

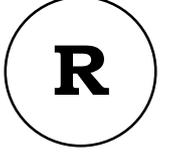
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.6203 OF 2023 (GM-DRT)



BETWEEN:

- 1 . MR. Y.B.SHAMANNA
AGED ABOUT 73 YEARS
S/O LATE BYANNA
RESIDING AT NO. 48, 1ST CROSS
HEGGANAHALLI MAIN ROAD
BEHIND GANESH TEMPLE
WARD NO. 71, BENGALURU - 560 091.

- 2 . MR. RAGHUNATH S.,
AGED ABOUT 39 YEARS
S/O SHAMANNA
RESIDING AT NO. 48, 1ST CROSS
HEGGANAHALLI MAIN ROAD
BEHIND GANESH TEMPLE
WARD NO. 71, BENGALURU - 560 091.

... PETITIONERS

(BY SRI. ADITYA SONDHI, SENIOR ADVOCATE A/W
SRI. KARAN BORAIHAH D.R., ADVOCATE)

AND:

- 1 . THE AUTHORIZED OFFICER
THE UCO BANK LTD.,
JAYANAGAR BRANCH
NO. 238/35, 9TH MAIN

3RD BLOCK, BENGALURU – 560 011.
2 . MR. MOHAMMED SULTHAN SHERIEF
S/O MR. JAVEED SHERIEF
RESIDING AT NO. 200
4TH MAIN, 4TH CROSS
RAMACHANDRAPURA
BENGALURU – 560 021.

... RESPONDENTS

(BY SRI. PARASHURAM K.R., ADVOCATE FOR R-1;
SRI. PUTTIGE R.RAMESH, SENIOR ADVOCATE FOR
SRI. HIRAN KRISHNASWAMY, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD 08.03.2023 AND THE ORDER DTD 15.03.2023 PASSED BY THE HONBLE DEBT RECOVERY TRIBUNAL (DRT-2) IN SA. NO. 114/23 IN SO FAR AS REFUSAL TO CONSIDER THE INTERIM RELIEF SOUGHT IN THE APPEAL AND IA NO.1/23 AND IA NO.2/23 FILED BY THE PETITIONERS HEREIN AT ANNEXURE-P.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.12.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question orders dated 08-03-2023 and 15-03-2023 passed by the Debts Recovery Tribunal-II, Bengaluru (hereinafter referred to as 'the Tribunal' for short) in S.A.No.114 of 2023 insofar as it refuses to consider the interim relief sought in the appeal on applications in I.A.No.1 of

2023 and I.A.No.2 of 2023 filed by the petitioner and have sought consideration of the interim relief sought before the Tribunal.

2. Facts in brief, germane are as follows:-

The 2nd petitioner is the borrower and the 1st respondent is the lender. The 2nd petitioner borrows an amount of ₹1,70,00,000/- on 14-08-2015 on mortgage of the scheduled property owned by his father, petitioner No.1. The loan was regular up to a certain point and became sticky in the year 2018. It is then the Bank sought to initiate proceedings invoking the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Act' for short) in respect of the schedule property by issuing a notice as is required under sub-sections (2) and (4) of Section 13 of the Act. When the amount was left unpaid despite all efforts, the Bank notifies the schedule property for sale in terms of its notification dated 10-10-2019. This is called in question by the 2nd petitioner before this Court in Writ Petition No.50465 of 2019 wherein the petitioner sought a direction by issuance of a writ in the nature of mandamus to consider his

representation for restructuring of the loan. Writ Petition comes to be disposed of on 19-11-2019 after noticing the reply to the representation of the petitioner. Therefore, the said sale did not take place in the light of the interim order operating in the aforesaid petition.

3. A fresh sale notice was issued on 23-08-2021 bringing the property again to sale fixing the sale on 14-09-2021. This is called in question before the Tribunal in S.A.No.1298 of 2021 in an appeal filed on 09-09-2021. The Tribunal does not grant any relief. The auction takes place on 14-09-2021 for a bid amount of ₹2,01,25,000/-. The auction purchaser immediately deposits 25% of the bid amount. The auction purchaser then pays the entire balance amount that was to be paid. The possession of the schedule property is still with the petitioners. This action of sale is challenged by the 2nd petitioner before this Court in W.P.No.19957 of 2021. This Court in terms of its order dated 11-11-2021 permits the petitioner to deposit ₹30,00,000/- and stalled further proceedings. Writ Petition No.19957 of 2021 is disposed of directing the petitioner to pay the entire loan amount with all interest with an

outer limit of 8 weeks and also pay ₹25,00,000/- as solatium to the auction purchaser, failing which the Court directed the Bank to issue sale certificate. This was an order passed on consent. Against the said order, a writ appeal comes to be filed by the 2nd petitioner in Writ Appeal No.1045 of 2022 and the petitioner would withdraw the writ appeal reserving liberty to fulfill the order passed by the learned single Judge. The order was not complied. On 27-10-2022 a sale certificate is also issued in favour of the 2nd respondent and the same is registered on 03-01-2023.

4. The Bank then seeks to take possession of the property. Petitioner No.1, father of petitioner No.2 files another writ petition in W.P.No.4965 of 2022 seeking quashment of the possession order in Crl.Mis.No.1471 of 2019. On 12-12-2022 the time to comply the interim order passed in Writ Petition No.19957 of 2021 was extended by three more weeks. Writ Petition No.4965 of 2022 comes to be dismissed on 13-02-2023 reserving liberty to the petitioner to challenge the sale certificate that was issued to the auction purchaser before the appropriate forum. It is then, the petitioners filed S.A.No.114 of 2023. The Tribunal on 8-03-2023

directs serving of copy of the appeal on the auction purchaser and the Bank. They do not do it. Again on 15-03-2023 the same direction is issued by the Tribunal. They do not comply this time also. Instead of complying with the directions of the Tribunal, they approached this Court in the subject petition alleging that the Tribunal has not considered their plea for interim relief and, therefore, the subject petition is filed seeking the very relief that is sought before the Tribunal. On the submission of the learned counsel for the petitioner, this Court directed the petitioners to deposit ₹25,00,000/- within 24 hours and subject to such direction stalled further proceedings. The interim order later was continued on the submission of the learned counsel for the petitioners that the conditional interim order had been complied with and voluntarily submits that ₹30,00,000/- would be paid within two weeks. The payment is said to have been made. In all, the petitioners, as on date, are said to have paid ₹1,05,00,000/- from 2019 to 2023.

5. Heard Sri Aditya Sondhi, learned senior counsel appearing for the petitioners, Sri. Parashuram.K.R., learned counsel appearing

for respondent No.1/Bank and Sri Puttige R.Ramesh, learned senior counsel appearing for respondent No.2/auction purchaser.

6. The learned senior counsel Sri Aditya Sondhi would vehemently contend that the Bank at every step has not given adequate opportunity to the petitioners to make the payment. Merely because sale certificate is issued or the confirmation of sale is made, this Court would not dismiss the petition on account of its maintainability on the score of statutory violation at every step. He would submit that the Tribunal did not grant any interim order. Therefore, it is his case that interim order should be granted in this writ petition as sought before the Tribunal and the Tribunal should be permitted to proceed further.

7. Per-contra, the learned senior counsel Sri Puttige R. Ramesh representing the 2nd respondent/auction purchaser would take this Court through the entire documents appended to the petition as well as to the statement of objections to contend that the petition itself is not maintainable once the sale notice is issued and this Court has repeatedly shown undue sympathy to the

petitioners, who at all times did not comply with the order. He would seek to place reliance upon the judgment of the Apex Court in the case of **CELIR LLP v. BAFNA MOTORS (MUMBAI) PRIVATE LIMITED**¹. Taking the Court through the order impugned, he would seek to contend that no right of the petitioners is taken away by the order as the order is only to serve a copy of the appeal upon the Bank and the auction purchaser. Having not served copy, suppressing every fact, the petitioners are before this Court time and again seeking interim relief.

