-2014 concerning the subject property, an auction/sale, which is third in the line. Therefore, he is fully aware of the property being put to sale, but, the averment in the petition is that, no paper publication was issued for the 3<sup>rd</sup> e-auction and the petitioner was not aware of the property being put to sale. If the submission is considered in the teeth of what is recorded by the Tribunal, it is a clear case where the petitioner is wanting to mislead the Court. He was fully aware of the sale notice so issued on 22.09.2014 and challenges it before the Tribunal. The Tribunal on answering the contentions of both the petitioner and the respondent on every ground that is now sought to be urged before this Court rejects the appeal – S.A.No.502 of 2014. The point that fell for consideration before the Tribunal is, whether the appellant establishes that the impugned sale





notice i.e., 22.09.2014 was illegal? The submissions in support of quashment of sale notice in the appeal are as follows:

*"Grounds of appeal:*

- (1) *OS 36 of 2002 is pending before the Kudlgi. Hence present sale of the property cannot be held.*
- (2) *Respondent No.2 is hoping to get more than ₹ 200 crores by virtue of the order of Hon'ble Supreme Court, hence six months time be granted to pay the entire loan amount to the Bank.*
- (3) *Iron ore which was hypothecated should have been sold, but not property.*
- (4) *Demand notice does not contain details of the documents executed by the parties, hence proceedings are illegal.*
- (5) *Classification of the loan account as NPA is illegal.*
- (6) *As per the statement of account there is no proper deduction and excess rate of interest has been imposed, hence proceedings be set aside.*
- (7) ***In the demand notice amount claimed is ₹9,37,51,394/- but in the sale notice it shows ₹10,03,97,337/- therefore statement of account cannot be relied.***
- (8) ***Valuation of the property fixed by the Bank is meager and the same is fixed only to knock out the property.***
- (9) ***Demand notice has not been served to the appellant who is the guarantor.***
- (10) ***Possession notice is not served.***
- (11) ***Prior to declaration of loan account as NPA no intimation letter is sent.***



- (12) Reserve price fixed by the Bank in respect to schedule property at ₹700 lakhs is incorrect but valuation of the property is more than ₹1250 lakhs. No officer of the Bank has visited the schedule property and there is no affixture of the possession notice. Hence, proceedings are illegal.**
- (13) Respondent Bank has not followed Rule 8(2), 8(3) and 8(4) of the Security Interest (Enforcement) Rules, 2002, hence impugned possession notice is also liable to be set aside.**
- (14) Bank has hatched a serious conspiracy to grab the schedule property.**
- (15) There is no creation of mortgage of the schedule property, hence, proceedings are illegal.
- (16) The amount sought by the Bank is incorrect and arbitrary.
- (17) Calculation of interest and quantum of amount stand disputed.

3. In view of these reasons, appellant seeks to set aside the impugned sale notice and sale proceedings.

4. In support of this SA, appellant has produced notice of intended sale and sale notice.

5. After filing this SA respondent No.1 Bank appeared through Advocate and filed objection. Appellant has not taken effective steps against respondent No.2.”

*(Emphasis added)*

It is the case of the petitioner that the property was put to sale contrary to Rule 8(2), 8(3) and 8(4) of the Security Interest (Enforcement) Rules, 2002 and on several other grounds. The



Tribunal considers every ground and rejects the securitization appeal by its order dated 13-05-2015. The petitioner does not challenge this order any further. It is after failure of the petitioner in the said proceedings, the Bank moves forward in taking the sale to its logical conclusion. The sale was confirmed in favour of the 2<sup>nd</sup> respondent/auction purchaser and sale certificate comes to be issued on 16-09-2015. The Bank issues possession notice seeking possession of the property on 29.05.2015. This again leads the petitioner before the Tribunal in S.A.No.287 of 2015 wherein, the said possession notice dated 29.05.2015 comes to be challenged. In the said S.A.No.287 of 2015 the Bank files its objections. In the statement of objections the factum of sale is brought to the notice of the petitioner along with all documents. The averments in the objections are as follows:

***"(XI) The respondent Bank submits that earlier a symbolic possession was taken of the mortgaged property and now the respondent Bank has took physical possession of the mortgaged property and possession notice dated 29-05-2015 under section 13(4) of the SARFAESI Act has been issued. The said notice has been sent to the respondent No.2 and the appellant and to the partners of respondent No.2, vide letter dated 30-05-2015. Copies of Possession Notice dated 29-05-2015, Letter***



***dated 30-05-2015 and Postal receipts and paper publications are produced herewith and collectively marked as Annexure-R6.***

