

# **Sunita Nishad And Anr. vs Debt Recovery Appellate Tribunal Thru ... on 1 April, 2025**

**Author: Sangeeta Chandra**

**Bench: Sangeeta Chandra**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Judgement Reserved on: 05.11.2024

Judgement Delivered on: 01.04.2025

Neutral Citation No. - 2025:AHC-LK0:17786

AFR

Case :- WRIT - C No. - 35050 of 2019

Petitioner :- Sunita Nishad And Anr.

Respondent :- Debt Recovery Appellate Tribunal through Registrar And Ors.

Counsel for Petitioner :- Sushil Kumar, Abhiuday Pratap Singh, Amrendra Nath Tripathi, Meen

Counsel for Respondent :- Rakesh Pal, Pc Chauhan, Prashant K. Srivastava, Ramesh Chandra, S.

Hon'ble Mrs. Sangeeta Chandra, J.

1. This writ petition has been filed by the petitioners Sunita Nishad and her husband Om Prakash, challenging the order dated 22.10.2019 passed by the Debt Recovery Appellate Tribunal Allahabad, (DRAT) in Appeal No.18 of 2018, filed by the Bank of Baroda through which the order dated 20.08.2018 passed by the Debt Recovery Tribunal, Lucknow (hereinafter referred to as "DRT") has been set aside and auction sale dated 11.12.2017 and possession notice dated 05.10.2016 has been affirmed and physical possession of House No. 13/88, Sector-13, Indira Nagar Vistar Yojna, Lucknow, has been directed to be delivered to Smt. Mamta Yadav, the respondent no.4 in this

petition. The petitioners had earlier filed Writ Petition No. 31115 (MB) of 2017 before this Court challenging the auction notice dated 11.12.2017, which petition was disposed off by this Court directing the petitioners to approach the DRT as the proceedings were under the SARFAESI Act.

2. The brief facts necessary for deciding the case, as mentioned in the Writ Petition No. 35050 of 2019 are that the State Government launched a scheme called "Kamdhenu Dairy Scheme" with intention to promote dairy farming in the State of U.P. to maintain its status as the highest milk producing state in the country. One Jai Prakash, the brother of petitioner no.2 and the brother-in-law of the petitioner no.1, applied for a term loan of five years and was sanctioned Rs.90 lakhs by the Bank of Baroda under the State Sponsored Scheme. The petitioner no.1 and the petitioner no.2 being relatives of the borrower Jai Prakash and already being customers of Bank of Baroda, Gomti Nagar Branch, were shown as guarantors of the loan fraudulently by the bank, which used the original papers relating to petitioner's jointly owned property at Indira Nagar, which was already mortgaged to the bank in a housing loan, as surety for the agricultural loan of the borrower. It has been stated in paragraph 10 to 13 that the petitioner no.1 was never consulted by the bank, nor did she sign any papers for extension of mortgage and she never stood as guarantor or surety for the loan taken by Jai Prakash. Petitioner no.1 and petitioner no.2 had taken a housing loan from HDFC Bank on 30.07.2011 of Rs.32 lakhs for buying the house situated at Indira Nagar and the loan had to be repaid with interest to HDFC initially, but due to lower rate of interest being offered by Bank of Baroda, the petitioners got their loan transferred on 23.01.2015 to the respondent no.3, Bank of Baroda, which granted them a loan of Rs.29,50,000 and the papers relating to the house situated at Indira Nagar were submitted by the petitioners to the said bank in January, 2015 itself. In March 2015, when Jai Prakash applied for loan of Rs.90,00,000 under Kamdhenu Dairy Scheme, the papers relating to Indira Nagar House property had already been deposited in the bank as the house was mortgaged for repayment of housing loan, which had to be done in 217 monthly installments. The loan account of the borrower Jai Prakash Yadav was declared NPA by the bank on 30.06.2016 and a Demand Notice was issued under Section 13(2) of the SARFAESI Act on 21.07.2016.

