IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Appellate Side

Present:
The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta

MAT 56 of 2019
Dr. Tushar Kanti Karmakar
Vs.
Shilabati Hospital Private Limited & Ors.

With

MAT 118 of 2019
With
I.A. No. CAN 2 of 2020 (Old CAN 4725 of 2020)
With
I.A. No. CAN 3 of 2020 (Old CAN 4726 of 2020)
State Bank of India & Ors.
Vs.
Shilabati Hospital Private Limited & Ors.

With

MAT 815 of 2020
Dr. Tushar Kanti Karmakar
Vs.
Shilabati Hospital Private Limited & Ors.

With

MAT 702 of 2020
With
I.A. No. CAN 6 of 2025
Dr. Tushar Kanti Karmakar
Vs.
Shilabati Hospital Private Limited & Ors.

2025:CHC-AS:1805-DB

Mr. Jaydip Kar, ld. Senior Advocate,
Mr. Pankaj Kumar Mukherjee,
Ms. Jyoti Routh.
.... For the appellant, State Bank of India.

Mr. Surojit Nath Mitra, ld. Sr. Advocate,
Mr. Pratip Mukherjee,
Mr. Purnankar Biswas.
...For the appellant in MAT 56 of 2019.

Mr. P.K. Das, ld. Sr. Advocate,
Mr. Indranil Banerjee,
Mr. Subrata Mukherjee,
Mr. Mukul Agarwal,
Ms. Ankita Mitra,
Mr. Purnankar Biswas.
.... For the Appellant in MAT 118 of 2019, MAT 815 of 2020 & MAT 702 of 2020.

Mr. Suman Kumar Dutt, ld. Senior Advocate,
Ms. Monica Jaiswal,
Mr. Gaurav Purkayastha,
Mr. S. Choudhury
...For the respondent nos.1, 2 & 3.

Heard on : 10.09.2025

Judgment on : 16.09.2025

Ajay Kumar Gupta, J:

1. Dr. Tushar Kanti Karmakar, purchaser of mortgaged property and Secured Creditor, State Bank of India assailed the impugned Judgment and Order dated 11th December, 2018 passed by Single Bench of this High Court in W.P. No. 11203(W) of 2010 (Shilabati Hospital Private Limited & Ors. Vs. State

Bank of India & Ors.) by filing two separate appeals being MAT No. 56 of 2019 and MAT No. 118 of 2019 respectively.

2. By the said impugned judgment and order, the Single Judge allowed the Writ Petition, *inter alia*, on the following terms:

> *".... the Bank acted without jurisdiction in selling the immovable property concerned without adhering the Rule 8(8) of the Security Interest (Enforcement) Rules 2002.*
>
> *Rule 8(8) of the Security Interest (Enforcement) Rules, 2002 is as follows:*
>
> > *"(8) Sale by any method other than public auction or public tender shall be on such terms as may be settled between the parties in writing."*
>
> *Rule 8(8) of the Security Interest (Enforcement) Rules, 2002 requires the Bank, to enter into an agreement, in writing with the parties affected by the property concerned, to allow the Bank to sell such property other than by means of a public auction. In the facts of the present case, the Bank was required to take the written consent not only of the borrower, but also of the guarantor and the person claiming title over the property to sell such property by a method other than public auction. The Bank did not do so. Therefore, the Bank did not adhere to the provisions of the Rule 8(8) of the Security Interest (Enforcement) Rules, 2002. The auction of the Bank is therefore, wholly without jurisdiction.*
>
> *The Bank is an authority within the meaning of Article 12 of the Constitution of India. Any action of such authority within the meaning of Article 12 of the Constitution of India if found to be without jurisdiction can be assailed under Article 226 of the Constitution of India. The writ petition of 2010 and is*

pending for a considerable period of time. It would be improper to relegate the parties to avail of the remedies under the Act of 2002 at this stage of the proceeding and this late."

3. The Appellant, Dr. Tushar Kanti Karmakar further assailed two other impugned interlocutory orders dated 30.09.2020 and 02.12.2020 passed by the Single Bench of this High Court in another writ petition filed by the writ petitioners being W.P.A No. 6046 of 2020 (Shilabati Hospital Private Limited & Ors. Vs. State Bank of India & Ors.) by way of filing two separate appeals being MAT No. 702 of 2020 and MAT No. 815 of 2020 respectively.

4. By the first impugned order dated 30.09.2020, the Single Judge passed interim order, *inter alia*, as under:

> *"The private respondent and/or its men, agent, assigns are restrained from dealing with and/or disposing of and/or alienating and/or creating any third party right or changing the nature and character of the property, which was sold to the private respondent and the sale has been set aside by order dated 11th December, 2018, until the disposal of the present writ petition.*
>
> *The private respondent shall maintain a separate account on and from 1st October, 2020 till the disposal of the appeal on account of the income generated by operating the clinic and/or the hospital at the property in question. The Monthly accounts for each month shall be produced before the court at the time of final hearing of the writ petition when the Bank and the Petitioners Shall be at liberty to seek inspection thereof."*

5. Similarly, by the second impugned order dated 02.12.2020, the Single Bench passed an order, *inter alia*, as under:

> *"Since the matter has been directed to be listed for final hearing immediately after re-opening of the court following the ensuing Christmas Vacation, let the accounts which have presumably been maintained by the private respondent be made available to the learned advocates of the petitioners and the bank for their inspection. Let this be done by 24.12.2020"*

6. All the aforesaid four appeals have been taken up together for analogous hearing for the purpose of fair and effective disposal, by a common judgment, for the sake of convenience and to avoid repetition as the parties and issues involved thereof are same and identical, particularly arising from the sale of a mortgaged property under the provisions of The Securitisation And Reconstruction Of Financial Assets And Enforcement of Security Interest Act, 2002 (In short 'SARFAESI Act, 2002') and The Security Interest (Enforcement) Rules, 2002 (In short 'the said Rules, 2002') thereof.

7. The facts of the instant case are that the Writ Petitioners/Borrowers, being the Directors of M/s Shilabati Hospital Pvt. Ltd. (Private limited company within the meaning of Companies Act, 2013), approached the State Bank of India seeking a loan to facilitate medical treatment for the public through their hospital, namely, M/s Shilabati Hospital Pvt. Ltd.

8. The Bank sanctioned credit facilities as term loan of Rs. 200 lakhs to the Writ Petitioners on 23rd July, 2003, upon mortgaging properties consisting of two adjacent Plots of land. The hospital building was erected on the first part of

the borrower's land, and the second part belonged to the Guarantor of the loan, Smt. Tanushree Manna, who also held 50% ownership in the 1st part of the land. Smt. Tanushree Manna also took a separate loan against the second part of the property.

9. The Loan account was, subsequently, classified as a Non-Performing Asset (NPA) on 31st March, 2004, due to non-repayment of the term loan availed by the mortgagors.

10. The Bank's approved valuer assessed the combined value of the Hospital Building & Property of Tanushree Manna, i.e,. both properties at Rs. 1,77,22,000.00/- as on 17th June, 2006. A demand notice was issued under Section 13(2) of the SARFAESI Act, 2002 on 28th June, 2006 to the Writ Petitioners asking them to discharge the liability of Rs. 3,70,90,320.00/- in full within 60 days, but they failed.

11. The Bank issued a possession notice under Section 13(4) of the Act, maintaining all due process of law under the SARFAESI Act, 2002 on 16th December, 2006, covering both the hospital property and the adjacent land owned by Smt. Manna.

12. Pursuant to Rule 8 of the said Rules, notice was published in Bengali and English Newspapers "Ajkal" and "The Statesman" on 22nd December, 2006. Rule 8 provides for the sale of immovable secured assets after compliance of necessary provision of the said SARFAESI Act, 2002.

13. On 23.12.2006, writ petitioners handed over the physical possession of property to the Bank without any objection.

14. A fresh valuation was conducted on 11.01.2007 by Engineers and Valuers Collaborated, assessing the value at Rs. 1,85,97,000.00/- for Land & Building and Rs. 1,64,00,000.00/- for Plant & Machinery (Total Rs. 3,50,57,000.00/-) on 11th January, 2007 and after getting such valuation report of the properties, Bank issued notice for public auction as per Rule 8(5) of Rules, 2002 at a reserve price of Rs. 3,75,00,000/- on 23rd February, 2007. However, no bids were received.

15. The writ petitioners challenged the public auction notice before the Learned D.R.T. No. 2, Kolkata, u/s 17 of the said Act and the same was registered as S.A. No. 15 of 2007. It was ultimately dismissed for non-prosecution vide Order dated 05.10.2007.

16. In the year 2007, the devastating flood swept the whole Ghatal town and the ground floor of Shilabati Hospital was clogged with a water level of 3 feet for four days, and all the costly machines were defunct. Bank again published Public Auction Notice in the 'Times of India', keeping reserve price at Rs. 3.75 Crores on 2nd January, 2008, but this time also no bid offer was found from any corner. Therefore, another valuation Report was sought from the Bank's approved valuer. It was valued at Rs. 2.16 Crores for the Land & Building and Rs. 55 Lakhs for Plant & Machinery, both properties (Total comes to Rs. 2.71 Crores) on 26th March, 2008.

17. The writ petitioner had offered to the bank a one-time settlement at a full and final value of Rs. 155 Lakhs on 28th August, 2008, but the said offer was

rejected by the Bank on 15th November, 2008, as the value of properties was higher than the offer price.

18. A third Valuation Report was sought from the Bank's approved valuer on 15th November, 2008. It was valued at Rs. 207.47 Lakhs for Land & Building and Rs. 60.76 Lakhs for Plant & Machinery of both properties (Total Rs. 268.23 Lakhs). The bank filed O.A. No. 13 of 2009 against the Writ Petitioners and the guarantor of the loan before the Ld. D.R.T. No. 2 claiming dues of Rs. 5,17,40,906.07/- as on 14.01.2009 under Section 19 of The Recovery of Debts Due To Banks and Financial Institutions Act, 1993 for recoveries of money lent and advanced, enforcement of hypothecation, pledge and guarantees for certificate and other reliefs.

19. Finally, a Sale Notice was published by the Bank in Ananda Bazar Patrika, keeping Rs. 2 Crores as reserve price on 24.05.2009, but this time also nobody came forward to offer to purchase the said mortgage properties.

20. One Dr. T.K. Karmakar, Medical Practitioner, Doctor DGD, MD, DNB, Specialist in Gynecology, Infertility and Laparoscopy, by letter dated 15th September, 2009, offered to purchase the Property at a price of Rs. 1, 80,00,000/- to the Bank for the similar purpose of providing medical facilities to the local people of the area on 15.09.2009, but the Bank informed Dr. Karmakar that the price is less than the expected valuation assessed by the approved valuer.

21. Thereafter, Dr. Karmakar had given a second offer to the Bank to purchase at a price of Rs 200 lakhs on 29.09.2009. Therefore, SAMG, Kolkata Bank

sought for approval from Mumbai Head Office for the sale of asset by private treaty on 19th March, 2010.

22. A fourth valuation Report was sought from the approved valuer. It was valued at Rs. 186.41 Lakhs for Land & Building and Rs. 30,85,000/- for Plant & Machinery, Total (Rs. 217.26 Lakhs). Considering the realisable Value of Rs. 173.81 Lakhs and the forced sale value Rs. 152.08 lakhs of both properties.