8. The learned counsel representing the 1st respondent/Bank would submit that auction was conducted on 14-09-2021, sale certificate is issued on 27-10-2022, it is registered on 03-01-2023 and the entire proceedings are complete. The petitioners have not yet delivered possession of the property on one pretext or the other right from the date of issuance of sale certificate.

¹ 2023 SCC OnLine SC 1209

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. The afore-narrated facts are not in dispute. The entire case revolves around juggleries of dates. Therefore, the dates, though narrated hereinabove, would require reiteration. The undisputed fact is that loan was availed by the 2nd petitioner, son of the 1st petitioner pursuant to a mortgage of the schedule property in a sum of ₹1,70,00,000/-. The loan becomes sticky as the petitioners failed to pay equal monthly installments diligently month on month. This leads the Bank to initiate proceedings under the Act. A notice is issued under sub-section (2) of Section 13 of the Act on 03-09-2018. When the petitioners did not come forward to clear the loan, action under sub-section (4) of Section 13 was taken by the Bank. The property was then put to sale by issuance of sale notification on 05-02-2019 to conduct auction on 07-03-2019. No bidder came forward and, therefore, the sale did not take place. The second sale notice was issued on 10-10-2019 fixing the date of sale on 31-10-2019. The 2nd petitioner approaches this Court in

W.P.No.50465 of 2019. Initially an interim order was granted and later the petition comes to be disposed of by the following order:

"2. Learned counsel for respondent Bank Sri. K.R. Parashuram has filed a memo alongwith reply to the representation of the petitioner dated 30.10.2019 and in the reply dated 14.11.2019, it is specifically stated as under:-

"You are being informed that the Bank/Authorised Officer have not been vested and conferred with such Authority to held up or defer the legal proceedings under the SARFAESI Act, 2002 without any valid reasons and causes. Since you have been failed to deposit the Overdue amounts in both the Loan accounts in time in spite of your repeated commitments earlier and your loan accounts have been running irregular for long time, it has been very difficult on our part to be convinced regarding your proposed future course of repayment of the Bank's dues in time. Therefore you have been advised once again to deposit a minimum of Rs.40.00 Lac, Rs.20.00 lac in each of the loan account within 7-10 days from the date of this letter for a valuable consideration of your proposal on our part. We will revert to your proposal only after receiving an amount of Rs.40.00 lac in both the Loan accounts. Otherwise we shall not have any other options but to initiate further suitable legal course of action as deemed fit to recover the Bank's dues."

In view of the said reply stated supra, learned counsel for the petitioner submits that the petitioner has paid the said amounts. In view of the subsequent developments, the prayer sought for in this writ petition would not survive for consideration. Accordingly, the petition is disposed of."

The Bank would wait for two more years so that the petitioners would make some payment. When the petitioners failed to make

payment, the bank again issues a fresh sale notice on 23-08-2021 fixing the date of sale on 14-09-2021. The sale on 14-09-2021 takes place. The 2nd respondent is the auction purchaser. The auction bid amount was ₹2,01,25,000/-. 25% of the bid amount is deposited by the auction purchaser immediately which would amount to ₹50,31,250/- and on subsequent dates concludes the entire payment up to 23-11-2021. The dates of payments are as follows:

"14-09-2021	10% of the EMD paid to online e-auction bidding and subsequently credited to the loan account on 16-09-2021.	₹18,08,750/-
15-09-2021	15% of the bid amount paid	₹30,18,750/-
16-09-2021	Amount paid	₹2,01,250/- ₹2,500/-
30-09-2021	Part payment of bid amount paid	₹20,00,000/-
08-10-2021	Part payment of bid amount paid	₹6,97,500/-
12-10-2021	Part payment of bid amount paid	₹18,00,000/-
25-10-2021	Part payment of bid amount paid	₹10,00,000/-
09-11-2021	Part payment of bid amount paid	₹10,00,000/-
12-11-2021	Part payment of bid amount paid	₹11,00,000/-
23-11-2021	Balance payment of bid amount paid	₹72,95,000/-
23-11-2021	1% TDS amount paid	₹2,01,250/-
	Total	₹2,01,25,000/-"

Therefore, as on 23-11-2021 the entire amount of ₹2,01,25,000/- was paid by the auction purchaser. The 2nd petitioner approaches this Court in Writ Petition No.19957 of 2021. A conditional order was passed on 11-11-2021 in the said writ petition directing the 2nd petitioner to pay an amount of ₹30,00,000/- within two days. The 2nd petitioner did not comply with the interim order and it was then projected illness of the father of the 2nd petitioner to be the reason. Therefore, this Court disposed of the writ petition by the following order:

"Petitioner-borrower has presented this writ petition essentially assailing the coercive action of recovery by Issuance of notice dated 23.08.2021 Issued under SARFAESI Act, 2002. This Court vide interim order dated 11.11.2021 had granted reprieve to the petitioner as under:

*"Office Objections are over ruled.
Issue emergent notice.
Interim order as prayed for till next date of hearing subject to petitioner depositing with the respondent Bank a sum of Rs.30,00,000/- (Rupees Thirty Lakh) only within two days, falling which, Interim order withers away on its own."*

2. After service of notice, the first respondent has entered appearance through its Panel Counsel; the second respondent-auction buyer is represented by his own counsel. Both the advocates oppose the writ petition contending that petitioner is a chronic defaultes and despite granting several opportunities, he has not repaid the loan and eventually the security property having been auctioned the second respondent being successful bidder has remitted a sum of

Rs.2,01,25,000/- In all. So contending, they seek dismissal of the writ petition.

3. On the previous, occasion, the matter was heard for some time and on the suggestion of this Court, the petitioner has come out with a proposal as under:

1) The petitioner shall pay back the entire loan amount with all the interest accruing due to the Bank within an outer limit of eight weeks.

2) The petitioner shall pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakh) only to the second respondent auction buyer as solatium.

3) The amount if credited as above, the first respondent shall refund Rs.2,01,25,000/- (Rupees Two Crore One Lakh and Twenty Five Hundred) only to the second respondent.

The respondents having opposed the petition for some time, now broadly agree with the above proposal of the petitioner subject to the rider that the auction shall be treated as having been confirmed should the petitioner fail to abide by the undertaking as above.

In the above circumstances, this writ petition is disposed off with following directions:

I) The accomplished auction sale shall be kept in abeyance for a period of eight weeks to enable the petitioner to make the payment as stated above.

ii) The petitioner shall pay to the second respondent a sum of Rs.25,00,00/- within an outer limit of eight weeks by way of solatium.

iii) If the petitioner fails to pay in terms of the proposal above, the auction shall be treated as having been confirmed and the first respondent-Bank shall issue the Sale Certificate to the second respondent Immediately.

iv) If above proposal does not materialize, the petitioner shall peaceably deliver the possession of subject property to the second respondent, forthwith; If the petitioner falls to deliver possession; the jurisdictional police shall assist the respondent. No.1 to take possession and hand, the property to the second respondent."

The order was on consent of both the parties. The payment is not made but a writ appeal is preferred in Writ Appeal No.1045 of 2022 only to drag the proceedings. But, the writ appeal comes to be withdrawn on 21-10-2022. The Bank in obedience to the pendency of the writ appeal had not issued sale certificate notwithstanding non-compliance of the order dated 26-08-2022 passed in Writ Petition No.19957 of 2021. The Bank later on 27-10-2022 issued the sale certificate and registered it on 03-01-2023. After issuance of the sale certificate an application comes to be filed by the petitioners seeking extension of time in Writ Petition No.19957 of 2021. This Court showing indulgence extended the time in terms of its order dated 12-12-2022. The order dated 12-12-2022 reads as follows:

"This court while disposing of the Writ Petition has granted relief as reflected in the operative portion of the judgment in question wherein the grant was subject to condition of making payments.