3. It has been stated that the petitioner no.1 never received such Demand Notice under Section 13(2) of the SARFAESI Act. On 05.10.2016, possession notice was issued by the bank under Section 13(4) of the SARFAESI Act, 2002 and it took symbolic possession of the property, but no such notice was ever served upon petitioner no.1, and the petitioner had no knowledge of taking over of the property by the bank. On 27.01.2017, a letter of redemption was sent by the bank to the petitioners through speed post. Thereafter summons were issued by the District Magistrate, Lucknow under Section 14 of the SARFAESI Act, 2002, on 21.03.2017.

4. It has been stated that the petitioners filed their objections, but they were not considered and the house property at Indira Nagar was put up for auction. The bank failed to comply with Rule 8(6)(a) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the Rules of 2002), which specifically provides that publication of auction sale notice shall include details of encumbrances on the property known to the secured creditor. The bank was well aware that there was a housing loan of Rs.29 lakhs pending against the said property, which was the primary charge and details of such encumbrance was not published.

5. The petitioners filed Writ Petition No. 31115 (MB) of 2017 at Lucknow challenging the Auction Sale Notice dated 11.12.2017, which was disposed of by this court, directing the petitioners to approach the DRT. The petitioners filed an application under Section 17 (1) of the Act of 2002 before the DRT Lucknow and after pleadings were exchanged, the Securitisation Application No.19 of 2018 was allowed by the DRT by its order dated 20.08.2018, a copy of which has been filed as annexure-12 to the petition.

6. It has been submitted on behalf of the petitioners that the Securitisation Application No. 19 of 2018 was allowed by the DRT after recording a specific finding that the Demand Notice issued under Section 13(2) of the Act of 2002 was not served upon petitioner no.1. The postal receipt submitted by the bank was issued in the name of one 'Savita' and not Sunita. The DRT observed that the bank should have gathered more proof of service, instead of placing reliance upon postal receipt dated 25.07.2016, which was in the name of 'Savita' and not Smt. Sunita Nishad. The DRT while placing reliance upon the Rule 3(4) of the Rules of 2002, which required that the Demand Notice should be served upon each borrower individually where there were more than one borrowers; was of the opinion that the Demand Notice was served only upon the husband of the petitioner no.1 Om Prakash, and not on Sunita Nishad although the property was jointly owned by husband and wife. The DRT also observed that mere producing of postal receipt in support of having dispatched the notice under Section 13(2) is not sufficient to have established that the communication was actually delivered to the addressee. Due to non-compliance of Rule 3(4) of the Rules of 2002, the entire action initiated by the respondent bank was void ab initio, and therefore, the possession notice dated 05.10.2016 and the E-auction sale notice published by the bank were also vitiated on the ground that the possession notice was dispatched to the petitioners through registered post on 05.10.2016 and symbolic possession was taken by the bank on 05.10.2016 itself. Such action was against the law settled by the High Court of Karnataka in the case of K.R. Krishna Gowda and Another Vs. Chief Manager/Authorised Officer, Kotak Mahindra Bank reported in Manu/KA/0689/2012, where the Karnataka High Court observed that in order to enable the borrower to know the date on which possession would be taken by the secured creditor Rules(1) and (2) of Rule 8 would have to be complied with by issuance of notices indicating the date on which possession would be taken. The DRT observed further that Special Leave Petition preferred by Kotak Mahindra Bank was dismissed by the Supreme Court hence the judgement rendered by Karnataka High Court stood affirmed about service of possession notice prior to actual taking of symbolic possession.

7. It was also observed by the DRT that auction sale notice published by the respondent bank did not mention the encumbrances already existing on the secured asset proposed to be sold in terms Rule 8(6) of the Rules of 2002, Sunita Nishad being a joint owner of the secured asset along with her husband Om Prakash, had taken a housing loan on the property earlier from the bank, which was not mentioned in the sale notice. Consequently, since the bank had failed to prove service of demand notice dated 21.07.2016, on Sunita Nishad hence, the entire consequential action taken by the respondent bank under the SARFAESI Act of 2002 was vitiated and void ab initio.