23. Memorandum of the Mid Corporate Valuation Committee, which comprised of 4 Senior Managers of the Bank, recommended a fair price, finding no alternative or other buyers at Rs. 200 Lakhs as offered by Dr. T.K. Karmakar on 17th April, 2010.

24. On 19th April, 2010, as per Rule 8(6) of Rules, 2002, the Bank issued a Notice of "Sale of Assets" to the Writ Petitioners and also informed that Dr. Karmakar offered to purchase at Rs. 200 Lakhs. By a letter dated 19th April, 2010, issued by the Deputy General Manager, State Bank of India, they were invited to offer a price higher than the existing offer, failing which, the Bank shall presume that they have consented to the sale of said assets to Dr. Karmakar.

25. On 3rd May, 2010, the writ petitioner, its directors and Guarantor Smt. Tanushree Manna, in response to the Notice of Sale of Assets, offered to pay Rs. 205 Lakhs, payable over a period of 46 months, in 18 instalments. The Offer made by the writ petitioners was rejected on the next day for being financially unviable and not a better offer than the purchaser Dr. T.K. Karmakar.

26. It appears that the petitioners filed a writ petition and affirmed it in May, 2010, but the proposed Purchaser was not made a party therein. It is mentioned in the writ petition that the value of the property was not less than Rs. 9 Crores without any supporting documentary evidence.

27. On 2nd June, 2010, as per Rule 8(8) of the Rules, 2002, the Bank had given terms and conditions of sale as may be settled between the Bank and the proposed purchaser. It was accepted by Dr. T.K. Karmakar, the proposed purchaser.

28. On 7th June, 2010, Sale was affected in favour of Dr. T.K. Karmakar upon full payment of Rs. 2 Crores, a Registered Sale Certificate dated 07.06.2010 was executed. On 11th June, 2010, the Bank requested the BL & LRO, Ghatal, to record the property in favour of Dr. T.K. Karmakar.

29. On 14.07.2010, Smt. Tanushree Manna, Guarantor, filed an application (S.A. No. 330/2010) before the Kolkata D.R.T. No. 2 against the Bank and Dr. T.K. Karmakar under Section 17 of the SARFAESI Act, 2002, for quashing/setting aside the sale of the second part of the mortgage property. On 23.08.2010, the Bank filed Affidavit-in-Opposition, where it was mentioned that the property was sold to Dr. T.K. Karmakar, Purchaser.

30. The application filed by Smt. Tanushree Manna, Guarantor being SA/330/2010 was dismissed on merit by the Learned DRT on 30th April, 2012. The Bank issued a certificate stating that there is no liability pending against the loan of Dr. T.K. Karmakar on 18.07.2013.

31. On 17th May, 2017, the then Hon'ble Justice passed an order and pleased to direct the writ petitioners to amend the writ petition and to add the purchaser as respondent and also to be given an opportunity to file a short affidavit-in-opposition.

32. In July 2017, the Bank filed a supplementary affidavit. The writ petition was listed for hearing on 10.12.2018 before the Single bench. The learned Advocate on behalf of the Bank was directed by the Hon'ble Court to place the evidence in terms of sale as may be settled between the parties in writing in pursuance of Rule 8(8) of the Rules, 2002, as raised by the Borrowers/Writ Petitioners. The matter was adjourned to the next day, December 11, 2018.

33. On the adjourned date, i.e., 11th December, 2018, the learned advocate on behalf of the Bank raised the issue of non-maintainability of the writ petition. It was also submitted that all the documents were submitted in their supplementary affidavit dated 25th July, 2017, as directed by this Hon'ble Court. The Hon'ble Single Bench, by judgment and order dated December 11, 2018, set aside the sale on the ground of non-compliance of strict Rule 8(8) of the Rules, 2002, and the same was without jurisdiction, as mentioned herein above.

34. Two other Single Benches of this Court passed orders as referred to hereinabove dated 30th September, 2020 and 02nd December, 2020, respectively. Those orders are also subject matter of challenge in the appeals.

CONTENTION OF THE STATE BANK OF INDIA:

35. Mr. Jaydip Kar, learned senior counsel appearing on behalf of the State Bank of India, vehemently argued and submitted that when the accounts of the borrowers/respondents were classified as non-performing assets on 26th June, 2006, the Bank took all legal formalities as per the provisions of the SARFAESI Act, 2002 and the Rules, 2002. The respondents handed over the possession of movable and immovable property to the appellant/Bank on 23.12.2006 without objection when they failed to repay the loan and other allied charges of the bank.

36. The petitioner bank thereafter floated public auctions on four occasions on different dates by publishing in different newspapers after obtaining updated valuations of the properties, to recover its dues and allied charges. However, it failed as no bids for the same were received by the Bank. The Bank also sought negotiations with various parties, but failed.

37. The Borrowers/respondents forwarded a compromise proposal of Rs. 155 Lakhs, which was found to be very low, and the same was rejected by the Bank on 29th September, 2009.

38. Ultimately, the Bank received an offer from one Dr. T.K. Karmakar, purchaser/appellant at Rs. 200 Lakhs. The valuation was confirmed by the Mumbai Head Office. In compliance with the procedural requirements, the Bank, by a letter dated 19th April, 2010, informed the borrowers/respondents to make an offer higher than the offer by Dr. T.K. Karmakar, failing which it

would be considered as consent for the sale of the assets to recover the dues of the bank.

39. After receiving such letter, the borrowers/respondents replied to the bank by offering to pay a sum of Rs. 205 Lakhs in 18 instalments payable over a period of 46 months.

40. The Bank, considering the financial and commercial unviability of such a deferred payment structure, rejected the offer on 4th May, 2010, when the Bank did not find it feasible to accept such offer, in comparison to the better offer of Dr. T.K. Karmakar, who offered to purchase the mortgaged property at a consideration amount of Rs. 200 lakhs in one go. Therefore, the Bank decided to sell the secured property to the proforma respondent, Dr. T.K. Karmakar, on 5th June, 2010, which was accepted by him and finally, the Sale Certificate was issued in favour of Dr. Karmakar and registered before the Additional District Sub-Registrar, Ghatal.

41. In the interregnum, borrowers/respondents as well as the guarantor failed to avail any favourable order from the DRT No. 2. Even after filing two separate applications under Section 17 of the SARFAESI Act, 2002, both appeals were dismissed.

42. A direction was passed by the DRT to deposit Rs. 30.05 lakhs by the guarantor in SA 330 of 2010 as the condition precedent for entertaining the application pending before the Tribunal, but failed, and ultimately the application was dismissed on merits.

43. The borrowers also challenged the auction floated by the bank under Section 17 of the said Act before the Learned Debts Recovery Tribunal, Calcutta No. 2 being SA No. 15/2007 (Shilabati Hospital Pvt. Ltd. Vs. State Bank of India), but the same was dismissed on 05.10.2007, when the petitioners were not represented.

44. Writ petitioners have availed all remedial measures before the Learned DRT under the SARFAESI Act, 2002, but failed. Ignoring such facts, the Borrowers filed Writ petitions before this court only to refrain from the sale process accordingly; writ petitions are not maintainable on two-fold grounds.

45. **Firstly,** all remedial measures were availed by the writ petitioners under the special statute provided under the SARFAESI Act, 2002. Subsequently approaching the writ court under Article 226 of the Constitution of India ought to be dismissed at the threshold.

46. **Secondly,** the Bank had complied all necessary formalities adhering the provision of SARFAESI Act and Rules, 2002 and sufficient opportunity was offer to the respondents but they failed, so question of non-compliance of Rule 8(8) of the Rules, does not and cannot arise in the facts and circumstances of present case, however, the Single Bench allowed the writ petition contending therein that the Bank did not adhere to the provisions of Rule 8(8) of the said Rules, 2002.

47. The Hon'ble Single Judge overlooked the pre and post amended provisions of Rule 8(8) of the Rules, 2002 and erred in concluding that Rule 8(8) of the said Rules, 2002 requires the Bank, to enter into an agreement in writing with the

parties affected by the property concerned, to sell such property other than by means of a public auction. 'Parties' indicated in Rule 8 (8) of Rules, 2002 refers to the parties involved in the sale process, particularly, the secured creditor (Bank or authorised officer) and purchaser through private treaty.

48. It was further submitted that the Hon'ble Single Judge failed to appreciate the scope and object of Rule 8(8) and Section 13 of the Act. The borrowers did not avail their right under Section 13(8) to redeem the property. Despite being given the full opportunity to make a better offer, they failed to do so.

49. Their proposal of Rs. 205 lakhs in 18 instalments covering 46 months was not commercially viable and rightly rejected by the Bank. The writ petitions were filed merely to restrain the sale of the Mortgaged property, though the sale was effected on 07th June, 2010. The petitioner was well aware of the value of the mortgaged property being declared at a reserved price to the tune of Rs. 200 Lakhs.

50. The borrowers and guarantor were also given an opportunity to make a better offer than the one made by Dr. Karmakar, but they failed, and also stayed silent, even after their offer was rejected. They did not raise any objection about the value of the mortgaged property fixed by the appellant at Rs. 200 Lakhs either before or even after the sale. They were fully aware and satisfied with the value and reserved price of the property. As such, it did not cause prejudice to them in any manner.

51. Mr. Kar, representing the Bank, would argue that the amendment brought to the Rule 8(8) of the rules, 2002 is clarificatory, since it has only clarified the

intent of the executive more explicitly. Thus, it shall be deemed that the provision was introduced by way of an amendment, but the same has always been in existence for all practical purposes.

52. Learned counsel representing the Bank has placed reliance on following judgments in support of his aforesaid contentions:-

i. Mathew Varghese Vs. M. Amritha Kumar and Ors.[1]*;*

ii. L&T Housing Finance Ltd. v. Trishul Developers and Anr.[2]*,*

iii. Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority[3]*;*

iv. PHR Invent Educational Society Vs. UCO Bank & Ors.[4]*;*

v. South Indian Bank Ltd. & Ors. v. Naveen Mathew Philip & Anr.[5]*;*

vi. Vijay v. Union of India & Ors.[6]*;*

vii. Sree Sankaracharya University of Sanskrit and Ors. v. Dr. Manu and Anr.[7]*;*

viii. General Manager, Sri Siddeshwara Co operative Bank Ltd. and Anr. v. Ikbal & Ors.[8]*;*

ix. J. Rajiv Subramaniyan and Anr. v. Pandiyas and Ors.[9]*;*

---

[1] (2014) 5 SCC 610;

[2] (2020) 10 SCC 659;

[3] 2023 (384) E.L.T. 8 (S.C.)/ (2023) 3 Centax 49 (S.C.);

[4] (2024) 6 SCC 579: 2024 SCC OnLine SC 528;

[5] *(2023) 17 SCC 311: (2024) 244 Comp Cas 642: 2023 SCC OnLine SC 435;*

[6] *(2023 SCC OnLine SC 1585 / (2023) 17 SCC 455);*

[7] *(2023) 19 SCC 30: 2023 SCC OnLine SC 640];*

[8] *(2013) 10 SCC 83;*

[9] (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295: (2014) 186 Comp Cas 73: 2014 SCC OnLine SC 237;

x. Celir LLP Vs. Bafna Motors (Mumbai) Private Limited & Ors.[10]*;*

xi. Keshavlal Jethalal Shah (2) Vs. Mohanlal Bhagwandas and Anr.[11]*;*

xii. Virender Chaudhary Vs. Bharat Petroleum Corporation and Ors.[12]*;*

xiii. Commissioner of Income Tax, Bhopal Vs. Shelly Products and Anr.[13]*;*

xiv. Vasu P. Shetty Vs. Hotel Vandana Palace and Ors.[14]*;*

xv. Dwarika Prasad Vs. State of Uttar Pradesh and Ors.[15]*.*

CONTENTION OF THE PURCHASER:

53. Mr. Surojit Nath Mitra, learned Sr. counsel appearing for the purchaser in MAT No. 56 of 2019, supported the arguments advanced by Learned Sr. Counsel, Mr Kar appearing on behalf of the Bank. In addition, he has further submitted that the borrower never challenged the Registered Sale Certificate dated 07.06.2010, by which the sale was affected in favour of Dr. T.K. Karmakar upon payment of Rs. 2 crores.

