# HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

**Case No**. WP(C) No. 2342/2024
c/w
WP(C) No. 839/2025
Reserved on: 08.12.2025
Pronounced on:- 16.12.2025
Uploaded on:-16.12.2025
Whether the operative part or full judgment is pronounced

Vikas Bharti & Anr.

.....Petitioner(s)

Through: Ms. Mandeep Reen, Advocate

**Vs**

Punjab National Bank and ors.

..... Respondent(s)

Though: Mr. Parveen Kapahi, Advocate

**c/w**

M/s Krishna Traders .

.....Petitioner(s)

Through: Mr. P.N Raina, Sr. Advocate with
Mr. Sudesh Sharma, Advocate

**Vs**

Punjab National Bank & ors

..... Respondent(s)

Through: Mr. Parveen Kapahi, Advocate

**CORAM:** **HON'BLE MRS.JUSTICE SINDHU SHARMA, JUDGE**
**HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

**(JUDGMENT)**

**Shahzad Azeem-J**

**1.** At the outset and in order to keep the record straight, be it noted that WP(C) No. 2342/2024, titled **Vikas Bharti and anr.**

**Vs. Punjab National Bank and ors**. is filed by the successful bidder who participated in pursuance of e-auction sale notice dated 30.07.2024, whereas, e-auction was held in respect of secured assets stood mortgaged against the loan amount availed by the petitioner which is subject matter of challenge in WP(C) No. 839/2025 titled **M/s Krishna Traders Vs. Punjab National Bank and ors**., therefore, the petitioner is challenging the e-auction notice issued by the respondent-bank in respect of the secured assets, whereas, in the petition titled **Vikas Bharti and anr. Vs. Punjab National Bank and ors.**, the petitioners are seeking direction to the respondent-Bank for handing over the physical possession of the auctioned property being successful bidders.



**2.** It is in the above backdrop, both the petitions were clubbed, therefore, fate of the petition titled **Vikas Bharti and anr. Vs. Punjab National Bank and ors.** is subservient to the outcome of WP(C) No. 839/2025, titled **M/s Krishna Traders Vs. Punjab National Bank and ors**, hence, we first propose to deal with the petition titled **M/s Krishna Traders Vs. Punjab National Bank and ors.**

**WP(C) No. 839/2025**

**3.** The petitioner has invoked the writ jurisdiction of this Court seeking quashment of e-auction sale notice dated 30.07.2024 issued by respondents No. 1 to 3 in respect of residential house along with land measuring 01 kanal, falling under Survey No. 215 min, Khata No. 64 min and Khewat No. 07 situate at Toph Sherkhania, Tehsil and District Jammu [residential house bearing No. 37-A, Bharat Nagar, Talab Tillo, Jammu] and also further seeks quashment of sale intimation letter dated 28.08.2024. The petitioner also seeks direction to the respondent-Bank not to proceed in terms of Notices issued under Section 13 (2) and 13 (4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act].

**FACTS**

**4.** Succinctly stated, the petitioner has availed a Cash Credit Limit [the CCL] to the tune of Rs. 75 lacks and housing loan to the tune of Rs. 10 lacs from the respondent-Bank and as primary security, the petitioner has mortgaged his property i.e. residential house along with land measuring 01 kanal, falling under Survey No. 215 min, Khata No. 64 min and Khewat No. 07 situate at Toph Sherkhania, Tehsil and District Jammu [residential house bearing No. 37-A, Bharat Nagar, Talab Tillo, Jammu].

**5.** However, the petitioner defaulted in repayment of installments which resulted in classification of the loan account as Non Performing Asset [NPA] on 30.09.2010 as per the Reserve Bank of India Guidelines and borrower was intimated accordingly.

**6.** On finding no response from the borrower, the bank was compelled to issue demand notice under Section 13 (2) of the SARFAESI Act followed by notice under Section 13 (4), respectively.