8. It has further been stated that the bank being aggrieved filed an appeal before the DRAT, which was allowed mainly on three grounds. It was observed that even though notice was sent indicating a

wrong name of 'Savita' instead of Sunita Nishad it can be considered to be a typographical error of the postal department and notice shall be treated to have been duly sent as it was not returned undelivered. Such notice will be deemed to have been served upon petitioner no.1 as it was addressed, not only to petitioner no.1, but also to her husband Om Prakash, who was living at the same address. The Securitisation Application was filed by both husband and wife. The pleading in the Securitisation Application was only for non-receipt of notice by the the applicant no.1, Smt. Sunita Nishad. It is sufficient to infer that the notices were served to both husband and wife as they were dispatched to one and the same address and her husband, Om Prakash did not allege that such notice was never served upon him, and even the notice sent to Sunita Nishad did not return unserved.

9. It has also been observed by the DRAT that non-service of prior notice of taking symbolic possession under Section 13(4) is also of no consequence once summons were issued under the provisions of Section 14 of the Act by the District Magistrate. The DRAT also observed that in view of the judgment rendered by the Supreme Court in *Standard Chartered Bank Vs. V. Noble Kumar*, 2013 (9) SCC 620; there was no necessity to serve any notice before taking over symbolic possession of the property. The DRAT placed reliance upon a judgement rendered by this court at Allahabad in Writ-C No. 9731 of 2019, '*M/s Mahesh Industries Private Limited and Others Vs. Karur Vyasa Bank Limited*', on 08.08.2019, where relying upon *Noble Kumar (supra)*, this Court had observed that there is no requirement for issuance of any notice to the borrower for the proposed date of taking possession. The secured creditor is under no obligation to intimate to the borrower/guarantor before taking symbolic possession of the property.

10. The DRAT has allowed the appeal of the bank also on the ground that the applicants had created an extended mortgage of property for securing the loan granted to their relative Jai Prakash, who was the Borrower. The extended mortgage letter dated 07.05.2015 was signed by both Sunita Nishad and her husband Om Prakash, and therefore, Sunita Nishad could not be permitted to say that she had not given any guarantee for securing the loan taken by Jai Prakash. As per Rule 8(6), the secured creditor is required to mention encumbrances in the sale notice, but in this case the properties were primarily mortgaged against the housing loan granted to Sunita Nishad and her husband by Bank of Baroda itself and since no mention regarding such housing loan was made in the demand notice, it was apparent that such housing loan was regular. Also, even if the encumbrance was in existence, the property was mortgaged with the self same bank and encumbrance was not of any third party (institution), hence if at all it caused any prejudice to the rights of any party it was that of the bank alone. Non-mentioning of such encumbrance on the properties in the sale notice was of no consequence and it could not be said that the bank had committed such a grave irregularity as to vitiate the sale proceedings altogether.

11. Initially, when this petition was filed and taken up as fresh, the counsel for the petitioner had argued that the requirement of Rule 13 of the Rules of 2002 had not been met and the Appellate Tribunal had given a wrong finding regarding sufficiency of service of notice under Section 13. The Court issue notice to the respondent and directed that till the next date of listing, the parties shall maintain status quo. Such time interim order continued to be extended and counter affidavit was filed by the respondent bank on 26.03.2021, along with an application for vacation of interim order.

12. In the counter affidavit, the bank denied the claim of the petitioners in the writ petition and stated that the petitioners have resorted to material concealment and misrepresentation in stating on oath that they have not taken any guarantee in the term loan facility extended to Jai Prakash of Rs.90 lakhs under the Kamdhenu Scheme. It was stated that earlier Writ-C No.16546 of 2021 was filed by the borrower Jai Prakash before this court, praying for early disposal of his application for recall dismissing Securitisation Application No. 15 of 2017 for want of prosecution. The High Court disposed off Writ-C No. 16546 of 2021 on 07.04.2022 with direction to the DRT to decide the recall as well as delay condonation application filed by Jai Prakash expeditiously, but before such order was passed, the DRT had already disposed off both the applications by its order dated 04.04.2022 and Securitisation Application No. 15 of 2017 filed by Jai Prakash stood revived.