54. Smt. Tanushree Manna, the guarantor, filed S.A. No. 330/2010 before DRT No. 2 under Section 17 of the SARFAESI Act, 2002, seeking quashing of the sale of the second part of the mortgaged property. This was, despite knowing that an earlier challenge against the sale notice in S.A. No. 15/2007 filed by the borrowers had already been dismissed on 05th October, 2007.

---

[10] (2024) 2 SCC 1 : 2023 SCC OnLine SC 1209;
[11] 1968 SCC OnLine SC 14 : AIR 1968 SC 1336;
[12] (2009) 1 SCC 297 : 2008 SCC OnLine SC 1669;
[13] (2003) 5 SCC 461 : (2003) 261 ITR 367 : 2003 SCC OnLine SC 642;
[14] (2014) 5 SCC 660 : 2014 SCC OnLine SC 363;
[15] (2018) 5 SCC 491 : 2018 SCC OnLine SC 183.

55. The Learned DRT directed about Rs. 30,00,000/- to be deposited by the guarantor, as a condition precedent for entertaining the application pending before the Tribunal, but failed to deposit as directed. Consequently, vide order dated 30.04.2012, the Learned DRT No. 2 dismissed the application on merits when she failed to deposit the amount fixed by the DRT. Therefore, a challenge to the same auction sale or sale through private treaty by way of a writ petition under Article 226, is not legally maintainable, especially when statutory remedies under the SARFAESI Act had already been exhausted on two occasions by the borrowers and guarantor.

56. It was further argued that the borrowers/writ petitioners never made a better offer prior to the date of the sale despite having full knowledge and affording sufficient opportunity. The failure to challenge the Sale Certificate and inaction in offering a higher price is a waiver of the right to object to the sale.

57. Supporting the submissions made on behalf of the Bank, counsel further argued that the writ petition filed by the respondents/borrowers is a misuse of judicial process and it is a gross abuse of the process of law, as both borrowers and guarantor had already approached the DRT and failed. A second challenge before the writ court, on the same grounds and issues, is not maintainable, especially when:

a) A special statutory forum constituted under the SARFAESI Act exists;

b) There are disputed questions of facts; and

c) No public law element is involved in the dispute.

58. Finally, it was reiterated that Rule 8(8) does not require the borrower or guarantor to be made a party in the terms of sale. The amended Rule 8(8) is clarificatory and explanatory and has retrospective effect, confirming that the term "parties" refer thereto only to the Bank (secured creditor) and the purchaser, and not the borrower or guarantor.

59. Learned counsel representing the Purchaser has also placed reliance on the same judgments as referred by the Bank in support of his contentions.

CONTENTION OF THE PURCHASER BY ANOTHER SET OF COUNSEL

60. Another learned counsel, Mr. P.K. Das, Sr Counsel representing the appellant in MAT 702 of 2019 and MAT 815 of 2020, on his usual fairness, submitted that he is also representing Dr. T. K. Karmakar. The appellant herein has also filed two appeals against the two different orders passed by the Hon'ble Single Judges on 30th September, 2020 and 02nd December, 2020, respectively.

61. Additionally, it was argued that the borrowers deliberately did not implead the purchaser, Dr. T.K. Karmakar, as a party respondent in the writ petition initially, despite being fully aware of his interest in the secured property. He was impleaded only after a direction passed by a Division Bench of this Hon'ble Court, presided over by the then Hon'ble Justice I.P. Mukherji on 17th May, 2017, though the writ petition was filed in 2010.

62. The borrower made false representations before the Court, alleging that the property was not worth less than Rs. 9 crores, without furnishing any documentary evidence or supporting evidence. The writ petitioner committed fraud upon the court by misguiding regarding the actual valuation of the

mortgaged property and not coming with clean hands. Although he was made party in another proceeding, pending before the DRT, despite being fully aware that the sale had already been affected and Sale certificate was registered in favour of Dr. Karmakar.

63. When any order is obtained from the Court by practising fraud or suppression of a single material fact, it could be fatal to the whole proceeding as it is a general rule that a litigant is disqualified from obtaining any relief/reliefs. It is argued that under such circumstances, the obtained order is void ab initio and not enforceable in law.

64. Mr. Das, further added that the borrowers have no locus to maintain the writ petition, as its name was struck off from the records of the Registrar of Companies (ROC) following liquidation, and the company was dissolved by ROC as the entity has been deemed a shell company. No statutory returns have been filed by the borrowers with the ROC since 2005; thus, company's status indicates non-existence in the eyes of law.

65. Another writ petition, filed by writ petitioners, being WPA No. 6046 of 2020 praying, inter alia, directing the Bank to take physical possession of the property from the appellant herein, if necessary, with the help and assistance of the concerned local police authority, is also not maintainable in law. The purchaser also filed CAN No. 925 of 2019 and CAN No. 7 of 2020 under Order 41 Rule 27 for additional evidence.

CONTENTIONS ON BEHALF OF THE RESPONDENT NOS. 1, 2 AND 3:-

66. Mr. Suman Kumar Dutta, learned senior counsel representing the respondents vociferously argued and submitted that the bank acted illegally by not allowing them an opportunity to enter into a written agreement as the term 'parties' indicated in the Rule 8(8) of the said Rules, 2002, requires that the bank ought to enter into an agreement in writing with the parties affected by the property, concerned in case of sale of mortgaged property other than public auction i.e. under private treaty. Therefore, the Learned Single Judge rightly held that the Bank acted without jurisdiction and/or without adhering the Rule 8(8) of the Rules, 2002 and finally allowed the writ petition and set aside such sale in favour of private respondent. Therefore, no interference is required by this Court.

67. The next issue further vehemently argued is that of waiver and redemption on the part of the Petitioners, as these are not applicable and also not valid in eye of law when sale was affected without adherence to the Act and Rules of 2002. The borrower is entitled to enter into the agreement prior to sale of the mortgaged property to protect their interest in connection with the value of the property, which is supposed to be sold through private treaty. So, the question of waiver or redemption in the present case is not and cannot be applicable.

68. As and when the offers made by the petitioners were rejected by the Bank, immediately without any making delay, the petitioners approached this Court and, subsequently, challenged the sale. The statute is very clear about giving

an opportunity to the borrower to enter into an agreement in writing, prior to sale. No such terms and conditions were settled in the presence of the borrower or the guarantor, though they were the necessary parties to the terms of the agreement before the sale of a mortgaged property.

69. It was finally submitted that the question of maintainability of the writ petition has also been dealt with by the Learned Single Judge in its order on two-fold grounds:

i) Firstly, the Bank authority falls within the meaning of Article 12 of the Constitution of India and any action by such authority that is found to be without giving an opportunity to the borrower, or not following the provisions of specific statute and act without jurisdiction, can be assailed under Article 226 of the Constitution of India.

ii) Secondly, the writ petition was pending for a considerable period from 2010. It would have been improper for the Writ Court to relegate the matter to the Learned DRT. Therefore, even though there is alternative remedy under the specific statute for redressal of the grievances, it does not debar the Writ Petitioners from filing the writ petition, when a plenary power is assigned to the Writ court to decide the case, if it is found to be arbitrary, illegal, and against the principle of natural justice. The Writ Court can utilize its plenary power under Article 226 of the Constitution of India. Therefore, there is no merit in these appeals filed by the purchaser and/or the Bank. The impugned orders under challenge are required to be affirmed by dismissing all the appeals filed by the appellants.

ISSUES FOR DETERMINATION:

70. Considering the arguments advanced by the rival parties and submissions made thereof and upon perusal of the materials on records, the following issues emerge for our consideration, keeping in mind the legal provisions of the said SARFAESI Act, 2002 and the said Rules, 2002.

i. Whether the Bank duly complied with all the relevant provisions of the SARFAESI Act, 2002 while taking possession of the secured assets or without adhering to the relevant provisions, sold the mortgage property to the Purchaser, Dr. T. K. Karmakar?

ii. Whether the amendment of Rule 8(8) brought into force in the year 2016 is clarificatory in nature and has a retrospective effect or not?

iii. Whether the word "Parties" referred in Rule 8(8) of the said Rules, 2002 contemplates only the bank and the purchaser, when a sale would be affected under private treaty?

iv. Whether Writ Petitions are maintainable in the present form of law, when the writ petitioners have already availed their grievances by filing applications under Section 17 of the SARFAESI Act, 2002 as provided under the special statute?

v. Whether the writ petitioners have failed to redeem and/or waived their formal right by not offering better payment option than the purchaser?

vi. Whether the writ petitioners would have suffered prejudice by such sale of secured property?

vii. Whether Writ Petitioners have committed fraud, suppressed material facts and mis-leaded the court while filing or obtaining orders from this court?

DISCUSSION, ANALYSIS AND FINAL CONCLUSION OF THIS COURT:

71. Before deciding the issues involved herein, this Court would like to notice the following relevant legal provisions of the SARFAESI Act, 2002 and the Rules, 2002 thereof, for the sake of convenience and effective disposal of these appeals: -

Section 13 of the SARFAESI Act, 2002 reads as under: -

> *"**13. Enforcement of security interest.** — (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.*
>
> *(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4):*
>
> *[Provided that—*
>
> *(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply*

to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.]

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

[(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate [within fifteen days] of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.]

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely: —

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

[(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so

authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).]

(6) Any transfer of secured asset after taking possession thereof or takeover of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received

shall be paid to the person entitled thereto in accordance with his rights and interests.

[(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.]

(9) [Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than 2 [sixty per cent.] in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimate dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation. —For the purposes of this sub-section, —

(a) "record date" means the date agreed upon by the secured creditors representing not less than [sixty per cent.] in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measured specifies in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor."

Sections 8 and 9 of the Security Interest (Enforcement) Rules, 2002 reads as under: -

8. Sale of immovable secured assets. *- (1) Where the secured asset is an immovable property, the authorised officer*

shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) [The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case, not later than seven days from the date of taking possession, in two leading newspaper], one in vernacular language having sufficient circulation in that locality, by the authorised officer.

[(2A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of rule 8.]