Learned Sr. Advocate appearing for the petitioner presses the application seeking extension of the period for making the payment contending that there were some financial difficulties which his client was put to and therefore, he could not make the payment as directed in the judgment. Learned Panel Counsel appearing for the Bank and the learned private counsel appearing for the auction buyer, oppose the application contending that the entire judgment is constructed on the principle of equity and therefore, the one who seeks equity should do it to the other side; not even a rupee having been paid under the judgment, there is absolutely no reason for granting extension again on the pleaded ground of equity.

Having heard the learned counsel for the parties and having perused the Petition Papers, this court is inclined to grant a very short extension in the fitness of things, of course subject to conditional levy enuring to the benefit of private respondent herein. The period prescribed under the judgment in question is extended by three weeks subject to the condition that the petitioner should pay another sum of Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand) only, to the 2nd Respondent in addition to the payable Rs.25,00,000/- (Rupees Twenty Five Lakh) only.

Ordered accordingly, all other terms & conditions of the order remaining intact."

This was again left un-complied. Therefore, the sale certificate was registered by the Bank on 03-01-2023. The 1st petitioner then again files writ petition in Writ Petition No.4965 of 2022. The writ petition is dismissed on account of non-compliance of the order but permits the petitioner to avail of such remedy as is available in law and in the light of the interim order operating continued it for 15 days. The order reads as follows:

"The petitioner is before this Court calling in question an order, dated 19.02.2022 passed in Crl. Mis. No. 1471/2019 and has consequently sought to consider the representation Submitted by him on 22.10.2020.

2. The very petitioner was before this Court calling in question a sale notice, issued by the respondent-Bank seeking to sell the property of the petitioner. The said writ petition came to be disposed in terms of an order dated 26.08.2022, The order reads as follows:

"2. After service of notice, the first respondent has entered appearance through its Panel Counsel; the second respondent-auction buyer is represented by his own counsel. Both the advocates oppose the writ petition contending that petitioner is a chronic defaulter and despite granting several opportunities, he has not repaid the loan and eventually the security property having been auctioned the second respondent being successful bidder has remitted a sum of Rs.2,01,25,000/- in all. So contending, they seek dismissal of the writ petition.

3. On the previous occasion, the matter was heard for some time and on the suggestion of this Court the petitioner has come out with a proposal as under:

1) The petitioner shall pay back the entire loan amount with all the interest accruing due to the Bank within an outer limit of eight weeks.

2) The petitioner shall pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakh) only to the second respondent auction buyer as solatium.

3) The amount if credited as above, the first respondent shall refund Rs.2,01,25,000/- (Rupees Two Crore One Lakh and Twenty Five Hundred) only to the second respondent.

The respondents having opposed the petition for some time, now broadly agree with the above proposal of the petitioner subject to the rider that the auction shall be

treated as having been confirmed should the petitioner fall to abide by the undertaking as above.

In the above circumstances, this writ petition is disposed off with following directions:

i) The accomplished auction sale shall be kept in abeyance for a period of eight weeks to enable the petitioner to make the payment as stated above.

ii) The petitioner shall pay to the second respondent a sum of Rs.25,00,00/- within an outer limit of eight weeks by way of solatium.

iii) If the petitioner fails to pay in terms of the proposal above, the auction shall be treated as having been confirmed and the first respondent-Bank shall issue the Sale Certificate to the second respondent Immediately.

iv) If above proposal does not materialize, the petitioner shall peaceably deliver the possession of subject property to the second respondent, forthwith; If the petitioner fails to deliver possession, the jurisdictional police shall assist the respondent No.1 to take possession and hand the property to the second respondent.

3. This Court recorded that the auction sale of the property has taken place and the auction purchaser has deposited the amount, notwithstanding that a last opportunity was granted by directing accomplished auction sale to be kept in abeyance for a period of 8 weeks, on the condition that the petitioner had to deposit Rs.25.00 lakhs within an outer limit of 8 weeks by way of solatium to the auction purchaser. If he failed, the sale was directed to be confirmed by Issuance of a sale certificate. The petitioner filed an application seeking extension of time before the very same Court. The Court on 12.12.2022 rejected the application observing that the petitioner has not deposited or paid even a rupee pursuant to the order dated 26.08.2022.

4. Later the auction purchaser was issued with a sale certificate and the sale is also registered in favour of the auction purchaser. After all these proceedings, the petitioner

again files the subject petition on 25.02.2022 suppressing the earlier petition filed in the year 2021, in which the aforesaid orders were passed, it is filed on the ground that the petitioner would pay certain amount. Interim order was granted on the submission of the petitioner that pursuant to the Interim order in the aforesaid writ petition, two demand drafts were paid amounting to Rs.10.00 and Rs.20.00 lakhs respectively which is also disputed.

5. In the light of the non-compliance of the order passed by this Court, the petition would not merit any consideration at the hands of this Court. Since the sale certificate is already issued, it is open for the petitioner to call the said sale certificate in question in a manner known to law.

6. In the light of the Interim order operating, it shall continue to operate for another 15 days.

7. For the aforesaid reasons and observations, reserving such liberty, the petition stands disposed."

The petitioners then approach the Tribunal in S.A.No.114 of 2023.

The Tribunal on 08-03-2023 passes the following order:

"Counsels for the appellant, respondent Bank and respondent No.2 are present.

Counsel K.R. Parshuram undertakes to file vakalath for the respondent Bank.

Counsel for the respondent Bank submits that the appellant has not served copy of the SA to the counsel for the respondent Bank.

Heard the submissions of all the three counsels.

Counsel for the appellant is directed to serve copy of the SA to the Counsels for the respondent Bank and respondent No.2 forthwith for filing their objections.

For objections, list the matter on 15-03-2023."

All that the Tribunal directed was to serve copy of the appeal on the learned counsel for the respondent-Bank and the auction purchaser to enable them to file their objections and ordered listing of the matter on 15-03-2023. On 15-03-2023 noticing the fact that the petitioners had not complied with the earlier order passed the following order:

"Counsels for the appellant, respondent Bank and respondent No.2 are present

Counsel for the respondent Bank seeks a direction to the appellant to serve copy of the SA to the respondent Bank for filing the objections.

Heard the submissions of all the three counsels.

Counsel for the appellant is directed to serve copy of the SA to the counsel for the respondent Bank forthwith enabling them to file its objections.

For objections, list the matter on 27-03-2023."

The matter was posted for objections again with a direction to serve a copy of the appeal on the respondents. It is un-understandable as to what right of the petitioners is taken away by the afore-quoted orders. They were orders directing service of copy of the appeal upon the respondents to enable them to file their objections.

Projecting that the Bank is likely to take possession of the property, the subject writ petition is preferred.

11. In the subject writ petition slew of orders are passed. On 17-03-2023, 04-05-2023, 07-06-2023 and 03-10-2023 the following orders are passed.

17-03-2023:

"Heard Sri. Aditya Sondhi, learned Senior counsel appearing for the petitioners.

The learned Senior counsel to demonstrate the bonafides of the petitioners, is ready and willing to deposit Rs.25,00,000/-.

The submission is placed on record.

The petitioners are directed to deposit the said demand draft before the Bank in the next 24 hours and file an acknowledgment before this Court.

Subject to the aforesaid, there shall be interim order of stay, as prayed for till the next date of hearing."

.... ..

04-05-2023:

"On 17.03.2023, an interim order was granted subject to the petitioners depositing a sum of Rs.25 lakhs within 24 hours.

Learned counsel for the petitioners submits that the said deposit has been made and the petitioners also state that a further sum of Rs.30 lakhs will be deposited in the Bank by way of demand draft.