13. It was also stated in the counter affidavit of the bank that the Demand Notice dated 21.07.2016, issued under Rule 13 (2) of the Act of 2002 was sent to the borrower and also to the guarantor through registered speed post on 25.07.2017, which notice has not returned undelivered, and therefore, service was deemed upon them. The bank took symbolic possession of the secured asset on 05.10.2016 and summons were issued by the District Magistrate under Section 14 of the Act which were affixed on a conspicuous place on the house property/secured asset as the borrower/guarantor had refused to accept personal service of the same.

14. It has also been stated that the petitioners have admitted in paragraphs 3 and 15 of writ petition that they had stood as guarantors for the loan facility extended to Jai Prakash. Kamdhenu Dairy Loan is a commercial loan, which is granted to the borrower against some security. The borrower Jai Prakash and the guarantors have executed the necessary documents in this regard by securing the said term loan by extending guarantee of house property no. 13/88, Indira Nagar Vistar Yojna and a plot situated at Sharda Nagar Raebareli Road Scheme, therefore, the bank could initiate recovery proceedings under SARFAESI Act which relates to recovery of NPAs from secured assets held by the creditor. Moreover, the Uttar Pradesh Agricultural Credit Act, 1973 prohibits sale of agricultural property, whereas the house property situated at Indira Nagar Vistar Yojna and the plot situated at Sharda Nagar Raebareli Road Housing Scheme were not agricultural properties.

15. It has also been stated that after summons were issued under Section 14 of the Act of 2002 by the District Magistrate, Lucknow. The petitioners did not file objections when orders were passed under section 14 of the Act by the designated officer, the Bank had published auction notice on 18.11.2017, in two leading newspapers, namely, Times of India and Amar Ujala as is required under the Act and the Rules. The DRT had allowed the Securitisation Application of the petitioners on technical grounds stating the Demand Notice remained unserved due to wrong mention of the name of the petitioner no.1, the name of the petitioner no.1 was Sunita, but it was typed as 'Savita'. It has been stated that the postal receipt issued in the name of 'Savita' had been issued for the notice which showed the correct name and address of the guarantors. Both petitioner no.1 and petitioner no.2 were joint owners of the property. The Demand Notice sent through registered post has never been received back undelivered, and therefore, service is deemed upon the petitioners. With regards to taking over of symbolic possession, the bank has relied upon Standard Chartered Bank Vs. Noble Kumar (supra), where the Supreme Court has observed that application under Section 14 of the Act can be moved straight away after Demand Notice under Section 13(2) of the Act is issued.

16. The bank has also stated in its counter affidavit that there is no provision which requires the bank to cancel the sale proceedings in case only one bid is received. Since the reserved price set by the bank had been met by the bidder, the house property could be sold to such bidder. It was an open bidding process and the petitioners were free to place a better offer in the auction.

17. In the rejoinder affidavit filed by the petitioners to the counter affidavit of the bank, it has been stated that Writ-C No. 16546 of 2021 was filed by the borrower Jai Prakash without knowledge of the petitioners. When the petitioners derived knowledge of the contents of the petition, they objected to the same. Since Jai Prakash, the borrower was petitioner no.1's brother-in-law, he admitted his mistake, but requested the petitioner no.1 not to deny the contents of the Writ Petition No. 16546 of 2021. To protect him, she had stated in her Writ Petition No. 31115 (MB) of 2017 that she was the guarantor in the loan extended to Jai Prakash. In fact, Writ Petition No. 31115 (MB) of 2017 was disposed of by this court by making no observations on merit, but with a direction to the petitioners to approach the DRT under the SARFAESI Act. In such writ petition the petitioners had made no admission of being guarantors for the term loan facility extended to Jai Prakash. The petitioners had taken a housing loan of Rs. 29 lakhs from the Bank of Baroda to buy a house property situated in Sector-13, Indira Nagar and mortgaged the said house to secure the loan. They had not signed any document extending the guarantee in favour of Jai Prakash for securing his term loan taken under Kamdhenu Dairy Scheme. However, the bank in collusion with the borrower Jai Prakash had extended the guarantee which was never executed by the petitioners. As a result of such fraudulent behaviour, the bank manager, who had processed the loan given to Jai Prakash had been suspended and later demoted.