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of

the property and may sell the whole or any part of such immovable secured asset by any of the following methods: -

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

[(c) by holding public auction including through e-auction mode; or]

(d) by private treaty.

[Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provision of Jammu and Kashmir Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.]

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

[Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.]

[(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the

web- site of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorized officer considers it necessary for a purchaser to know the nature and value of the property.]

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled [11][between the secured creditors and the proposed purchaser in writing].

9. Time of sale, Issue of sale certificate and delivery of possession, etc.- *[(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to*

sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.]

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of [Rule 8]:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

[(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;]

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the

fifteenth day of confirmation of sale of the immovable property or such extended period [21][as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months].

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [22][to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

[Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen day, from date of finalisation of the sale.]

(8) On such deposit of money for discharge of the encumbrances, the authorised officer [24][shall] issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make, the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

72. It is also relevant to note here the legislative History of the enactment of the SARFAESI Act, 2002 and its object and reasons. All these are well discussed in detail in the recent judgment of the Hon'ble Supreme Court passed in ***Bank Of India v. M/S Sri Nangli Rice Mills Pvt. Ltd & Ors***[16] is quoted hereunder:

"43. Till early 1990s, the civil suits were being filed for recovery of the dues of banks and financial institutions under the Act 1882 and the Code of Civil Procedure, 1908 (CPC). Due to various difficulties the banks and financial institutions had to face in recovering loans and enforcement of securities, the Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the "RDBFI Act").

[16] 2025 INSC 765

44.On account of lack of infrastructure and manpower, the regular civil courts were not in a position to cope up with the speed in the adjudication of recovery cases. In the light of recommendations of the Tiwari Committee the special tribunals came to be set up under the provisions of the RDBFI Act referred to above for the recovery of huge accumulated NPA of the Bank loans.

45. On the continuing rise in number of Non-Performing Assets (NPA) at banks and other financial institutions in India; a poor rate of loan recovery and the failure of the existing legislation in redressing the difficulties of recovery by banks; the Narasimham Committee I & II and Andyarujina Committee were constituted by the Government for examining and suggesting banking reforms in India. These Committees in their reports observed that one out of every five borrower was a defaulter, and that due to the long and tedious process of existing frame work of law and the overburdening of existing forums including the specialised tribunals under the 1993 Act, any attempt of recovery with the assistance of court/tribunal often rendered the secured asset nearly worthless due to the long delays. In this background the Committees thus, proposed new laws for securitisation in order to permit banks and financial institutions to hold securities and sell them in a timely manner without the involvement of the courts.

46. On the recommendations of the Narasimham Committee and Andyarujina Committee, the SARFAESI Act was enacted to empower the banks and financial institutions to take possession of the securities and to sell them without intervention of the court.

47. The statement of objects and reasons for which the Act has been enacted reads as under: -

"STATEMENT OF OBJECTS AND REASONS The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce nonperforming assets by adopting measures for recovery or reconstruction."

48. This Court in Mardia Chemicals Ltd. & Ors. v. Union of India & Ors. reported in (2004) 4 SCC 311, examined the history and legislative backdrop that ultimately led to the enactment of the SARFAESI Act as under: -

"34. Some facts which need to be taken note of are that the banks and the financial institutions have heavily financed the petitioners and other industries. It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through courts is lengthy and time taken is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the economic progress followed by a large number of other consequential ill effects. Considering all these circumstances, the Recovery of Debts Due to Banks and Financial Institutions Act was enacted in 1993 but as the figures show it also did not bring the desired results. Though it is submitted on behalf of the petitioners that it so happened due to inaction on the part of

the Governments in creating Debts Recovery Tribunals and appointing presiding officers, for a long time. Even after leaving that margin, it is to be noted that things in the spheres concerned are desired to move faster. In the present-day global economy it may be difficult to stick to old and conventional methods of financing and recovery of dues. Hence, in our view, it cannot be said that a step taken towards securitisation of the debts and to evolve means for faster recovery of NPAs was not called for or that it was superimposition of undesired law since one legislation was already operating in the field, namely, the Recovery of Debts Due to Banks and Financial Institutions Act. It is also to be noted that the idea has not erupted abruptly to resort to such a legislation. It appears that a thought was given to the problems and the Narasimham Committee was constituted which recommended for such a legislation keeping in view the changing times and economic situation whereafter yet another Expert Committee was constituted, then alone the impugned law was enacted. Liquidity of finances and flow of money is essential for any healthy and growth-oriented economy. But certainly, what must be kept in mind is that the law should not be in derogation of the rights which are guaranteed to the people under the Constitution. The procedure should also be fair, reasonable and valid, though it may vary looking to the different situations needed to be tackled and object sought to be achieved.

xxx xxx xxx

36. In its Second Report, the Narasimham Committee observed that NPAs in 1992 were uncomfortably high for

most of the public sector banks. In Chapter VIII of the Second Report the Narasimham Committee deals about legal and legislative framework and observed:

"8.1. A legal framework that clearly defines the rights and liabilities of parties to contracts and provides for speedy resolution of disputes is a sine qua non for efficient trade and commerce, especially for financial intermediation. In our system, the evolution of the legal framework has not kept pace with changing commercial practice and with the financial sector reforms. As a result, the economy has not been able to reap the full benefits of the reforms process. As an illustration, we could look at the scheme of mortgage in the Transfer of Property Act, which is critical to the work of financial intermediaries…." One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of assets. It is thus to be seen that the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field. In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the Report of the Narasimham Committee, yet another Committee was constituted headed by Mr Andhyarujina for bringing about the needed steps within the legal framework. We are

> *therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in operation it was uncalled for to have yet another legislation for the recovery of the mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy."*

73. Upon meticulous perusal of the relevant provisions, objects and reasons for enactment of the SARFAESI Act, 2002, it becomes evident that the legislation is a special statute enacted to empower the banks and financial institutions to take possession of secured assets. In the event a borrower, under a liability to a secured creditor pursuant to a security agreement, commits default in repayment of a secured debt or any instalment thereof, and the account in respect of such debt is classified by the secured creditors as a Non-Performing Asset (NPA), the secured creditor may, by written notice, call upon the borrower to discharge in full his liabilities to the secured creditor within sixty (60) days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under Section 13 sub-Section (4) of the SARFAESI Act, 2002.

74. In the present case, it is an admitted fact that the writ Petitioners/borrowers defaulted in repayment of the term loan availed by them, and its other allied

charges and, therefore, they handed over peaceful possession of the secured assets to the Bank, without any objection. There is no dispute regarding such a handover of possession.

75. Once possession of secured assets is taken by the Bank, an onerous duty of care is cast upon the secured creditor under Rule 8(3) of the Rules, 2002. The bank is obliged to take such care of the property as an owner of ordinary produce would take, under similar circumstances. Rule 8(4) of the 2002 Rules imposes additional responsibility upon authorized officer to take steps for the preservation and protection of the secured assets either movable or immovable and to protect the secured assets from financial loss due to unexpected events like natural disaster, fire, theft, vandalism or accidents. They can even insure the property, until they are sold or otherwise disposed of.

76. Insofar as the **issue nos. 1, 2, 3 and 6 are concerned**, all are taken up together for the sake of convenience and to avoid repetition. It is an admitted fact that the Bank, after complying with all relevant provisions of SARFAESI Act, 2002, took possession of the creditor's secured assets, and the petitioners had handed over the possession under Section 13(4) of the SARFAESI Act without any objection. Till taking over the possession of the secured assets, there was/is no dispute regarding the compliance provisions of section 13 (4) of SARFAESI Act, 2002.

77. Section 13(8) of the SARFAESI Act protects the ownership right of a borrower/debtor (i.e. the right of redemption), which is a constitutional right

under Article 300A of the Constitution of India. Section 13(8) gives an opportunity to the borrower, the owner of the secured asset, to take all efforts to stop the sale or transfer of the secured asset till the last minute, by tendering all dues, inclusive of costs, charges, etc., to the secured creditor before the date fixed for sale or transfer of the secured asset. If even one such tender, as stipulated in Section 13(8) is made by the borrower, it is mandatory for the secured creditor not to effect the sale or transfer of the secured asset and also not to take any further steps for the same. This view is also endorsed in the case of ***Mathew Varghese Vs. M. Amritha Kumar (Supra)***[17].

78. Despite being afforded ample opportunity, the writ petitioner made no payment. Now, the question remains that after taking over the possession, the sale was affected through a private treaty following the relevant provision of the Act and rules. It was done after exhaustion after floating of four tender processes through advertisement in newspaper but no bids were received by the bank and those issuance of four public notices were fully aware to the writ petitioners and the guarantor because they have challenged the auction sale and sale of secured assets before the DRT No. 2, Kolkata, by filing applications under Section 17 in view of the provisions laid down in the SARFAESI Act. However, the same was dismissed.

79. Initially, an offer was made by Dr. Karmakar to purchase to the extent of the value of Rs. 1.80 Lakhs, but the Bank refused his offer as the value/reserved price provided in the fourth public notice was higher than the offer price. On

---

[17] ***(2014) 5 SCC 610***

the second instance, Dr. Karmakar further offered to purchase at the consideration amount of Rs. 200 Lakhs, which was in consonance with the reserved price.

80. Upon receipt of this offer, the Bank provided the petitioners & guarantors an opportunity to submit a higher bid. In response, the petitioner offered Rs. 205 Lakhs, merely Rs. 5 Lakhs above Dr. Karmakar's offer, but on terms offering payment in 18 instalments spread over 46 months. Considering their past defaults and the prolonged pendency of the recovery process for nearly seven years, the bank found such a proposal commercially unviable and infeasible, as immediate recovery was imperative. Accordingly, the Bank rejected the petitioner's offer. Compliance with Rule 8(8) was ensured through the issuance of the Bank's letter dated 02nd June, 2010, and as the petitioners neither outbid Dr. Karmakar nor filed any written objection, the Bank rightly proceeded.

81. These facts have not been considered by the learned Single Judge who proceeded only on the ground that the Bank, without adhering to Rule 8(8), effected the sale in favour of Dr. Karmakar. According to the learned Single Bench, the Bank is required to enter into an agreement in writing with the parties affected by the property concerned, to allow the Bank to sell the property by means other than public auction and the word "parties" under Rule 8(8) indicates bank, purchaser, borrower and guarantor as well because borrower and guarantor are the effected party due to interest in the property supposed to be sold under private treaty.

82. The Single Bench further observed that an ownership right is a constitutional right provided under Article 300A of the Constitution of India to the borrower, which mandates that no person shall be deprived of his property saved by the authority of law. The Bank needs to protect borrowers' interests, particularly with regard to the valuation of the property. He should not be kept in the dark. Therefore, the term 'parties' herein refers to any entitiy against whom interest is involved in the property supposed to be sold by private treaty. When the secured property is to be sold by a private treaty, the terms and conditions of sale shall be decided between the parties for future reference.

83. In our considered view, when sale is conducted through public auction, the terms & conditions of sale set out in the auction brochure are published in the newspaper, and the purchaser is bound to comply with those terms. In such cases, neither the bank nor the purchaser can privately alter the conditions, as this could prejudice the rights of the borrowers or the guarantor. To safeguard all interests, an agreement in writing is necessary in the case of a private treaty under Rule 8(8) of the Rules, ensuring that the sale terms are transparent and mutually settled.