***(XII) After taking the physical possession of the mortgaged property, Sale certificate dated 1.07.2015 has been issued and has been handed over to the auction purchaser, for registration with SRO, Bangalore.***

***(XIII) An amount of ₹7,20,00,000/- being the sale proceeds of the mortgaged property has been credited to the account of respondent No.2 on 16-10-2014, 28-10-2014 and 10-06-2015."***

*(Emphasis added)*

Therefore, the petitioner was again aware that the Bank has put up the property for sale and he has not called that in question before any *fora* as the said application also comes to be dismissed. After all the aforesaid proceedings only to overcome limitation, the petitioner begins a torrent of mails to the respondent/Bank seeking information about the auction, which he knew at all times. One of the mails, reads as follows:

*"Dear Sir,*

*Kind Attn: Mr. Verma.*

*PNB has sold our mortgaged immovable property being converted industrial land bearing Sy.No.80, Block Nos. 9, 10, 17, 18 & 19 situated at Shettygere Village, Jala Hobli measuring 2 acres during the year 2015-16.*



*We request you to kindly provide the sale confirmation documents as soon as possible*

*Kindly do the needful and oblige.*

*Regards,*

*Venkatesh*

*Bangalore North"*

The Bank reverts to the petitioner by enclosing a sale certificate of the property that was sold and the sale certificate being registered in favour of successful auction purchaser dated 16.09.2015. The petitioner projects this to be the knowledge of the same and calls in question. This is unacceptable, as he was already before the Tribunal in S.A.No.502 of 2014. He is fully aware that it has been dismissed on merits and the dismissal of S.A.No.502 of 2014 has happened on 13<sup>th</sup> May 2015, but he keeps quiet for close to nine years. Even the mail correspondences that the learned senior counsel seeks to project is hit by delay and laches. The last of the mails was on 31-05-2017. Again, the petitioner keeps quiet for six long years, and the next mail comes about on 11-08-2023. Therefore, at every point, the petitioner has lost his rights, only due to delay and laches. The petitioner ought to have



challenged the order dated 13-05-2015 before the Tribunal. To-day he cannot, as it is an order of nine years vintage. He, therefore, is wanting this Court to interfere on imaginary plea of fraud. Fraud is being projected on the ground that the petitioner was kept in dark. The petitioner was not kept in dark, and cannot ***feign ignorance*** of what has been happening to his property. It is stated to be a landed property, converted for industrial purpose. If proceedings are going on against the property, it is understandable as to how a person who is owning landed property could keep quiet for nine long years and then knock at the doors of this Court on the ground that he has no knowledge of what has happened to his property.

10. Therefore, the petition is unentertainable only on the ground of sheer delay and laches on the part of the petitioner. The projection of fraud in the pleading is too bleak to get over delay as the petitioner at all times was aware of what has been happening around him *qua* his property. Reference being made by the learned senior counsel, Sri K. Suman, to the judgment of the Division Bench of this Court, in the case of ***HOTEL***



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reported in ***(2015) 3 Kar.L.J.644*** is of no avail as the facts obtaining therein are completely distinguishable with the facts obtaining in the case at hand. The borrower therein had been diligent in prosecuting his case and the issue therein was deliberate undervaluing the property and selling which was agitated at the appropriate time. It is not a case where the borrower therein has lost his right due to delay and laches. The petitioner may have had equity on his side when the Tribunal passed the order but, the said equity is lost to the winds by sheer delay on the part of the petitioner. The petitioner cannot wake up from deep slumber and begin to agitate his right as and when he wants, under the umbrella of "fraud vitiates everything". Therefore, the said judgment is not applicable to the facts of the case.

11. It is settled law that '***delay defeats equity***'. Though for bringing a petition under Article 226 of the Constitution of India, delay would not be an absolute bar for maintainability of the petition, but the remedy available is extraordinary and



discretionary and therefore, would become unentertainable. It is not the case of the petitioner that after the loan becoming sticky, he has made payment to the Bank nor it is his case that after the sale having taken place and having lost the challenge before the Tribunal, he has made payment to the Bank and the Bank has accepted the same. A sale of nine years vintage is sought to be projected on grounds, which are on their face unacceptable. *It becomes apposite to refer to a short story penned by an American author – Washington Irving in the year 1819, of a Dutch – American who falls asleep and wakes up after twenty years, only to see a changed world, having missed the American revolution, on waking up from deep slumber, the story of **RIP VAN WINKLE**, the doors of this Court to such **Rip Van Winkles** is not ajar but closed.*

12. For the aforesaid reasons, finding no merit in the case projected by the petitioner, the petition stands dismissed.

**Sd/-  
JUDGE**