18. It was also stated in such rejoinder affidavit that the alleged letter issued on 27.11.2017 admitting the mortgage of house property situated at Indira Nagar for securing the loan given to the principal borrower was not signed by the petitioners and Jai Prakash may have forged the same. The house property at Indira Nagar was never mortgaged, and therefore, there could not have been an extension of the mortgage deed.

19. It was reiterated that the bank had failed to comply with Rule 8(1) and 8(2) by not issuing notices, specifying the possession date. The alleged notice of symbolic possession dated 05.10.2016 was published only on 07.10.2016 proceedings initiated thereafter ex parte.

20. After affidavits were exchanged and the petition was ripe for hearing an Impleadment Application no.9 of 2022 was filed by the petitioners on 25.04.2022 for impleading the principal borrower Jai Prakash as respondent no.5 in the writ alleging that Securitisation Application No.150 of 2017 was pending before the DRT and its outcome would impact the petitioners, and therefore, it was necessary to include Jai Prakash as respondent no.5 in the petition.

21. Objections were filed by the bank on 18.07.2022, against such application for impleadment by the bank saying that such impleadment application was collusive in nature and filed only to delay the decision in the writ petition where pleadings had been exchanged and the matter was ripe for final hearing. It was stated that initially one Securitisation Application No. 150 of 2017 was filed by Jai Prakash, the petitioners were not impleaded therein as respondents. When Securitisation

Application No.19 of 2018 was filed by petitioners Sunita Nishad and Om Prakash, they did not implead Jai Prakash as a respondent, although the same advocate was engaged by them and they had made pleadings on behalf of each other. Also, when Securitisation Application No.19 of 2018, was allowed by the DRT, the bank filed appeal before the DRAT Allahabad. Jai Prakash, the borrower was not a party to such proceedings and no objections regarding the non-joinder of the borrower was ever raised by the petitioners.

22. This court passed a detailed order on 14.03.2023, rejecting the impleadment application by noticing the objections as stated by the bank and finding that the securitisation application of Jai Prakash the borrower is pending before the DRT, where the guarantors have not been impleaded as parties. The securitisation application of the guarantors Sunita Nishad and Om Prakash having been allowed, the bank had filed appeal before the DRAT Allahabad, and during the pendency of the appeal, the petitioners did not raise any issue regarding non-impleadment of the principal borrower. Since Writ-C No. 35050 of 2019 had arisen out of proceedings in the Securitisation Application No. 19 of 2018 and challenged the order passed in appeal by the DRAT, Allahabad where Jai Prakash was not a party, there was no necessity of impleading the Jai Prakash in the instant petition.

23. An application for amendment in the petition was moved on 20.09.2023 by the petitioners stating that Writ Petition No. 31115 (MB) of 2017 had been disposed off on 20.12.2017 and there were certain incorrect pleadings made therein and the petitioners had filed an amendment application which was pending in the finally disposed off petition.