84. Therefore, according to our considered opinion, the term 'parties' in the Rule 8(8) of the rule means the bank and only the purchaser. Before the date of final order passed in 2018, there was no clarification that 'parties' mean bank/purchaser/borrower and guarantor. Only in the year 2014 in the case of ***Mathew Varghese (supra)***, particularly in paragraph 53, the Hon'ble Supreme Court observed as far as rule 8(8) of the Rules is concerned, and the

'parties' referred thereto can only relate to the secured creditor and the borrower, which includes guarantors (as defined in S.2 (f) and 13 of the SARFAESI Act, 2002).

85. In the said case, the Hon'ble Supreme Court has taken a view that the term "parties" mean secured creditor and borrower, which includes guarantors because in the said case, guarantors i.e first and second respondents stood as guarantors in respect of a credit facility to the tune of Rs. 30,00,000/- granted by the fourth respondent/Bank in favour of the company called "Jerry Merry Exports Pvt Ltd". As guarantors, the first and second respondents created an equitable mortgage in favour of the fourth respondent/Bank, by depositing their title deeds of their property.

86. Furthermore, on 20th September, 2007, the first and second respondents filed WP No. 27182 of 2007 challenging the proceedings initiated under the SARFAESI Act. The said writ petition was disposed of [*M. Amritha Kumar* v. *Indian Bank*, WP (C) No. 27182 of 2007, order dated 20-9-2007 (Ker)] by a learned Single Judge of the Kerala High Court by order dated 20-9-2007.

87. By the said order, the High Court, after taking note of the OA filed by the fourth respondent/Bank, as well as SA filed by the first and second respondents, directed the DRT to hear the parties and dispose of both the cases or at least the securitisation application filed by the first and second respondents without any delay.

88. The High Court also noted that at that point of time, the DRT had fixed 12th October, 2007 as the date for disposal of both the applications. While issuing the said directions, the learned Judge gave liberty to the parties to settle the liability and also directed the fourth respondent/Bank to defer the sale posted on 25th September, 2007 by six weeks, by imposing a condition on Respondents 1 and 2 to deposit a sum of Rs 10,00,000 before the date of sale i.e. 25-9-2007. It was also observed therein that since the fourth respondent/Bank had agreed for OTS in a sum of Rs 55,00,000, the Bank should waive interest if the first and second respondents offer a settlement within a reasonable time and by making payment of the said amount.

89. Pursuant to the said order, the first and second respondents state to have deposited the sum of Rs. 10, 00,000/- with the Fourth respondent Bank. Despite Bank without giving further notice, Bank affected sale to the third party. Therefore, in such situation consent of the guarantors was necessary in writing as per the Rule 8(8). The Hon'ble Supreme Court observed as far as sub-rule (8) is concerned, and the 'parties' referred thereto can only relate to the secured creditor and the borrower, which includes guarantors (as defined in S.2 (f) and 13 of the SARFAESI Act, 2002).

90. Rule 8(8) came to be amended after the decision in ***Mathew Varghese (Supra)***. Thus, the principles of law laid down in ***Mathew Varghese (Supra)*** have to be considered and applied with reference to the factual position obtained in ***Mathew Varghese (Supra)***, but not dehors it, to answer the

question whether the amendment introduced is to clarify or is it with the view to effect a substantive change.

91. ***Mathew Varghese (Supra)*** was a case where the Bank did not follow the mandatory procedure for effecting the sale of the secured assets. The Bank first notified in the public domain, and then individually to the borrower, that the secured assets will be sold. The first attempt did not attain any finality. On the next occasion, the Bank sold the secured property to a third party without notifying the borrower. It was only after the bank had confirmed the sale in favour of the third party that the Bank informed the borrower that the secured property had been sold. Thus, it was a case of the sale taking place behind the back of the borrower or guarantor.

92. As a sequitur, the question arose as to what is the outer limit after which the secured creditor will be at liberty to sell the secured assets to any third party. It is in that context that the Court considered Rule No. 8(6) and Rule No. 9(1), which provide 30 days as the outer limit.

93. The Court, however, gave a clear caveat, that the borrower cannot be kept in the dark; he has to be informed of every new attempt made by the secured creditor upon the lapse of the previous attempt to sell the secured property.

94. Thus, the purpose for which Rule nos. 8 and 9 was considered in ***Mathew Varghese (Supra)*** is different from the purpose for which Rule No. 8(5) and Rule No. 8(8) arise for consideration before this Court.

95. After amendment, Rule 8(8) indicates "Sale by any methods other than public auction or public tender, shall be on such terms as may be settled (between the secured creditor (Bank) and the proposed purchaser in writing)" It was the legislative intention.

96. The proposed purchaser may even be a borrower, a guarantor, or third party, who has to offer to purchase the secured assets at the reserved price, fixed by the secured creditor (Bank) and for the said purpose of affecting sale, a written document consisting of the terms and conditions of the sale process is essential. Meaning thereby Sale by any method, other than public auction or public tender, shall be on such terms as may be settled between the parties in writing, so no one would raise doubt with regard to the valuation of the property, party, terms and conditions etc.

97. When the sale is effected through public auction, the terms of settlement are already enumerated in the brochure of auction published in the newspaper. Before effecting the sale, the parties should comply with those terms as agreed. In such a situation, there is no essential participation of the borrower or the guarantor.

98. The provisions of the SARFAESI Act, 2002, do not require either the borrower or the guarantor when the terms and conditions are indicated in the brochure. The purchaser cannot play any role in the formulation of the terms from his side because he has to follow the terms of the Bank for purchasing the secured assets in public auction. The private party or the creditor (Bank) cannot fix terms independently in case of private treaty, therefore, written

terms are required before effecting the sale. Therefore, there must be written terms and conditions. It requires to be followed by the parties who are involved in the sale process regarding the valuation of the property, mode and manner of payment and all other terms as applicable for sale under Rule 8 (8) of the Rules.

99. Ample opportunity was provided to the writ petitioners by the Bank before effecting the sale to the third party because their interest was involved. The valuation offered by Dr. Karmakar was 200 lakhs. It was accepted by the Bank, when the head office approved the same after not receiving the bids, even after floating the 4th public auction notice in the newspapers.

100. It was deemed known to every person, including the borrowers and guarantor, when the public auction notice was published in the newspapers, which cannot be denied by the borrowers or the guarantor with regard to the value of the reserved price at the 4th public auction. But they did not come forward. Dr. Karmakar offered a value of 200 Lakhs; the bank tried their level best to inform accordingly, and gave an opportunity to the writ petitioners to offer a better price than the Purchaser. a written opinion from the borrower was obtained, so the question of causing prejudice to the borrower or guarantor with regard to actual valuation of the secured assets does not arise.

101. It would be deemed consent when the writ petitioners failed to pay or offer a better price than Dr. Karmakar and also remained silent.

102. The Bank has fully protected the interest of the Borrower and the guarantor as enshrined in the Act and the right granted under Article 300A of the

Constitution of India. However, the writ petitioners approached the writ court seeking following reliefs even after failure in DRT:

> "*ai) A declaration that the purported sale of the movable and immovable assets of the petitioner in exercise of power under Section 13(4) of the Securitization Act is invalid, illegal and void in law;*
>
> *aii) An order cancelling the purported sale of the secured assets of the petitioners be affected under Section 13(4) of the Securitization Act;*
>
> *aiii) A writ in the nature of Mandamus commanding the respondents forthwith to restore status quo ante and return the secured assets back to the petitioners;*
>
> *aiv) A writ of or in the nature of Mandamus commanding the respondents to consider the payment schedule of your petitioner and also the honest intention of your petitioner considering further the able management quality of the Directors of your petitioner for efficient running of the hospital and to Honour the wish of local people.*
>
> *b) A writ of or in the nature of Mandamus directing the respondents to pass for staying sale of the mortgaged properties of the loan for your petitioner and directing the respondents Bank to accept the payment schedules of your petitioner for the loan;*
>
> *c) A writ in the nature of mandamus directing the respondents Bank not to proceed against your petitioners under Recovery of debts due to Bank and Financial Institution Act, 1993 and*

to settle all loan upon acceptance of payment schedule of your petitioners.

d) A writ of or in the nature of Certiorari directing the respondents to certify and transmit to this Hon'ble Court all relevant papers and documents including the agreement in connection with the Cash Credit Facility and the impugned letter dated 19.04.2010 and 04.05.2010 so that they may be quashed and/or conscionable justice may be done by them.

e) Rule NISI in terms of prayers (ai), (aii), (aiii), (aiv), (b), (c) and (d) above.

f) Rules do issue may kindly be made absolute after hearing the parties and/or perusing the cause that may be shown.

g) Ad-interim order of orders in terms of prayers (a) to (e);

h) Cost or costs incidental thereto;

i) Such other or further order or orders as Your Lordships may deem fit and proper."

103. It was specifically contended by the appellant/Bank that Prayers (i) to (iii), as referred to by the writ petitioners, were not part of the original writ petition but were incorporated subsequently by way of amendment.

104. It is an admitted fact that the petitioners offered an amount of ₹205 Lakhs, but the same was proposed to be paid in 18 instalments spread over a period of 46 months. The Bank, in exercise of its commercial wisdom, rejected the said offer, as it was neither feasible nor acceptable when compared to the immediate and unconditional offer made by Dr. Karmakar.

105. It is well settled that it lies within the exclusive prerogative of the Bank to accept or reject any offer, keeping in view its recovery objectives and financial interests. The petitioners never raised any objection regarding the reserved price of ₹200 Lakhs either in the public auction or in the subsequent private treaty process. In the absence of any written objection, the same is deemed to have been accepted by the writ petitioners and guarantors, and hence no prejudice can be said to have been caused to them in any manner whatsoever.

106. Even after the amendment of Rule 8(8) of the Security Interest (Enforcement) Rules, 2002 in 2016, the expression "parties" therein has been clarified to mean only the secured creditor and the proposed purchaser. The clear legislative intent was that the agreement for sale under a private treaty would be concluded exclusively between these two parties, and such an amendment was purely clarificatory in nature to avoid administrative ambiguity.

107. The intention of the writ petitioners, in fact, was only to stall the recovery process without any bona fide intention to purchase the secured assets. The petitioners suffered no prejudice from the sale under private treaty.

108. The Hon'ble Supreme Court recently, on 10th September, 2025, in **Special Leave to Appeal © No. 7273/2025 (Mohammad Zubair Ahmad v. Punjab National Bank & Anr),** further emphasised that constitutional courts should not ordinarily interfere with DRT Proceedings. In the Catena of decisions, the Hon'ble Supreme Court has conveyed in so many words that in SARFAESI matters, High Courts should not exercise their writ jurisdiction. This applies

even to the financial institutions and banks. Once a law is laid down, the High Courts should refrain from exercising its writ Jurisdiction in SARFAESI matters.

109. The prayers sought in the writ petition, therefore, are not maintainable under Article 226 of the Constitution of India, as the Bank retains the absolute discretion to decide the manner and mode of recovery, provided such decision is in conformity with the statutory framework. The rejection of the petitioners' offer cannot be construed either as arbitrary, biased or as violative of the principles of natural justice.