Petitioners are permitted to deposit a sum of Rs.30 lakhs to the Bank within a period of two weeks from today.

Call after two weeks. Till then, interim order granted on 17.03.2023 to continue."

....

07-06-2023:

"ORDER ON I.A.Nos.1 & 2/2023

Applications in I.A.Nos.1 & 2/2023 are allowed and dispensation as sought for, is granted.

ORDER

Call this matter on 22.6.2023.

Interim order to continue till 22.6.2023.

This continuation of the interim order is made on the repeated assertion of the counsel for the Petitioners that in all, he has paid a sum of Rs.85,00,000/- (Rupees Eighty Five Lakh) only."

....

03-10-2023:

Learned Senior Counsel Sri Aditya Sondhi, appearing for the petitioners would submit that the petitioners have already complied the directions issued by this Court by depositing a sum of Rs.30,00,000/- (Rupees thirty lakhs only) with the respondent-Bank. Nevertheless, learned Senior Counsel would submit that the petitioners are ready to deposit another sum of Rs.30,00,000/- (Rupees thirty lakhs only) and seeks leave of this Court to deposit the sum with the respondent-Bank.

Leave is granted. The petitioners are permitted to deposit another sum of Rs.30,00,000/- with the respondent-Bank. Needless to observe that the deposit permitted by this Court will not in any way affect the rights of respondent No.2.

Learned Senior Counsel Sri Puttige Ramesh appearing for the respondent-Bank would submit that the case of the petitioners stands covered by a recent decision of the Hon'ble Supreme Court in the case of Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. And Others reported in 2023 SCC OnLine SC 1209.

Learned Senior Counsel Sri Aditya Sondhi, appearing for the petitioners seeks for a short accommodation to go through the said judgment and make his submissions.

Re-list this matter on 09.10.2023.

Interim order granted earlier stands extended till the next date of hearing."

The petitioners claim to have made substantial payment to the Bank. This Court, on 03-10-2023 observed that the deposit permitted by this Court to the Bank will not take away or affect the rights of the auction purchaser, the 2nd respondent. In all the jugglery of dates hereinabove, one fact that would unmistakably emerge is abuse of the process of law by the petitioners. On rotation, the son and the father are filing petitions. This is the 4th petition filed by the petitioners. Every time indulgence is shown by this Court directing payment to be made only to see that the

property of the petitioners is not lost, but every time the interim orders are violated.

12. After availing of the loan on 14-08-2015 the Act comes to be amended. The amendment is on 01-09-2016. After the amendment, the moment a sale notification is published, the right of the borrower to redeem the mortgage is lost. Interpretation of sub-section (8) of Section 13 of the Act need not detain this Court for long or delve deep into the matter. The Apex Court in the case of **BAFNA MOTORS PVT. LTD.** (*supra*) has held as follows:

"REDEMPTION OF MORTGAGE UNDER THE SARFAESI ACT

45. Sub-section (8) of Section 13 of the SARFAESI Act, as originally enacted, stated as under:—

"13. Enforcement of security interest.-

(8) 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 step shall be taken by him for transfer or sale of that secured asset."

46. In Mathew Varghese (*supra*), this Court had the occasion to consider the right of redemption of mortgage

under the SARFAESI Act vis-à-vis the Act, 1882, wherein, this Court made the following relevant observations, being reproduced below:—

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

registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property.

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

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41. ... even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question

of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of."

(Emphasis supplied)

47. In *Dwarika Prasad v. State of Uttar Pradesh*, (2018) 5 SCC 491, this Court speaking through one of us Dr. D.Y. Chandrachud, CJI., considered the unamended Section 13(8) of the SARFAESI Act, keeping in mind the decision in the case of *Mathew Varghese* (supra). The Court took the view that the right of redemption of mortgage is not lost until there is a transfer by a registered instrument. The following observations as contained in para 8 of the judgment are reproduced below:

"8. ... These provisions have fallen for interpretation before this Court in *Mathew Varghese*. Dwelling on Section 60 of the Transfer of the Property Act, 1882 this Court held that the right of redemption is available to a mortgagor unless it stands extinguished by an act of parties. The right of the mortgagor to redeem the property survives until there has been a transfer of the mortgagor's interest by a registered instrument of sale. ..."

48. In, yet one another decision of this Court in *Allokam Peddabbayya v. Allahabad Bank*, (2017) 8 SCC 272, a similar view was taken. The relevant observations made therein are as under:

"23. The aforesaid discussion leads to the conclusion that the plaintiffs lost the right to sue for redemption of the mortgaged property by virtue of the

proviso to Section 60 of the Act, no sooner that the mortgaged property was put to auction-sale in a suit for foreclosure and sale certificate was issued in favour of Defendant

2. There remained no property mortgaged to be redeemed. The right to redemption could not be claimed in the abstract."

49. *Thus, prior to the amendment of Section 13(8) of the SARFAESI Act, this Court consistently held, that the borrower shall continue to have a right of redemption of mortgage until the execution of the conveyance of the secured asset by way of a registered instrument. Furthermore, this Court in Mathew Varghese (supra) found no inconsistency between the unamended Section 13(8) of SARFAESI Act and the general right of redemption under Section 60 of the Act, 1882.*

50. *However, later on 1st September, 2016, the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Act, 2016 ("2016 Amendment") was enacted which inter-alia amended sub-section 8 of Section 13 of the SARFAESI Act, and substituted the words "any time before the date fixed for sale or transfer" of the original provision with "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". The amended provision of Section 13 sub-section (8) of the SARFAESI Act, now reads as under:—*

"13. Enforcement of security interest. -

(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 secured 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 subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."*

51. The true purport and scope of the amended Section 13(8) of the SARFAESI Act was looked into by the Andhra Pradesh High Court in Sri. Sai Annadhatha Polymers v. Canara Bank rep. by its Branch Manager, Mandanapalle, 2018 SCC OnLine Hyd 178. The court took the view that in accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. The court went on to say that the amended provisions of Section 13(8) of the SARFAESI Act brought in a radical change inasmuch as the right of the borrower to redeem the secured asset would stand extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. It is pertinent to note that the High Court has referred to and relied upon the decision of this Court in Mathew Varghese (supra). The relevant observations made by the High Court are reproduced hereinbelow:

"6. In terms of the amended provisions of Section 13(8) of the SARFAESI Act, the right of redemption given to the borrower would expire upon publication of such a notice. However, Rule 8(6) of the Rules of 2002, as interpreted by the Supreme Court in Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610], stipulates that the thirty day notice period mentioned therein is for the purpose of enabling the borrower to redeem his property. Significantly, this provision remains unaltered. Therefore, this statutory

notice period of thirty days is sacrosanct and deviation therefrom would curtail the statutory right of redemption available to the borrower. However, in terms of the amended Section 13(8) of the SARFAESI Act, once the notice under Rule 9 of the Rules of 2002 is published, the said right stands extinguished.

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20. *In the light of the aforestated changes in the statutory scheme, certain crucial aspects may be noted. As per the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. Case law consistently held to the effect that a sale or transfer is not completed until all the formalities are completed and there is an effective transfer of the asset sold. In consequence, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. The recent judgment of the Supreme Court in ITC LIMITED v. BLUE COAST HOTELS LIMITED also affirmed this legal position.*

21. 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. ...

