

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4529 of 2023**

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KETANKUMAR JAYANTILAL SHAH

Versus

BANK OF INDIA

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Appearance:

MR RAVI PAHWA FOR THAKKAR AND PAHWA ADVOCATES(1357) for the
Petitioner(s) No. 1,2,3

for the Respondent(s) No. 2,3,4

MR A. S. PANESAR FOR MS ANUSHREE M SONI(11431) for the
Respondent(s) No. 1

MS ABHINEETA CHATURVEDI for the Respondent no.4

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 29/03/2023****ORAL ORDER**

1. Mr Ravi Pahwa, learned advocate appearing for the petitioners, has tendered the draft amendment. Amendment is allowed in terms of the draft. The same shall be carried out forthwith.

2. Mr Ravi Pahwa, learned advocate appearing for the petitioners, submitted that the petitioners, are against the order dated 9.1.2023 whereby, the petitioners, have been required to pay an amount of Rs.20 Crores as pre-deposit in two equal installments of Rs.10 Crores each. It is submitted that such direction by the Tribunal, would be erroneous inasmuch as, the notice issued under sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act"), only contained the amount of Rs.21,28,82,976/- whereas, the Tribunal, has considered the amount mentioned in the notice plus

interest as on the date of filing of the appeal. It is therefore submitted that since the petitioners, are only challenging the measures under sub-sections (2) and (4) of Section 13 of the SARFAESI Act, the petitioners would be required to pay the amount contained in the notice excluding interest.

3. On the other hand, Mr A. S. Panesar, learned advocate for Ms Anushree M. Soni, learned advocate for respondent no.1 bank, submitted that the contention is misplaced inasmuch as, the petitioners, have filed an appeal against the order dated 7.7.2021 passed by the Debts Recovery Tribunal wherein, the Tribunal, while declaring the sale in favour of the respondent no.4 as null and void, has quashed and set aside the confirmation letter so also the sale certificate. It is submitted that one of the direction contained, is giving a liberty to the bank to proceed further by issuing a fresh auction notice in accordance with the provisions of the Act. It is submitted that it is against this direction, that the appeal has been filed. Therefore, as per the judgment of the Apex Court in the case of *Sidha Neelkanth Paper Industries Private Limited & Another v. Prudent ARC Limited & Others* reported in 2023 SCC OnLine 12, the petitioners, shall fall in the third contingency and that the debt due, would mean the amount mentioned in the notice plus interest and therefore, no error can be said to have been committed by the Tribunal

4. Ms Abhineeta Chaturvedi, learned advocate has made her submissions along the lines of the submissions made by the respondent no.1 bank. It is urged that the petitioners, since are challenging measures under Section 13 of the SARFAESI Act so also the auction, the petitioners, are liable to pay the amount mentioned in the notice together with interest.

5. Considered the submissions. Issue notice, returnable on 19.4.2023. Mr A.S. Panesar, learned advocate for Ms Anushree M. Soni, learned advocate waives service of notice on behalf of respondent nos.1 and 2. Ms Abhineeta Chaturvedi, learned advocate waives service of notice on behalf of respondent no.4. For respondent no.3, direct service is permitted.

RAVI P. PATEL

(SANGEETA K. VISHEN,J)