110. If it were the legislative intent that the expression "parties" in Rule 8(8) also includes the borrower and guarantor, then the borrower could have, at best, been treated as a confirming party to the agreement for sale. However, such an interpretation would render the entire sale process uncertain and unworkable, since every borrower could obstruct the conclusion of sale by refusing to cooperate at the stage of registration or execution of the sale agreement.

111. Such an interpretation was never contemplated by the legislature, as it would frustrate the very purpose and object of the SARFAESI Act and undermine the Bank's right of recovery. The scheme of the Act clearly demonstrates that while ensuring that no undue prejudice is caused to the borrower or guarantor, the paramount consideration remains the expeditious recovery of secured debts

112. Therefore, the term "parties" under Rule 8(8) must be read as confined to the Bank and the proposed purchaser, the latter being a borrower, guarantor, or third party, if such person chooses to purchase the secured asset under private treaty.

113. In the present case, as neither the borrower nor the guarantor came forward with any viable proposal to purchase the property, the sale in favour of Dr. Karmakar stands unimpeachable. The conduct of the borrower and guarantor is not appreciable in any manner.

114. Unless the writ petitioners are able to establish substantial prejudice resulting from a proven procedural lapse under the SARFAESI Act or the Rules framed thereunder, no interference is warranted.

115. As emphasised by the Hon'ble Supreme Court in ***L&T Housing Finance Ltd. v. Trishul Developers***[18], the determination of whether a procedural lapse has resulted in prejudice necessarily depends upon the facts of each case, and there can be no straitjacket formula applicable to all transactions. In the present case, no prejudice of any nature has been demonstrated by the writ petitioners.

116. From the above discussion, it is evident that under Rule 8(8), whether in its pre-amendment or post-amendment form, the term "parties" refers only to the Bank and the proposed purchaser.

---

[18] ***(2020) 10 SCC 659***

117. No judgment has been placed before this Court wherein it has been held that the expression "parties" under Rule 8(8) must mandatorily include the borrower and guarantor. The subsequent amendment of 2016 only clarified the legislative intent to this effect. The judgments relied upon by the respondents in support of a contrary proposition are distinguishable and not binding in the facts of the present case. Consequently, the learned Single Judge misinterpreted Rule 8(8) and committed a manifest error in holding that the Bank had failed to comply with the said Rule by not including the borrowers and guarantor in the agreement. The impugned order, therefore, is unsustainable in law and liable to be set aside.

118. Insofar as Issue No. 6 is concerned, the right of redemption available to the mortgagor stands extinguished. The writ petitioners failed to discharge their liability in terms of the Bank's demand, and even the guarantors defaulted in depositing the amounts directed by the Tribunal in proceedings under Section 17 of the SARFAESI Act. Both applications filed under Section 17 by the borrowers and guarantor came to be dismissed. Consequently, the right of redemption stood extinguished upon transfer of the mortgagor's interest by execution of a registered instrument of sale, consequent upon default in repayment of the loan.

119. This principle has been reiterated by the Hon'ble Supreme Court in ***Dwarika Prasad v. State of U.P.***[19], particularly in paragraphs 8 and 9 thereof, wherein it has been held that once the secured asset is lawfully sold and title passes to

---

[19] ***(2018) 5 SCC 491***

the purchaser, the mortgagor's right of redemption ceases to exist. The Hon'ble Court held as follows:

> *"8.* ***Section 13(8) of the SARFAESI Act provides as follows:***
>
> *"**13 (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."*
>
> *These provisions have fallen for interpretation before this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254]. 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. Applying these principles in the context of the SARFAESI Act this Court held as follows: (SCC p. 638, para 39)*
>
> *"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 above stated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act."

9. In the present case, the appellant failed to comply with the provisions of Section 13(8). The statute mandates that it is only where the dues of the secured creditor are tendered together with costs, charges and expenses before the date fixed for sale or transfer that the secured asset is not to be sold or transferred. The appellant was aware of the proceedings initiated by the Bank for asserting its right to recover its dues by selling the property. The appellant moved the DRT in Securitisation Application No. 176 of 2015. During the pendency of those proceedings, orders were passed by the Tribunal on 1-2-2016 and 3-2-2016. The appellant moved the Allahabad High Court which by its order dated 9-3-2016 [Dwarika Prasad v. State of U.P., 2016 SCC OnLine All 2564]

restrained the Bank and the auction-purchaser from executing the sale deed until 15-3-2016. The stay was extended till 28-3-2016 by which date the appellant was to deposit an amount of Rs 7,00,000. The balance was required to be deposited by 30-4-2016. While the appellant deposited an amount of Rs 7,00,000 with the Bank, he failed to deposit the balance in accordance with the provisions of Section 13(8). Even after the writ proceedings before the High Court were withdrawn, the appellant did not deposit the balance due together with the costs, charges and expenses. The sale was confirmed, a sale certificate was issued and a registered sale deed was executed on 12-4-2016. The appellant failed to ensure compliance with Section 13(8). The right to redemption stands extinguished on the execution of the registered sale deed. This is also the view which has been expressed in the judgment in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254]".

120. Furthermore, the Hon'ble Supreme Court in the case of ***Celir LLP v. Bafna Motors (Mumbai) (P) Ltd.***[20], particularly paragraph Nos. 63, 64, 65 and 66 has clearly held as follows:

"63. 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

[20] **(2024) 2 SCC 1: (2024) 1 SCC (Civ) 62: (2024) 242 Comp Cas 45: 2023 SCC OnLine SC 1209**

this Court in Arce Polymers (P) Ltd. v. Alphine Pharmaceuticals (P) Ltd. [Arce Polymers (P) Ltd. v. Alphine Pharmaceuticals (P) Ltd., (2022) 2 SCC 221: (2022) 1 SCC (Civ) 571], referred as under: (SCC pp. 233-34, paras 16-17)

> *"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)*

64. 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 1882 Act. 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 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.

65. The SARFAESI Act is a special law containing an overriding clause in comparison to any other law in force. Section 60 of the 1882 Act, is a general law vis-à-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 1882 Act till the execution of conveyance of the mortgaged property. The legislative history has been covered in the preceding

paragraphs of this judgment and how Parliament desired to have express departure from the general provision of Section 60 of the 1882 Act. 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 1882 Act. 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 1882 Act, an interpretation which furthers the said Objects 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).

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

121. Provisions of Rule 8 of 2002 Rules and Rule 15, Schedule II Pt. I of Income Tax Act, 1961 by virtue of Section 29, RDDB Act, 1993 and Section 37, SARFAESI Act, 2002, held; have to be strictly followed in the sale of secured assets under SARFAESI Act, 2002. If sale, properly notified after giving 30

days' clear notice to borrower, does not take place as scheduled for reasons which cannot be solely attributable to borrower, secured creditor cannot affect sale or transfer of secured asset on any subsequent date by relying upon notification issued earlier. Such earlier notification would lapse, as has been held by the Hon'ble Supreme Court in the case of ***Mathew Varghese v. M. Amritha Kumar (Supra)***. However, in the case at hand, no such situation would have arisen, as in the present case, the secured creditor (Bank) had complied with all legal formalities for effecting the sale of secured assets, and the writ petitioners got sufficient time before effecting sale to Dr. Karmakar.

122. The chart of the compliance of all legal formalities is given in details as under: -

Provision	**Legal Requirement**	**Date & Action Taken**	**Compliance Status**
Section 13(2) SARFAESI Act	Borrower must be given 60 days' demand notice to repay dues before creditor takes possession.	**28.06.2006** – Demand Notice issued for dues of ₹3,70,90,320/-. Borrowers failed to pay.	Complied
Rule 8(6) Security Interest (Enforcement) Rules, 2002	Before effecting sale of immovable property, Bank must give 30 days' notice of sale to borrower.	**19.04.2010** – Bank issued "Notice of Sale of Assets" to borrower & guarantor, inviting higher offers.	Complied
Rule 8(8) Security Interest (Enforcement) Rules, 2002	If sale is not by public auction/tender but by private	**02.06.2010** – Bank gave terms & conditions of sale; Dr. T.K.	Complied

	treaty, terms must be settled in writing between Bank & purchaser (clarified by 2016 amendment, retrospective).	Karmakar accepted. Sale completed on **07.06.2010.**	

123. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the secured creditor has duly complied with all the mandatory provisions under Section 13 of the SARFAESI Act, 2002, and Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. Sufficient opportunities were afforded to the writ petitioners, which they failed to avail. The learned Single Judge, however, overlooked the entire gamut of proceedings and erroneously allowed the writ petition. Consequently, the impugned order dated 11th December, 2018, is unsustainable in law and is liable to be set aside.

124. With respect to **Issue Nos. 4 and 5**, it is undisputed that the writ petitioners/borrowers as well as the guarantor instituted two separate applications under Section 17 of the SARFAESI Act, 2002, assailing the sale notice issued by the Bank and praying for quashing the sale of the mortgaged property. Both applications, however, stood dismissed. Prior to the dismissal of S.A. No. 330 of 2010, the DRT-II, Kolkata, while granting liberty, had directed the deposit of about ₹30,00,000/- as a condition precedent for entertaining the securitisation application vide order dated 22.03.2007.

125. The guarantor failed to comply, and consequently, the Tribunal, vide order dated 30.04.2010, dismissed the application on merits. No further appeal was preferred by either the writ petitioners or the guarantor, rendering the dismissal orders final and conclusive. The question, therefore, that arises is whether the writ petition, filed thereafter despite exhaustion of remedies under the special statute, was maintainable.

126. Once the writ petitioners exhausted all available statutory remedies before the DRT, Kolkata, as envisaged under the SARFAESI Act, 2002, they could not have invoked the writ jurisdiction of this Court. Being fully conscious of the statutory framework and remedies therein, the petitioners, upon failure to secure favourable orders, could not bypass the special statute and directly resort to writ proceedings.

127. It is true that alternative remedy is not totally barred. The Hon'ble Supreme Court held in different cases and decided that alternative remedy is not totally barred. Particularly, in the case of ***Uttar Pradesh Power Transmission Corporation Ltd. & Anr. vs Cg Power and Industrial Solutions Ltd. & Anr.***[21], the Hon'ble Supreme Court held in particularly paragraph no. 67 as under: -

> *"67. It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an*

[21] AIR 2021 SUPREME COURT 2411, AIRONLINE 2021 SC 243

alternative remedy, particularly (1) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. reported in AIR 1999 SC 22 and Pimpri Chinchwad Municipal Corporation and Ors. V. Gayatri Construction Company and Ors, reported in (2008) 8 SCC 172, cited on behalf of Respondent No.1."

128. In this context, reference may be made to the decision of the Hon'ble Supreme Court in ***PHR Invent Educational Society v. UCO Bank & Ors.***[22], wherein it was categorically held that once the secured asset is sold, the sale confirmed, and the sale certificate duly registered, the borrower's right of redemption stands irrevocably extinguished, save in cases of fraud or collusion. It was further held that a borrower's application under Section 17 of the SARFAESI Act, even if withdrawn, cannot be retrospectively revived after such sale confirmation.