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23. *Therefore, even after the amendment of Section 13(8) of the SARFAESI Act, a secured creditor*

is bound to afford to the borrower a clear thirty day notice period under Rule 8(6) to enable him to exercise his right of redemption. In consequence, a notice under Rule 9(1) of the Rules of 2002 cannot be published prior to expiry of this thirty day period in the new scenario, post-amendment of Section 13(8) of the SARFAESI Act, as such right of redemption would stand terminated immediately upon publication of the sale notice under Rule 9(1) of the Rules of 2002. The judgment of the Supreme Court in CANARA BANK v. M. AMARENDER REDDY, which was rendered in the context of the unamended provisions, would therefore have no application to the post-amendment scenario in the light of the change brought about in Section 13(8). To sum up, the post-amendment scenario inevitably requires a clear thirty day notice period being maintained between issuance of the sale notice under Rule 8(6) of the Rules of 2002 and the publication of the sale notice under Rule 9(1) thereof, as the right of redemption available to the borrower in terms of Rule 8(6) of the Rules of 2002, as pointed out in MATHEW VARGHESE, stands extinguished upon publication of the sale notice under Rule 9(1)."

(Emphasis supplied)

52. The amended Section 13(8) of the SARFAESI Act was also looked into by the High Court of Telangana in the case of *K.V.V. Prasad Rao Gupta v. State Bank of India*, 2021 SCC OnLine TS 328 and relying on the decision of the Andhra Pradesh High Court in the case of *Sri. Sai Annadhatha Polymers (supra)*, the court observed in para 21 as under:

"21. Thus from the above judgments it is clear that under Rule 8(6) of the Rules of 2002, the petitioners are entitled for a thirty day notice period enabling them to clear the loan and to redeem the property as envisaged under Section 13(8) of the SARFAESI Act, and that if they fail to repay the amount within the stipulated period, after expiry of said period of 30 days, the secured creditor is entitled to issue publication of sale notice under Rule 9(1), and

that on publication of such notice, the right of the borrower to redeem the property stands extinguished.

(Emphasis supplied)

53. The Telangana High Court in Concern Readymix (supra), examined the amended Section 13(8) of the SARFAESI Act, & held that the same only restricts the right of the secured creditor and not the borrowers right of redemption, which will continue to exist until the execution of the conveyance. The following relevant observations are reproduced below:—

"10. The first distinction between the unamended and amended sub-section (8) of Section 13 is that before amendment, the facility of repayment of the entire dues along with the costs, charges and expenses, was available to the debtor at any time before the date fixed for the sale or transfer. But after the amendment, the facility is available upto the time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty. The second distinction is that the unamended sub-section (8) did not provide for the contingency when the dues are tendered by the borrower before the date of completion of the sale or lease but after the issue of notice. But the amended sub-section (8) takes care of the contingency where steps have already been taken by the secured creditor for the transfer of the secured asset, before the payment was made. Except these two distinctions, there is no other distinction.

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13. What is important to note both from the amended and unamended provisions of Section 13(8) and Rule 9(1) is that both of them do not speak in express terms, about the equity of redemption available to the mortgagor. The amended Section 13(8) merely prohibits the

secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610], have come to the conclusion as though Section 13(8) speaks about the right of redemption. The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in Mathew Varghese that the Supreme Court took note of Section 60 of the Transfer of Property Act and the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice. Therefore, we should first understand that the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.

14. Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002. Rule 3(5) inserted by way of amendment with effect from 04-11-2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time

available to the borrower to redeem the secured assets. Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned."

(Emphasis supplied)

54. We are conscious of the fact, that the aforesaid decision of Concern Readymix (*supra*) was carried upto and challenged before this Court by way of Special Leave Petition (C) No. 20500 of 2019, which came to be dismissed by this Court in limine, being as follows:—

"ORDER

Delay condoned.

The Special Leave Petition is dismissed"

55. In *Shakeena* (*supra*), while primarily dealing with the unamended provision of Section 13(8) of the SARFAESI Act, this Court also made certain pertinent observations in respect of the amended provision of Section 13(8), which are being reproduced hereunder:—

"15. Be it noted that on 1-9-2016 amendment to Section 13(8) of the 2002 Act came into force as a result of which the dues of the secured creditor together with all costs, charges and expenses incurred by him are required to be 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.

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30. A fortiori, it must follow that the appellants have failed to exercise their right of redemption in the manner known to law, much less until the registration of the sale certificate on 18-9-2007. In that view of the matter no relief can be granted to the appellants, assuming that the

appellants are right in contending that as per the applicable provision at the relevant time [unamended Section 13(8) of the 2002 Act], they could have exercised their right of redemption until the registration of the sale certificate — which, indisputably, has already happened on 18-9-2007. Therefore, it is not possible to countenance the plea of the appellants to reopen the entire auction process. This is more so because, the narrative of the appellants that they had made a valid tender towards the subject loan accounts before registration of the sale certificate, has been found to be tenuous. Thus understood, their right of redemption in any case stood obliterated on 18-9-2007. Further, the amended Section 13(8) of the 2002 Act which has come into force w.e.f. 1-9-2016, will now stare at the face of the appellants. As per the amended provision, stringent condition has been stipulated that the tender of dues to the secured creditor together with all costs, charges and expenses incurred by him shall be at any time before the "date of publication of notice" for public auction or inviting quotations or tender from public or private deed for transfer by way of lease assessment or sale of the secured assets. ..."

(Emphasis supplied)

56. The Punjab & Haryana High Court while rendering its decision in Pal Alloys (supra), looked into the Report of the Joint Committee on the 2016 Amendment and the decision in Concern Readymix (supra), & concluded that under the amended Section 13(8) of the SARFAESI Act, the right of redemption of mortgage would continue till the execution of conveyance or issuance of sale certificate. It further observed that the decision in Shakeena (supra) was not applicable inasmuch as it did not deal with the right of redemption under the Act, 1882. The observations made in it are given below:

"78. It is interesting to note that para 24 of the Report of the Joint Committee referred to above deals with the proposed amendment to Section 13(8) of

the SARFAESI Act and gives a heading "Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions-Amendment to Section 13(8) of the SARFAESI Act."

79. Thus the amendment was proposed w.r.t. when to stop the secured creditor from selling/transferring the secured asset. The words 'when to stop the exercise of right of redemption by the borrower/mortgagor' were not used.

80. In the said Report, at pg.12, Clause 11(ii) of the Bill which proposed to amend Section 13(8) of the SARFAESI Act is noted. After extracting the existing Section 13(8) of the Act which stands as under:—

"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 step shall be taken by him for transfer or sale of that secured asset."

81. The proposed modification to Section 13(8) is set out also at pg.12 as under:—

"(8) Where the amount of 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 lease, assignment or sale of the secured assets,-

- (i) the secured assets shall not be leased, assigned or sold by the secured creditor; and*
- (ii) in case, any step has been taken by the secured creditor for 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 lease or assignment or sale of such secured assets."*

82. *Strangely, on the next page at page 13, the following is stated:—*

"The Committee after examining the proposed amendment and the existing Rules in this regard decide to modify proposed Clause 11(ii) [section 13(8) of the principal Act] as under:

"(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 secured 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."*

83. *Nothing is mentioned as to why the proposal indicated in Page-12 was changed on page-13 differently.*

84. *Admittedly, what is stated in page-13 was passed in the Lok Sabha and the Rajya Sabha and then it became the Act 44 of 2016 and came into effect on 01.09.2016.*

85. *But the important thing to note is that this Report does not indicate that the Committee had even considered Section 60 of the Transfer of Property Act, 1882, which provides the general law of right to*

redeem a mortgaged asset of a mortgager vis-a-vis the provisions of the SARFAESI Act.

86. It no where says that there was an intention to bring about a change with regard to the time before which a mortgagor can exercise his right to redeem the mortgage.

87. Even the heading of Para 24 of the Report which says "Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions - Amendment to Section 13(8) of the SARFAESI Act" seems to suggest that the focus of the Committee was on the date when the secured creditor's right to lease or assignment or sale would stop.