**7.** Meanwhile, the respondent-Bank said to have approved One Time Settlement (OTS) of the loan amount and intimation in this regard was given to the borrower vide letter dated 14.11.2017 with explicit stipulation, thus:-

> ***"Please note that if full payment is not received as per under mentioned terms and conditions, bank shall proceed to recover the entire dues after adjusting the payment, if any, received"***

**8.** One of the terms and conditions of the OTS was that the borrower was enjoined upon to make the payment within a period of three months towards full and final settlement. However, the petitioner failed to pay the amount as per OTS Scheme, resultantly, the bank went onto proceed in terms of Section 13 (8) of the SARFAESI Act, followed by publication of e-auction sale notice in two newspapers, and same finally culminated by way of sale intimation letter dated, 28.08.2024, whereby, respondents No. 4 & 5 were declared as successful bidders and were asked to deposit the bid amount as per the terms and conditions contained therein. However, the respondents No. 4 & 5 though have completed the terms and conditions contained in sale intimation letter dated 28.08.2024, but because of the litigation, same could not be finalized.

**9.** In the above backdrop, the respondents No. 4 & 5 have also invoked the jurisdiction of this Court by way of WP(C) No. 2342/2024, titled, **Vikas Bharti and anr. Vs. Punjab National Bank and ors**.

**SUBMISSIONS**

**10.** The bone of contention of the petitioner is that notices under Section 13 (2) and 13 (4) of the SARFAESI Act came to be issued before the OTS Scheme, therefore, the action of the respondent-Bank in initiating the action under Section 13 (8) of the SARFAESI Act is illegal, because, according to the petitioner, the respondent-Bank once, offered to settle the account under the OTS, any action taken prior to that loses its significance and as such, the bank was mandated to proceed from the very inception.

**11.** The other ground urged by the petitioner is that as per the OTS Scheme, he could not make the payment of total outstanding loan amount, nevertheless, he had paid Rs. 30 lacs, therefore, bank was required to adjust the same and also thereafter, he was willing to settle the amount but without any rhyme and reason, the bank has rejected his offer, as such, according to the petitioner, the action of the bank in auctioning the secured assets is also bad in law.

**12.** Further submission of the petitioner is that the notices under Section 13 (2) and 13 (4) of the SARFAESI Act have been issued prior to One Time Settlement, as such, amount mentioned therein do not fall within the definition of secured debt, therefore, e-auction sale notice and sale intimation letter are liable to be quashed.

**13.** *Per contra,* learned counsel appearing for the respondent-Bank has taken us to the objections filed on behalf of the bank and would submit that the petitioner after availing the loan facility failed to repay the same as per the terms and conditions and when the bank initiated the proceedings under SARFAESI Act, the petitioner has filed number of suits and writ petitions by concealing the material facts, therefore, he played fraud on the Courts and also illegally withheld the loan amount, which obviously, is the public money.

**14.** The main plank of argument of learned counsel for the respondent-Bank is that the petitioner admittedly failed to repay the loan amount, compelling the respondent-Bank to take recourse to recover the outstanding loan amount under the provisions of SARFAESI Act, which finally culminated in issuance of e-auction notice which has been finalized, but because of the litigation, it could not be completed, therefore, once, e-auction notice is issued and the petitioner failed to repay the amount, in that event, his right to redeem the secured assets also extinguishes, as such, prays for dismissal of the petition.

**15.** It is equally noteworthy that the respondents have given the details of the notices under Section 13 (2) and 13 (4) of the SARFAESI Act, and subsequent actions which were not only published in the newspapers, but also communicated, through registered post [postal receipts], therefore, we do not deem it necessary to burden this judgment with these details as same are not disputed by the petitioner, particularly in view of the earlier writ petition filed by the petitioner being **WP(C) No. 421/2022 titled M/s Krishna Traders Vs. Punjab National Bank and ors**. wherein, the petitioner has thrown challenge to the notice issued by the respondent-Bank under Section 13 (4) of the SARFAESI Act, which came to be dismissed at motion hearing stage itself.