129. The Court underscored the primacy of statutory remedies under the SARFAESI Act over writ jurisdiction under Article 226 of the Constitution, cautioning High Courts to exercise judicial restraint when the statute provides a complete mechanism. The attempt of the borrower therein to revive proceedings

---

[22] (2024) 6 SCC 579: (2024) 3 SCC (Civ) 226: (2024) 245 Comp Cas 80: 2024 SCC OnLine SC 528

through writ jurisdiction was rejected, and the order of the High Court directing such revival was set aside with costs.

130. The Hon'ble Supreme Court particularly held in paragraph nos. 22, 32, 37, 40 and 41 in the aforesaid judgment as under: -

> *"**22.** The law with regard to entertaining a petition under Article 226 of the Constitution in case of availability of alternative remedy is well settled. In Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110: (2010) 3 SCC (Civ) 260: 2010 INSC 428] , this Court observed thus : (SCC p. 123, paras 43-45)*
>
> > *"43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*
> >
> > *44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court*

under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

32. *It can thus clearly be seen that though it was specifically contended on behalf of the appellant herein that the writ petition was not maintainable on account of availability of alternative remedy, the High Court has interfered with the writ petition only on the ground that the matter was pending for some time before it and if the petition was not entertained, the borrower would be left remediless. We however find that the High Court has failed to take into consideration the conduct of the borrower. It is further to be noted that, though the High Court had been specifically informed that, on account of subsequent developments, that is confirmation of sale and registration thereof, the position had reached an irreversible stage, the High Court has failed to take into consideration those aspects of the matter.*

37. *It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*

> *(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;*
>
> *(ii) it has acted in defiance of the fundamental principles of judicial procedure;*
>
> *(iii) it has resorted to invoke the provisions which are repealed; and*
>
> *(iv) when an order has been passed in total violation of the principles of natural justice.*

40. *We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.*

41. *While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110: (2010) 3 SCC (Civ) 260: 2010 INSC 428] since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy: (SCC p. 128, para 55)*

> *"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Court's continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope*

and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

131. In ***CELI LLP (Supra)*** the Hon'ble Supreme Court has further held in paragraph Nos 100 and 101 as follows:

*"**100.** In Varimadugu Obi Reddy [Varimadugu Obi Reddy v. B. Sreenivasulu, (2023) 2 SCC 168: (2023) 1 SCC (Civ) 58], it was held as under: (SCC p. 183, para 36)*

"36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under the second proviso to Section 18 of the 2002 Act."

***101.** More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8*

> *SCC 110: (2010) 3 SCC (Civ) 260], it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act."*

132. Further, in the case of ***South Indian Bank Ltd. v. Naveen Mathew Philip & Anr.***[23] the Hon'ble Supreme Court unequivocally held that High Courts should not ordinarily entertain writ petitions under Article 226 in SARFAESI matters when effective statutory remedies, such as appeals under the SARFAESI Act before the DRT or DRAT, are available. In this case, borrowers filed writs challenging demand and recovery notices while statutory tribunals were already functional.

133. The Supreme Court declared this an abuse of process, explaining that Article 226 writ power must be confined to extraordinary circumstances such as violations of fundamental rights, natural justice, or jurisdictional errors not commercial disputes. It reiterated the exhaustion principle: statutory grievance mechanisms must be utilized first. The Supreme Court upheld the lenders' rights, decrying continued High Court interference despite consistent precedent cautioning restraint in financial matters.

134. The Hon'ble Supreme Court in the aforesaid case observed in paragraph Nos. 15, 16, 17 and 17.2 are as follows: -

> *"**15.** Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any*

[23] (2023) 17 SCC 311: (2024) 244 Comp Cas 642: 2023 SCC OnLine SC 435

legal right, the court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the non-compliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative.

16. *We wish to quote with profit a recent decision of this Court in Radha Krishan Industries v. State of H.P. [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771]: (SCC pp. 794-95, paras 25-27)*

> *"25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar, Trade Marks [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1], a two-Judge Bench of this Court after reviewing the case law on this point, noted: (SCC pp. 9-10, paras 14-15)*
>
> > *'14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the fundamental rights contained in Part III of the Constitution but also for "any other purpose".*
> >
> > *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a*

discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.'

26. Following the dictum of this Court in Whirlpool Corpn. v. Registrar, Trade Marks [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1], in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107], this Court noted that: (Harbanslal Sahnia case [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107], SCC p. 110, para 7)

'7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii)

where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar, Trade Marks [Whirlpool Corpn. v. Registrar, Trade Marks, (1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.'

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the

right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(Emphasis in original)

17. *We shall reiterate the position of law regarding the interference of the High Courts in matters pertaining to the SERFAESI Act by quoting a few of the earlier decisions of this court wherein the said practice has been deprecated while requesting the High Courts not to entertain such cases.*

17.2. *United Bank of India v. Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] : (SCC pp. 123 & 128, paras 42-45 & 55)*

"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular

> *legislation contains a detailed mechanism for redressal of his grievance.*
>
> ***
>
> *55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."*

135. It is now a well-settled proposition that a High Court may, in its discretion, entertain a writ petition notwithstanding the availability of an alternative remedy only in the following exceptional circumstances:

(i) where enforcement of a fundamental right is sought;

(ii) where there is a violation of principles of natural justice;

(iii) where the impugned order is wholly without jurisdiction; or

(iv) where the vires of a statute is under challenge.

136. In the present case, the writ petitioners approached this Court only after their applications before the DRT, Kolkata, were dismissed, and after the guarantor too failed to secure any relief. Significantly, the writ petition was filed without impleading Dr. Karmakar, despite the sale certificate having already been registered in his favour on 07.06.2010. The Tribunal, meanwhile, did not interfere with the proceedings initiated by the Bank under the SARFAESI Act, which had attained finality. In such a scenario, the writ petition could not have been entertained merely on the grounds that the Bank falls within the

ambit of Article 12 of the Constitution or that the petition had been pending for a considerable period. The learned Single Judge further erred in entertaining the writ petition even on the ground that the secured creditor had rejected the petitioners' settlement offer.

137. The rejection of the settlement proposal by the Bank does not attract the principles of natural justice. At no stage—whether upon receipt of the notice under Section 13(2), or upon rejection of their offer, or thereafter—did the writ petitioners seek a hearing from the Bank. Such rejection could only have been challenged before the DRT under the statutory scheme. Instead, the petitioners, fully aware of their prior dismissal before the Tribunal, directly approached this Court, thereby abusing the writ jurisdiction.

138. In this regard, the judgment of the Hon'ble Supreme Court in ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others***[24] is squarely applicable. It has been categorically held that once the remedies provided under a special statute are exhausted, a party cannot, under the guise of a writ petition, reopen or revive proceedings. The SARFAESI Act, being a special enactment containing a comprehensive mechanism for redressal of grievances, precludes resort to writ jurisdiction, save in exceptional circumstances. The learned Single Judge, therefore, erred in holding the writ petition maintainable merely on the premise that the appellant-Bank is an instrumentality of the State under Article 12. No such

[24] (2023) 384 ELT 8 (SC)

exceptional circumstances existed in the present case. Hence, the writ petition ought to have been dismissed in limine or relegated to the appropriate forum.

139. The chart of the compliance of all legal formalities is given in details as under:-

Auction	**Valuation of Assets**	**Date & Place of Auction**	**Publication (Newspaper)**	**Whether Any Bids were Made**
First Auction	₹3,75,00,000/- (Valuation Report 11.01.2007: Land & Building ₹1,85,97,000/- + Plant & Machinery ₹1,64,00,000/- = Total ₹3,50,57,000/-; Reserve Price fixed at ₹3,75,00,000/-)	23.02.2007	Published as per Rule 8(5) — in the Bengali and English newspaper on 22.12.2006	No bids received
Second Auction	₹2,71,00,000/- (Valuation Report 26.03.2008: Land & Building ₹2.16Cr+Plant & Machinery ₹55 Lakhs) keeping reserve price at ₹3,50,57,000	02.01.2008	Times of India	No bids received

Third Auction	₹2,68,23,039/- (Valuation Report 15.11.2008: Land & Building ₹207.47Lakhs + Plant &Machinery ₹60.76 Lakhs) keeping reserve price at ₹2,00,00,000/-	23.05.2009	Not specified	No bids received
Fourth Auction	Reserve Price at ₹2,00,00,000/- (Valuer's report &Mid Corporate Valuation Committee: Realizable value ₹173.81Lakhs, Forced Sale Value ₹152.08 Lakhs)	24.05.2009	Ananda Bazar Patrika	No bids received
Private Treaty (Final Sale)	₹2,17,26,000/- (Valuation Report 17.04.2010: Land & Building ₹186.41Lakhs + Plant &Machinery ₹30.85Lakhs). Offer by Dr. Karmakar ₹2,00,00,000/-	07.06.2010 (Sale Certificate executed)	Sale not by auction. However, terms were settled under Rule 8(8)	Sold to Dr. T.K. Karmakar

140. Coming to **Issue No. 7**, this Court finds that the writ petitioners failed to implead Dr. Karmakar as a party respondent despite the fact that the sale certificate had already been registered in his favour on 07.06.2010. He was a necessary and proper party to contest the disputes raised.

141. The purchaser was impleaded in the writ petition upon direction of the this court at a much later stage. Moreover, the petitioners grossly misrepresented facts by inflating the value of the property at not less than ₹9 crores, only to impress upon the Court that the reserve price of ₹2 crores was arbitrary, though no documentary evidence was furnished.

142. Their conduct is further evident from their offers of one-time settlement—first at ₹155 lakhs on 28.08.2008 (rejected by the Bank on 15th November, 2008, as it was below the assessed value), and thereafter at ₹205 lakhs payable in 18 instalments covering 46 months—subsequent to learning about Dr. Karmakar's offer of ₹200 lakhs.

143. The Bank had obtained valuations on four occasions, with the highest assessment being ₹1,85,97,000/- for land and building and ₹1,64,00,000/- for plant and machinery (aggregating ₹3,50,57,000/-) as on 11th January, .2007. On this basis, the reserve price was rightly fixed at ₹3,75,00,000/- prior to the first auction. The writ petitioners, thus, not only misrepresented but also sought to mislead the Court and failed to approach with clean hands. On this ground alone, the impugned orders are liable to be set aside.

144. It is trite law, as reiterated time and again by the Hon'ble Supreme Court, that suppression of material facts, misrepresentation, or non-disclosure of the true state of affairs constitutes fraud upon the Court. A litigant who does not approach the Court with clean hands is disentitled to any relief under Article 226 of the Constitution. Judicial process cannot be permitted to be abused by

granting reliefs on the basis of falsehood or suppression. The writ petition, therefore, deserved dismissal on this ground alone.

145. Furthermore, the writ petitioners suppressed their actual legal status and locus standi. Their company had already been struck off the records of the Registrar of Companies and dissolved, having been deemed a shell entity. No statutory returns were filed since 2005, rendering the company non-existent in the eyes of law. These facts, though not raised before the learned Single Judge by the purchaser, ought to have been disclosed by the writ petitioners themselves. Their deliberate omission constitutes yet another instance of suppression of material facts, which per se disentitles them from seeking any equitable relief under Article 226 of the Constitution.