88. In our considered opinion, it is clear that the legislature did not have any intention to deal with the right of mortgagor to redeem the mortgage when they amended Sec. 13(8) or to modify it in any manner; and amendment cannot be said to have intended to modify the existing law which continued even when the un-amended Section 13(8) of the SARFAESI Act was in force. The amended Sec. 13(8) was intended to only deal with the date when the secured creditor's right to transfer the secured asset should stop and nothing more.

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93. The view taken by the High Court for the State of Telangana and Andhra Pradesh in M/s. Concern Ready Mix [(2019) 3 ALD 384 : Law Finder Doc Id # 1380151] commends itself to us and we accept and approve the same.

94. We shall now consider the judgment of Supreme Court in Shakeena [(2019) 5 RCR (Civil) 689 (SC)]cited by the counsel for 1st respondent. In that case, sale certificate had been issued in favour of the auction purchasers on 06.01.2006 and a Writ Petition was filed on 19.01.2006 challenging the auction and it was registered on 18.9.2007. The Court held that the appellants had failed to make a valid tender of

amounts due or exercise their right of redemption in a manner known to law until the registration of the sale certificate on 18.09.2007 and that the right of redemption stood obliterated on 18.09.2007. The statement therein in para 29 that as per the amended provision stringent conditions have been stipulated that the tender of dues to the secured creditor shall be at any time before the date of publication of notice for public auction does not, in our opinion, lead to an expression of opinion by the Supreme Court that the law of redemption as per Section 60 of the Transfer of Property Act would not apply in view of amendment to Section 13(8). We do not find any discussion in the decision in Shakeena [(2019) 5 RCR (Civil) 689 (SC)] about the decisions of the apex court dealing with the right of redemption under Sec. 60 of the Transfer of Property Act, 1872. So reliance on the said decision does not help the 1st respondent.

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96. Keeping in mind (i) the Report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 discussed above, (ii) the law laid down by the Supreme Court in Mathew Varghese [(2014) 5 SCC 610] and (iii) the decision in Concern Readymix [(2019) 3 ALD 384 : Law Finder Doc Id # 1380151] of the Telangana and Andhra Pradesh High Court, with which we respectfully agree, we hold that the amended Section 13(8) of the SARFAESI Act merely prohibits a secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale; a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor; the payment of the amount mentioned in Section 13(8) of the SARFAESI Act ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Act; that redemption comes later; extinction of the right of redemption comes much later than the sale notice; and the right of redemption is not lost immediately upon the highest bid made by a

purchaser in an auction being accepted. We also hold that such a right would continue till the execution of a conveyance i.e. issuance of sale certificate in favour of the mortgagee. ...

97. It would, therefore, certainly be available to the petitioners herein before the issuance of sale certificate in favour of respondents No. 2 and 3. Point (a) is answered accordingly in favor of the petitioners and against the respondents."

(Emphasis supplied)

57. In *S. Karthik (supra)* a three-Judge Bench of this Court, made the following relevant observations given below:—

"53. It could thus be seen that this Court in *Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254]* observed that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. This Court further observed that applying the principles stated with reference to Section 60 of the Transfer of Property Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. It has, however, been held that under Section 13(8), it is clearly stipulated that the mortgagor i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer.

54. This Court in *Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254]* further held that if the tender is made by the borrower at the last moment before the sale or transfer, the secured asset should

not be sold or transferred by the secured creditor. This Court held that there was no reason as to why the general principle laid down by this Court in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247] with reference to Section 60 of the Transfer of Property Act could not have application in respect of a secured interest in a secured asset created in favour of a secured creditor. It has been held that the said principles will apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

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115. Even if viewed from another angle, the claim of the appellants is not sustainable. The two-Judge Bench of this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254], has heavily relied on the judgment of the three-Judge Bench of this Court in Narandas Karsondas. It has been held by this Court in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247], that the right of redemption, which is embodied in Section 60 of the Transfer of Property Act, is available to the mortgagor unless it has been extinguished by the act of parties. It has been held, that only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument, that the mortgagor's right of redemption will be extinguished.

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118. It is further relevant to note that this Court in Dwarika Prasad [Dwarika Prasad v. State of U.P., (2018) 5 SCC 491] and in Shakeena [Shakeena v. Bank of India, (2021) 12 SCC 761] held that the right to redemption stands extinguished on the sale certificate getting registered."

(Emphasis supplied)

58. *Concern Readymix (supra) was referred to and relied upon later in another decision by the Telangana High*

Court titled Amme Srisailam (supra), wherein the following relevant observations were made:

"38. After referring to the amendments brought to the Security Interest (Enforcement) Rules, 2002, this Court took the view that amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale if the dues are paid before issuance of notice for public auction. Thereafter it has been held that a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. Payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the SARFAESI Act. Redemption comes later. It has been held as follows:

The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not.

39. Thus this Court emphasised that the right of redemption is not lost immediately upon the highest bid made by the purchaser in an auction is accepted.

40. A three-Judge Bench of the Supreme Court in S. Karthik (supra) held that the right of redemption which is embodied in Section 60 of the Transfer of Property Act, 1882 is available to the mortgagor unless it has been extinguished by the act of the parties. Only on execution of the conveyance and registration of transfer of mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. Referring to the previous decisions of the Supreme Court, it has been held that the right to redemption stands extinguished only on the sale certificate getting registered.

41. This position has been explained by the Punjab & Haryana High Court in *Pal Alloys & Metal India Private Limited (supra)*, wherein it has been clarified that the amended Section 13(8) of the SARFAESI Act merely prohibits the secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale if the dues are paid before issuance of sale notice for public auction. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor.

42. Let us now examine the decision of the Supreme Court in *Shakeena (supra)* relied upon by the petitioner. As opposed to *S. Karthik (supra)* which was rendered by a three-Judge Bench, *Shakeena (supra)* was delivered by a two-Judge Bench of the Supreme Court. That was a case which dealt with Section 13(8) of the SARFAESI Act prior to amendment. In this case, the appellants failed to exercise their right of redemption until registration of the sale certificate; therefore, relief was declined. While coming to the above conclusion, the Division Bench of the Supreme Court adverted to the amended Section 13(8) of the SARFAESI Act observing by way of obiter that tender of dues to the secured creditor with all costs, charges and expenses incurred by him shall be at any time before the date of publication of notice for public auction etc.

43. The decision in *Shakeena (supra)* was rendered by a two-Judge Bench of the Supreme Court on 20.08.2019. On the other hand, the decision in *S. Karthik (supra)* was rendered by a three-Judge Bench of the Supreme Court much later i.e., on 23.09.2021. The decision in *S. Karthik (supra)* being a later judgment and by a larger bench therefore will be binding on us and this decision says that the right of redemption stands extinguished only on the sale certificate getting registered.

44. Before we revert back to the facts of the present case, we may also refer to

Sections 35 and 37 of the SARFAESI Act. While Section 35 says that the provisions of the SARFAESI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, Section 37 clarifies that provisions of the SARFAESI Act or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force.

45. This brings us to Section 60 of the Transfer of Property Act, 1882. Section 60 says that at any time after the principal amount has become due, the mortgagor has a right, on payment or tender, of the mortgage money, to require the mortgagee (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof back to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. As per the proviso, the right conferred under the aforesaid provision shall not be extinguished by any act of the parties or by decree of a Court.

46. Therefore, on a careful application of Sections 35 and 37 of the SARFAESI Act, it is evident that the situation contemplated under Section 13(8) of the SARFAESI Act does not exclude application of Section 60 of the Transfer of Property Act, 1882. As explained by this Court in Concern Readymix (supra), a restriction on the right of the mortgagee to deal with the property post issuance of notice for public auction is not the same as the right of redemption available to the mortgagor."