**16.** The respondent-Bank has laid much emphasis on the point that the petitioner has filed one after the other civil suits and also availed remedy before this Court by way of writ petitions and now, by concealment of facts again approached the High Court which amounts to abuse of process of law, therefore, the petitioner is required to be burdened with heavy costs also. In this regard, following information is also delineated regarding filing of suits and petitions:-

| ***Case*** | ***Court*** | ***DOI*** | ***DOD*** |
|---|---|---|---|
| Writ Petition | *High Court* | *05.03.2022* | *07.03.2022* |
| Writ Petition | *High Court* | *15.07.2010* | *16.07.2015* |
| Civil Suit | *Sub Judge, Jammu* | *06.01.2017* | *10.10.2017* |
| Civil Suit | *Sub Judge, Jammu* | *02.06.2018* | *22.02.2019* |
| Civil Suit | *District Judge, Jammu* | *21.01.2021* | *21.01.2021* |

**ANALYSIS**

**17.** Insofar as the availing of housing loan to the tune of Rs. 10 lacs and CCL to the tune of Rs. 75 lacs by the petitioner is concerned, same is not in dispute. This is also admitted fact that loan account of the petitioner was classified as NPA and thereafter, action under Section 13 (2) and 13 (4), of the SARFAESI Act was taken as the petitioner failed to repay the loan amount. However, despite the petitioner failed to repay the amount even after issuance of notice under Section 13 (4) of the SARFAESI Act, and possession of the secured asset said to have been taken over by the respondent-Bank, the bank could not immediately, proceed in terms of Section 13 (8) of the SARFAESI Act as during the interregnum period, the bank has accepted the proposal for OTS and thus, communicated to the petitioner for one time settlement of loan amount within a period of three months with a specific stipulation that if full payment is not received as per the terms and conditions within a period of three months, the bank shall proceed to recover the entire dues.

**18.** The petitioner has specifically admitted in the petition that for some reasons, he could not make the payment of the loan amount as per the terms and conditions of the OTS, meaning thereby, once the petitioner has flouted the terms and conditions of OTS Scheme, in that event, he cannot be allowed to raise the plea that the bank for all the time to come, is duty bound to accept the amount even beyond the stipulated period of OTS.



**19.** It is also not in dispute that the petitioner has challenged the action of the bank taken in terms of Section 13 (4) of the SARFAESI Act by way of WP(C) No. 421/2022, but same was dismissed, therefore, the petitioner now, cannot again question the action of the bank initiated in terms of Section 13 (2) and 13(4) of the SARFAESI Act.

**20.** Admittedly, the petitioner did not repay the loan amount in terms of notices issued by the bank and also in pursuance of One Time Settlement Scheme within the stipulated period, therefore, the bank has rightly proceeded in terms of Section 13 (8) of the SARFAESI Act, whereby, e-auction sale notice dated 30.07.2024 came to be issued, in that, till the issuance of e-auction notice dated 30.07.2024, admittedly, the petitioner failed to tender the secured creditor the outstanding loan amount.



**21.** Confronted with the above factual narration, only point for consideration that arises is as to whether after publication of auction notice by the respondent-Bank strictly as per Rule 8 (6) of Security Interest (Enforcement) Rules, 2002 [Rules of 2002), the petitioner's right to redeem the secured assets survives.