146. Thus, in the light of the above discussion and foregoing reasons, we have reached to the conclusion that there is gross infirmity in the impugned orders passed by the Single Judge on 11th December, 2018, 30th September, 2020 and 2nd December, 2020, consequently, all impugned orders are set aside. In the result, the present appeals being **MAT 56 of 2019**, **MAT 118 of 2019**, **MAT 815 of 2020** and **MAT 702 of 2020**, filed by the appellant Bank and purchaser, Dr. Karmakar are hereby **allowed** without order as to costs.

147. Interim order, if any, stands vacated.

148. Connected applications being **CAN 2 of 2020 (Old CAN 4725 of 2020)**, **CAN 3 of 2020 (Old CAN 4726 of 2020)**, **CAN 6 of 2025** and all pending application(s), if any, shall also stand disposed of.

149. Urgent photostat certified copy of this Judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

I Agree.

(Rajasekhar Mantha, J.) **(Ajay Kumar Gupta, J.)**

1. I fully concur with the findings arrived at in the judgment authored by my learned brother Mr. Ajay Kumar Gupta, J,. I however take this opportunity to examine the amendment made to Rule 8(8) of the SARFAESI Rules of 2002, given the significance it holds in the financial sector of our country.

2. At paragraphs namely 30, 33.1, and 38 of ***Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610***. The Supreme Court was considering Section 13(8) of the SARFASEI Act 2002. Rule 8(8) was only referred and was not germane to the issues in the said case. Rule 8(8) above was not substantively considered or dealt with by the Supreme Court. It was in fact rule no. 8(6) and 9(1) which were germane to the Case. Paragraphs 30, 33.1, and 38 of the **Mathew Varghese Case (supra)** are set out below:-

> 30. Therefore, by virtue of the stipulations contained under the provisions of the Sarfaesi Act, in particular, Section 13(8), any sale or transfer of a secured asset, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.
>
> 33.1. <u>In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1),</u>

the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time.

38. On a reading of the above paragraphs, we are able to discern the ratio to the effect that 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 NarandasKarsondas [(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.

Emphasis applied

3. The Hon'ble Supreme Court in **Celir LLP v. Bafna Motors (Mumbai) (P) Ltd, reported in (2024) 2 SCC 1** discussed theratio of **Mathew Varghese(Supra):-**

> 47. In Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] , **this Court had the occasion to consider the right of redemption of mortgage under the Sarfaesi Act vis-à-vis the 1882 Act,** wherein, this Court made the following relevant observations, being reproduced below : (SCC pp. 637-39, paras 38-39 & 41))
>
> 66. In Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] this Court had interpreted the unamended Section 13(8) of the Sarfaesi Act and Section 60 of the 1882 Act respectively. However, thereafter the legislature amended Section 13(8) of the Sarfaesi Act. Thus, on this score, the decision in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] could be said to have been partially legislatively overruled as the substratum of the verdict stands altered/amended.
>
> 77.4. In Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] this Court held that the original Section 13(8) retained the borrower's right to redeem.

4. The Court therefore in **Mathew Varghese(Supra)**therefore discussed if there was any inconsistency between the right of redemption under the SARFAESI Act and the Transfer of Property Act.

5. As a matter of fact, the Court in **Mathew Varghese(Supra)** could not and did not have occasion to interpret the expression, 'parties in writing' in Rule no.8(8). The amended rule no.8(8) could not fall for a consideration in the **Mathew Varghese (Supra)** as the amendment was brought into force in 2016. The Para no.53 relied on by the borrower to argue that new amendment being substantive in nature may be referred to below :-

> 53. We, therefore, hold that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor. In the event of any such sale properly notified after giving 30 days' clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire

> blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is sub-rule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as sub-rule (8) is concerned, the parties referred to can only relate to the secured creditor and the borrower. It is, therefore, imperative that for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8 read along with Rule 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the Sarfaesi Act, in particular Sections 13(1) and (8) of the said Act.

6. Para no.53 has two parts. Firstly that a notice of sale, which has elapsed due to the sale not taking place within 30 days, will not operate as a good notice to the borrower for a subsequent sale. The secured creditor has to furnish a new notice for any further attempt to sell. Secondly that the proviso to Rule 9 (1) of the SARFAESI Rules 2002mandates a fresh notice to be served upon the borrower for each fresh, further or subsequent sale.

7. It is essentially in the above backdrop of the above the Supreme Court observed that a sale could be done either by way of a public auction or by a private treaty. While referring to the private treaty, the Court observed that the 'parties' shall mean secured creditor and borrower. There is a context in which the Court made the said observation. In **Mathew Varghese (Supra),** the bank was found in egregious violation of the due process in that the bank did not inform the borrower about its selling of the secured assets to the third party.

8. Thus the Supreme Court faced with the violation of the rights of the borrower made a fact specific observation, that "the expression parties under Rule 8(8) would mean the Bank and the borrower". There was no formal interpretation amounting to ratio decidendi, of the meaning of the expression 'parties'.

9. The law laid down in **Mathew Varghese(Supra)**is that the Right of redemption under SARFASEI Act is consistent with the Right of redemption under the Transfer of Property Act1882. The Legislative amendment to Sec.13(8), in the year 2016, has clarified the expression parties under Rule 8(8). An observation by Court where the issue was not germane to the decision is at best obiter and cannot be deemed as a conclusive interpretation.

10. There is yet another way of looking at the issuebyapplying the inversion test. If the observation as regards Rule 8(8) is hypothetically removed from the decision in **Mathew Varghese(Supra)**, the ratio and decision remains the same. Thus applying the inversion test, I am of the view that**Mathew Varghese(Supra)** did not lay down the law as regards Rule 8(8). In this regard, reference may be made to the decision in **Director of Settlements, Andhra Pradesh v. M.R. Appa Rao reported in (2002) 4 SCC 638,** wherein the Court held that the ratio of a judgment is the answers answer that the Court gives to questions raised and argued before it:-

> "7. ... It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. ***A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a***

> ***ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision.*** Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. …"

Emphasis applied

11. An Obiter has a good persuasive value. However, The Court cannot enforce an obiter dicta when its enforcement will cause injustice to the parties. I am of the view that an Obiter may be applied , if at all its application is called for, to a subsequent case in light of a comparative analysis of the factual context before the Hon'ble Supreme Court and that before the concerned High Court.

12. Hence, this Court proceeds to independently interpret Rule 8(8) in light of Rule no. 8(5).Rule no. 8 must be read in its entirety to ascertain whether the amendment has created any new right or extinguished any existing rights.

13. Rule no. 8(1) says that the bank shall inform the borrower that it is taking possession of the mortgaged property.

14. Rule no. 8(2) mandates the bank to inform the public about taking over of the possession of the mortgaged property. The same shall be done by way of advertising in the newspaper.

15. 8(2A) says that the bank shall further inform the borrower about the fact of taking possession of the mortgaged property, by an email.

16. Rule 8(3) mandates that the bank or its authorized representative shall preserve the mortgaged property upon taking over of the actual physical possession thereof, as if the owner thereof is the Bank.

17. Rule 8(4) mandates the bank to take out an insurance policy indemnifying the mortgaged property.

18. Rule 8(5) mandates twofold obligations before the reserve price is fixed. The first is that the monetary value of the mortgaged property must be valued afresh. The second is the reserve price shall be fixed after consulting the secured creditor. Thus the Bank fixes the reserve price based on an objective criteria namely the estimate value of the property.

19. Further, Rule 8(5), indicates the modes by which a mortgaged property may be sold. Can the borrower be a party to such sale. The answer lies in sub-rule 6 of Rule 8.

20. Rule no. 8(6) mandates that the bank serves notice of sale to the borrower. Sub rule 6 uses the expression '*for sale of the immovable secured assets,* ***under sub-rule (5)***'. The Bank is thus mandated to inform the mode of sale, adopted by it, to the borrower. The borrower is thus sufficiently informed for him/her to take a call that whether he should purchase the mortgaged property. Rule 8(6) is set out below:-

> (6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

21. The amended rule no. 8(8), is as follows - the terms of the sale shall be decided between the parties when the secured asset is sold by private treaty.

The2016 amendment which incorporated the words Secured Creditor and Proposed Purchaser has not excluded a borrower from being a party to the private agreement since a borrower can purchase back the property from the secured creditor.

22. The terms of sale are enumerated in the brochure of a public auction. The sale by public auction must conform with those terms. The purchaser has no role in the formulation of such terms. The parties inclusive of the borrower cannot fix terms privately.

23. The pre-amended Rule 8(8) did not explicitly state who would be the parties to the said private treaty. After the amendment, Rule 8(8) has made the 'meaning of the parties' explicit, which was implicit before the amendment.

24. The question therefore is whether there was any clear indication in Rule 8(8) (pre amendment) as to who are the parties to a sale by private treaty and whether any parties of the Pre amendment, has lost the right to be a party to the private arrangement in the post amendment.

25. The nature of private arrangement as described in Sub-rule 5 of Rule 8 would indicate who could be such parties. Rule no. 8(5) is set out below:-

> (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise <u>interested in buying the such assets;</u> or
>
> (d) <u>by private treaty.</u>

26. The first part of the clause may not include a borrower since a borrower may not be in the business of purchasing secured assets. However, the borrower will surely fall within the scope of the expression <u>interested in buying the such</u>

assets; since he could be an interested person in purchasing his property. The borrower can also be a party to a private treaty. In the same vein, any third party purchasor can also be a party to, under the purview of the above two clauses.

27. Under the pre amended Rule 8(8), the expression 'parties' would have included both third parties and the borrower. What has however continued to be prohibited pre and post amendment is that a borrower need not and cannot be a party to the sale agreement where he is not the purchaser. The Secured creditor or his authorized representative will always be a party along with the purchaser. The variables were and are the third party and borrower.

28. Post amendment, a borrower can also be a proposed purchaser within the meaning of Rule No. 8(8) Thus, as per the decisions of ***SriSankaracharya University of Sanskrit and Ors Vs Dr.Manu and Ors*** reported in ***(2023) 19 SCC Pg 30,*** particularly paragraphs 31, 34 and 35, the amendment made in 2016 to Rule 8(8), is clarificatory in the sense it said that the agreement will be between the parties namely the seller /creditor and the purchaser. It would date back to 2002 ie from the date of original enactment.

29. Hence none of the judgments cited by the parties rendered pre /post amendment, have not laid down the law as regards Rule 8(8) read in the light of Rule 8(5).

30. On the question of waiver already dealt with extensively by my Learned brother, there is an additional fact that comes to the notice of this Court. The borrower had not not objected to the revised valuation of the property

informed to him along with the offer of Dr Karmakar. The borrower on the contrary made a counter offer of 205 Lacs, albeit payable in 46 installments. The borrower thus accepted and acted upon the revised valuation of the secured asset procured by the bank at Rs. 200 lacs. Failure to repay the dues of the bank amounted to waiver and non-challenge to the revised valuation of the bank by the borrower amounted to acquiescence and attracts the principle of Estoppel. The dicta in the decision of ***CELIR LLP Vs Bafna Motors (Mumbai) Pvt Ltd*** reported in ***(2024) 2 SCC Pg1,*** paragraphs 63-66 and 97-110, is clearly attracted in the facts of the case.

31. The appeals of the Bank and the purchaser are, thus, **allowed** and the impugned judgement is liable to be set aside.

(**Rajasekhar Mantha, J.**)