(Emphasis supplied)

59. Thus, from the aforesaid, it is evident that the Telangana High Court in the Amme Srisailam (supra) has not referred to or looked into its earlier decision in the case of K.V.V. Prasad Rao Gupta (supra). The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) was also not been looked into by the Telangana High Court in the case of Amme Srisailam (supra). It appears that the Telangana High Court in Concern Readymix (supra) and Amme Srisailam (supra) as well as the Punjab and Haryana High Court in the case of Pal Alloys (supra) have taken the view that the amended Section 13(8) of the SARFAESI Act does not exclude the application of Section 60 of the Act, 1882 in view of Sections 35 and 37 respectively of the SARFAESI Act.

EFFECT OF THE AMENDMENT TO SECTION 13(8) OF THE SARFAESI ACT

60. Before proceeding with the analysis of the provision of Section 13(8) of the SARFAESI Act, it would be appropriate to refer to the said provision as it stood prior to the amendment and as it stands after the amendment, which is given below:—

Pre-amendment Section 13(8)	Post-amendment Section 13(8)
(8) 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 step shall be taken by him for transfer or sale of that secured asset.	(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 secured 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.

61. *At this juncture, it would be apposite to refer to the decision of this Court in Embassy Hotels Private Ltd. v. Gajraj and Company, (2015) 14 SCC 316, wherein this Court had held that the expression "by act of the parties" in the Proviso to Section 60 would include the failure of the parties to settle the dispute and by their act allowing the mortgaged property to be sold in auction. The relevant observations made in it are reproduced below:—*

"16. Section 60 of the Transfer of Property Act protects the right of redemption available to a mortgagor by providing that the mortgagor can exercise such a right by paying the mortgaged money any time after the principal money has become due. But the proviso clarifies that the right conferred by that section is available only if it has not been extinguished by act of the parties or by decree of the court. The act parties would cover act of the mortgagor and mortgagee, if they are unable to settle the dispute arising out of money claim covered by the mortgage and by their action, allow the mortgaged

property to be sold through auction in favour of a third party. Hence, it is not possible to accept the case of the plaintiff-respondent that in spite of sale of suit property becoming final through court auction, for the purpose of grant of specific relief to the plaintiff in the present suit, the first defendant would be deemed to still retain the right to the mortgage and transfer the suit property to the plaintiff regardless of the right, title and possession already legally vested in the auction-purchaser the appellant."

(Emphasis supplied)

62. *It is equally well settled that the rights created for the benefit of the borrower under the SARFAESI Act, can be waived. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favourable decision. The fact that the other side has acted on it, is sufficient consideration, as observed by this Court in Arce Polymers Pvt. Ltd. v. Alpine Pharmaceuticals Pvt. Ltd., (2022) 2 SCC 221, referred as under:—*

"16. Waiver is an intentional relinquishment of a known right. Waiver applies when a party knows the material facts and is cognizant of the legal rights in that matter, and yet for some consideration consciously abandons the existing legal right, advantage, benefit, claim or privilege. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favourable decision. The fact that the other side has acted on it, is sufficient consideration.

17. It is correct that waiver being an intentional relinquishment is not to be inferred by mere failure to take auction, but the present case is of repeated positive acts post the notices under Sections 13(2) and (4) of the SARFAESI Act. Not only did the borrower not question or object to the auction of the Bank, but it by express and deliberate conduct had

asked the Bank to compromise its position and alter the contractual terms. The borrower wrote repeated request letters for restructuring of loans, which prayers were considered by the Bank by giving indulgence, time and opportunities. The borrower, aware and conscious of its rights, chose to abandon the statutory claim and took its chance and even procured favourable decisions. Even if we are to assume that the borrower did not waive the remedy, its conduct had put the Bank in a position where they have lost time, and suffered on account of delay and laches, which aspects are material. Auction on the subject property was delayed by more than a year as at the behest of the borrower, the Bank gave them a long rope to regularise the account. To ignore the conduct of the borrower would not be reasonable to the Bank once third-party rights have been created. In this background, the principle of equitable estoppel as a rule of evidence bars the borrower from complaining of violation."

(Emphasis supplied)

63. We are of the view that the failure on the part of the borrower in tendering the entire dues including the charges, interest, costs etc. before the publication of the auction notice as required by Section 13(8) of the SARFAESI Act, would also sufficiently constitute extinguishment of right of redemption of mortgage by the act of parties as per the proviso to Section 60 of the Act, 1982. Furthermore, in the case on hand, there was no claim for right of redemption by the borrower either before the publication of the auction notice or even thereafter. The borrowers entered into the fray only after coming to know of the confirmation of auction. Be that as it may, once the Section 13(8) stage was over and auction stood concluded, it could be said that there was an intentional relinquishment of his right of redemption under Section 13(8), whereby the Bank declared the appellant as the successful auction purchaser having offered the highest bid in accordance with the terms of the auction notice.

64. *The SARFAESI Act is a special law containing an overriding clause in comparison to any other law in force. Section 60 of the Act, 1882, is a general law vis-a-vis the amended Section 13(8) of the SARFAESI Act which is special law. The right of redemption is clearly restricted till the date of publication of the sale notice under the SARFAESI Act, whereas the said right continues under Section 60 of the Act, 1882 till the execution of conveyance of the mortgaged property. The legislative history has been covered in the preceding paragraphs of this judgment and how the Parliament desired to have express departure from the general provision of Section 60 of Act, 1882. The SARFAESI Act is a special law of recovery with a paradigm shift that permits expeditious recovery for the banks and the financial institutions without intervention of Courts. Similarly, Section 13(8) of the SARFAESI Act is a departure from the general right of redemption under the general law i.e. the Act, 1882. Further, the legislature has in the objects and reasons while passing the amending Act specifically stated "to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts....". Thus, while interpreting Section 13(8) vis-à-vis Section 60 of the Act, 1882, an interpretation which furthers the said object and reasons should be preferred and adopted. If the general law is allowed to govern in the manner as sought to be argued by the borrowers, it will defeat the very object and purpose as well as the clear language of the amended Section 13(8).*

65. *In Mathew Varghese (supra) this Court had interpreted the unamended section 13(8) of SARFAESI Act and Section 60 of Act, 1882 respectively. However, thereafter the legislature amended Section 13(8) of the SARFAESI Act. Thus, on this score, the decision in Mathew Varghese (supra) could be said to have been partially legislatively overruled as the substratum of the verdict stands altered/amended.*

66. *Even otherwise, we should not lose sight of the fact that in Mathew Varghese (supra) the court held in*

regard to the right of redemption that both the SARFAESI Act and Act, 1882 are complimentary to each other and equally applicable. It had held this because, the words "before the date fixed for transfer" in the unamended Section 13(8), amongst other things also means and connotes the date of conveyance of the secured asset by a registered instrument (which is the ordinary process of extinguishment of right of redemption under Act, 1882). Since, this Court observed that the stipulation or expression "date fixed for transfer" could also mean the date of conveyance/transfer of such secured asset and being so, is not much different from the ordinary process of redemption under the Act, 1882, it could not be said that there was any material inconsistency between the SARFAESI Act & Act, 1882, and thus it found no reason or hesitation to hold that the Act, 1882 is inapplicable and thus made an endeavour of harmonizing the two.

67. It appears that while considering the right of redemption of mortgage under the unamended Section 13(8), this Court in Mathew Varghese (supra) only went so far to say that in the absence of any material inconsistency between the SARFAESI Act & Act, 1882, there was no good reason to hold that the Act, 1882 would not be applicable and as such, held that general right of redemption of mortgage contained in Section 60 Act, 1882 would apply even in respect of the SARFAESI Act.