**22.** The point involved in the petition is no more *res integra* and is settled by Hon'ble Supreme Court in **M. Rajendran and ors. Vs. M/s KPK Oils and Proteins India Pvt. Ltd. And ors.**; **2025 SCC Online SC 2036,** a *locus classicus* on the subject wherein, Hon'ble Supreme Court in an unequivocal words, while interpreting the object underlying Section 13 (8) of the SARFAESI Act held as follows:-

> "*To put it simply, as per sub-section (8) of Section 13 of the SARFAESI Act, a borrower can tender the amount of due to the secured creditor along with all costs, charges and expenses, at any time, before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be.*
>
> *A borrower has no unfettered right to tender such amount of dues, as stipulated in Section 13(8), after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be, because the restriction on the secured creditor, from transferring the secured asset, envisaged under clause(s) (i) and (ii) of the said provision, would only be attracted, if the dues are tendered prior to the publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be. Where the borrower tenders such dues after the publication of the notice stipulated in Section 13(8), the secured creditor is not bound to accept it, and can continue to proceed with the transfer of the secured asset, by way of lease, assignment or sale.*"

**23.** Hon'ble Supreme Court went onto explain the object underlying amended Section 13 (8) of the SARFAESI Act, that the amended provisions extinguishes the right of redemption of the borrower in the event he fails to repay his dues and redeem the secured assets before publication of the Auction Notice.

**24.** In the above case before the Hon'ble Supreme Court, the Auction Notice was published by the bank on 22.01.2021 and the secured assets were successfully auctioned on 26.02.2021. In the circumstances, the Hon'ble Supreme Court has authoritatively held that right to redeem the secured asset stood extinguished on 22.01.2021 on the ground that borrowers have failed to pay the outstanding debt before the publication of Auction Notice dated 22.01.2021.

**25.** The SARFAESI Act is a special legislation enacted with the avowed object of providing a speedy and expeditious remedy to banks and financial institutions for recovery of public money in respect of non-performing assets without the intervention of civil Courts.

**26.** Coming back to the case on hand, the e-auction sale notice came to be published on 30.07.2024, therefore, in view of the settled proposition of law, once auction notice is published, right of redemption of the petitioner has extinguished on

30.07.2024 and any amount even if deposited, is immaterial. Admittedly, the petitioner has failed to repay his dues till the publication of auction notice dated 30.07.2024 and by now, the respondents No. 4 & 5 were not only declared as successful bidders but said to have deposited the consideration amount as per the terms of auction notice with the respondent-Bank.

**27.** This is equally noteworthy that on going through the factual narration contained in the objections, it appears that every now and then after availing loan and subsequent failure to repay the same, the petitioner appears to have hit every door across all the rungs up to the High Court repeatedly to obstruct the bank from taking action to realize the outstanding loan amount which necessarily paid by the bank out of the public corpus, therefore, it is high time to put the litigation to quietus.

**28.** It is highly disturbing that a small but recalcitrant class of borrowers, instead of honouring their legitimate contractual obligations, deliberately resort to a multiplicity of frivolous proceedings before civil courts and High Courts, with the sole objective of stalling enforcement measures, thereby defeating the very purpose for which the SARFAESI Act was enacted. Such conduct has been repeatedly condemned by the Courts and terms the same as an abuse of process, warranting note of caution to such habitual litigants.

**29.** We are of the considered opinion that right of the petitioner to redeem the secured assets stand extinguished with the publication and culmination of auction process, therefore, peripheral pleas raised by the petitioner also do not stand the scrutiny of law.



**30.** Though we are not proceeding harshly against the petitioner despite his indulgence into multiplicity of litigation, nonetheless, struck a note of caution that litigation will be put to quietus.

**31.** In the above backdrop, WP(C) No. 839/2025 titled **M/s Krishna Traders Vs. Punjab National Bank and ors.** found to be bereft of merit, accordingly, same is dismissed along with connected CM(s).

**<u>WP(C) No. 2342/2024</u>**

**32.** In view of the observations and finding returned in WP(C) No. 839/2025, the respondent-Bank is at liberty to complete the process of e-auction and to proceed in terms of sale intimation letter dated 28.08.2024.

**33.** Disposed of.

| **(SHAHZAD AZEEM)**<br>**JUDGE** | **(SINDHU SHARMA)**<br>**JUDGE** |
|---|---|

**JAMMU**
**16.12.2025**
**Tarun/PS**

Whether order is speaking: Yes/No
Whether order is reportable: Yes/No