68. However, with the advent of the 2016 Amendment, Section 13(8) of the SARFAESI Act now uses the expression "before the date of publication 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" which by no stretch of imagination could be said to be in consonance with the general rule under the Act, 1882 that the right of redemption is extinguished only after conveyance by registered deed. Thus, in the light of clear inconsistency between Section 13(8) of the SARFAESI Act and Section 60 of the Act, 1882 the former special enactment overrides the latter general enactment in light of Section 35 of the SARFAESI Act. Thus, the right of redemption of

mortgage is available to the borrower under the SARFAESI Act only till the publication of auction notice and not thereafter, in light of the amended Section 13(8).

69. This aspect of inapplicability of the Act, 1882 vis-a-vis the SARFAESI Act can be looked at from one another angle. In *Madras Petrochem (supra)* this Court made a pertinent observation that the Sections 35 and 37 respectively of the SARFAESI Act form a unique scheme of overriding provisions, however the scope and ambit of Section 37 is restricted only to the securities law. The relevant portion is given as under:—

"39. This is what then brings us to the doctrine of harmonious construction, which is one of the paramount doctrines that is applied in interpreting all statutes. Since neither Section 35 nor Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is subject to the other, we think it is necessary to interpret the expression "or any other law for the time being in force" in Section 37. If a literal meaning is given to the said expression, Section 35 will become completely otiose as all other laws will then be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Obviously this could not have been the parliamentary intendment, after providing in Section 35 that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 will prevail over all other laws that are inconsistent therewith. A middle ground has, therefore, necessarily to be taken. According to us, the two apparently conflicting sections can best be harmonised by giving meaning to both. This can only be done by limiting the scope of the expression "or any other law for the time being in force" contained in Section 37. This expression will, therefore, have to be held to mean other laws having relation to the securities market only, as the Recovery of Debts and

Bankruptcy Act, 1993 is the only other special law, apart from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dealing with recovery of debts due to banks and financial institutions. On this interpretation also, the Sick Industrial Companies (Special Provisions) Act, 1985 will not be included for the obvious reason that its primary objective is to rehabilitate sick industrial companies and not to deal with the securities market."
(Emphasis supplied)

70. This Court in *M.D. Frozen Foods Exports Private Limited v. Hero Fincorp Limited*, (2017) 16 SCC 741, observed that since as per Section 37 SARFAESI Act, the RDBFI Act which also contemplates arbitration proceedings, is in addition to the SARFAESI Act, it held that both Arbitration & Conciliation Act, 1996 and the SARFAESI Act would go hand in hand. The relevant observations are reproduced below:—

"27. On the SARFAESI Act being brought into force seeking to recover debts against security interest, a question was raised whether parallel proceedings could go on under the RDDB Act and the SARFAESI Act. This issue was clearly answered in favour of such simultaneous proceedings in *Transcore v. Union of India*. A later judgment in *Mathew Varghese v. M. Amritha Kumar* also discussed this issue in the following terms: (*Mathew Varghese case*, SCC pp. 640-41, paras 45-46)

"45. A close reading of Section 37 shows that the provisions of the SARFAESI Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act. Section 35 of the SARFAESI Act states that the provisions of the SARFAESI Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of the RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely, the

SARFAESI Act and the RDDB Act, would be complementary to each other. In this context reliance can be placed upon the decision in Transcore v. Union of India. In para 64 it is stated as under after referring to Section 37 of the SARFAESI Act : (SCC p. 162)

'64. ... According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.'

46. A reading of Section 37 discloses that the application of the SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws is not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; the Securities and Exchange Board of India Act, 1992; the Recovery of Debts and Bankruptcy Act, 1993, or any other law for the time being in force."

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29. The aforesaid two Acts are, thus, complementary to each other and it is not a case of election of remedy.

30. The only twist in the present case is that, instead of the recovery process under the RDDB Act, we are concerned with an arbitration proceeding. It is trite to say that arbitration is an alternative to the civil proceedings. In fact, when a question was raised as to whether the matters which came within the scope and jurisdiction of the Debt Recovery Tribunal under the RDDB Act, could still be referred to arbitration when both parties have incorporated such a clause, the answer was given in the affirmative. That being the position, the appellants can hardly be permitted to contend that the initiation of arbitration proceedings would, in any manner, prejudice their rights to seek relief under the SARFAESI Act.

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32. The aforesaid is not a case of election of remedies as was sought to be canvassed by the learned Senior Counsel for the appellants, since the alternatives are between a civil court, Arbitral Tribunal or a Debt Recovery Tribunal constituted under the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an Arbitral Tribunal has been elected. The provisions of the SARFAESI Act are thus, a remedy in addition to the provisions of the Arbitration Act. In *Transcore v. Union of India* it was clearly observed that the SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been envisaged under the Sarfaesi Act and the two Acts are cumulative remedies to the secured creditors."

(Emphasis supplied)

71. It would be also appropriate to refer to another decision of this Court rendered in *Vishal N. Kalsaria v. Bank of India*, (2016) 3 SCC 762 wherein this Court while

construing the expression "any other law" occurring in Section 35 of the SARFAESI Act, held the same would mean any other law operating in the same field. The relevant observations made in it are given below:—

"37. It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested in the tenants under the Rent Control Act. The expression "any other law for the time being in force" as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State Legislatures. It can only extend to the laws operating in the same field."

(Emphasis supplied)

72. Thus, it appears from a combined reading of the decisions rendered by this Court in *Madras Petrochem (supra)* and *M.D. Frozen Foods Exports (supra)* that this Court has consistently construed that only those laws which have either been enumerated in Section 37 SARFAESI Act or similar to it would be applicable in addition to the SARFAESI Act i.e., laws which deal with securities or occupy the same field as the SARFAESI Act. Thus, even on this aspect, we are of the view that the Act, 1882 would not be applicable in addition to the SARFAESI Act. Suffice to say, that in view of the above discussion, the statutory right of redemption under the Act, 1882 will not be applicable to the SARFAESI Act at least in view of the amended Section 13(8) and any right of redemption of a borrower must be found within the SARFAESI Act in terms of the amended Section 13(8)."

(Emphasis supplied)

The Apex Court holds that in terms of sub-section (8) of Section 13, once the sale notice is issued, right to redeem mortgaged property by the borrower is lost and the right of enforcement of security interest by the Bank is absolute.

(Emphasis is mine)

13. The facts obtaining before the Apex Court completely fit into the facts obtaining in the case at hand and only some dates would require reiteration. The sale notice was issued on 23-08-2021, the property was sold on 14-09-2021, the auction purchaser has paid the entire amount on or before 23-11-2021, the sale certificate was issued on 27-10-2022 and it was registered on 03-01-2023. All that the petitioners have done during these dates is only litigation and nothing else. From 05-09-2018 to May 2023 the petitioners have on intermittent intervals, in a staggering manner, deposit ₹1.02 crores to the Bank in their account which was in default. Therefore, if the law laid down by the Apex Court is fitted to the facts of the case at hand, it becomes a classic case of repeated abuse of the process of law after having defaulted at every time in the undertakings given to this Court and the subject

petition calls in question an order that did not take away any right of the petitioners who have dragged on the proceedings for 7 months now. Therefore, it becomes a case where the petition is to be rejected with exemplary costs.

14. Since the matter is at large before the Tribunal, it is for the petitioners to pursue the remedy before the Tribunal and not approach this Court time and again by misusing and abusing the process of law and repeatedly violating the undertakings given to this Court. The petitioners submit that they have made payment of ₹1.02 crores till now. It is for the Tribunal to consider those submissions, as the proceedings are pending before it. No order on that score can be passed in favour of the petitioners in these proceedings, in view of the preceding analysis.

15. For the aforesaid reasons, finding no merit in the petition, the petition stands rejected with costs of ₹25,000/- to be paid to

the 2nd respondent/auction purchaser within eight weeks from the date of receipt of a copy of this order. Interim order, subsisting if any, shall stand dissolved

Consequently, I.A.No.4 of 2023 also stands disposed.

**Sd/-
JUDGE**

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