24. This Court partly allowed such Amendment Application on 01.03.2024, the relevant extract of which is being quoted here in below:-

1. \*\*\*

2. Learned counsel for the applicant has prayed, on the basis of the affidavit filed in support of such amendment application for permission to add paragraph 1A after paragraph 1 in Writ-C No.35050 of 2019, that initially a Writ Petition No.31115 (M/B) of 2017 was filed by the petitioners, which was disposed of by this court by an order dated 20.12.2017. In the said Writ Petition No.31115 (M/B) of 2017, certain incorrect statements were made in paragraphs-3 and 15, to substantiate the claim of the petitioners that loan ought to be recovered from the principal borrowers first and only if it is not feasible to recover from the principal borrowers, proceedings of recovery could be initiated against the guarantors that is the petitioners. Such pleadings was made in Writ Petition No.31115 (M/B) of 2017 by the petitioners only to convince this Court that the petitioners being guarantors cannot be fixed with liability of repayment of loan of the principal borrower before the bank proceeds against principal borrower. But from such pleadings, an inference has been drawn that the petitioners admitted the Bank's claim that they are guarantors of the loan taken by the principal borrower. In fact, the petitioners had wanted to assert that the bank was arbitrarily proceeding against the petitioners as guarantors.

The petitioners pleading in the said Writ Petition No.31115 (M/B) of 2017 was made only because they could not understand the nuances of the english language used by the learned counsel appearing for them in Writ Petition No.31115 (M/B) of 2017 and even the document that has been relied upon by the petitioners showed that the petitioner no.1 Sunita Nishad never signed the terms and conditions of the loan document and the extension of equitable mortgage, nor did she extended her own house as security against the loan of Jai Prakash, who is the principal borrower. The petitioners were under tremendous pressure as their residential house, which was fraudulently shown by the Bank officials to have been extended as security for repayment of loan in time by the principal borrower, was under auction sale and they were being threatened to be dispossessed. Therefore, inadvertently mistake was committed in the said pleading in Writ Petition No.31115 (M/B) of 2017.

3. Learned counsel for the applicant has also stated before this Court that Writ Petition No.31115 (M/B) of 2017 having already disposed off by this Court by its order dated 20.12.2017, an application for amendment in the pleadings in the said Writ Petition No.31115 (M/B) of 2017 has also been filed, which is pending disposal before the Division Bench.

4. Additionally, learned counsel for the applicant has prayed for liberty to add paragraph-70 A in Writ-C No.35050 of 2019, raising the plea with regard to the bank proceeding under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) illegally, as a loan that had been given to the Principal borrower was under "Kamdhenu Dairy Interest Subsidy Scheme" floated under the U.P. Agriculture Credit Act, 1973. In the said loan, subsidy was given by the State Government. As such recovery, if any, could be done only under the provisions Section 11, 12, 12A, 12B and 12C of the U.P. Agriculture Credit Act, 1973. The Bank could not be allowed to pursue the remedy under the SARFAESI Act before the Debt Recovery Tribunal.

5. Further, the learned counsel for the applicant prays for permission to be granted to the applicants to add paragraph 70-B to the pleadings in Writ-C No.35050 of 2019, wherein it has been stated that loan in question being under the Kamdhenu Dairy Interest Subsidy Scheme, under the U.P. Agriculture Credit Act, 1973, is an agricultural loan extended for agricultural purposes and, therefore, no proceedings under the SARFAESI Act could be initiated to effectuate recovery of agricultural loan.

6.,7.,8.\*\*\*

9. A strong objection has been taken to the pleadings proposed to be added as paragraph-1A saying that the petitioners knowingly signed all documents and they cannot resile from signatures made by them on such documents as guarantors and the annexure that have been filed along with Writ Petition No.31115 (M/B) of 2017 by the petitioners themselves belie their claim that they were not guarantors to the loan taken by the principal borrower and they did not offer their residential house as surety for the loan taken by the principal borrower.



10. It has been argued by Sri Prashant Kumar Srivastava, learned counsel for the respondent, that the petitioners deliberately moved an amendment application with a prayer to add the pleadings as proposed in paragraph-1A only to detract from the inference made from the pleadings in the writ petition subsequently filed i.e. Writ-C No.35050 (M/S) of 2019, where they had stated that they had not signed as guarantors and have not offered the house as surety for the loan taken by the principal borrower. Through the application for amendment, the petitioners are trying to raise new grounds and are trying to change nature and character of the petition.

11. It has also been argued that application for amendment filed by the applicants is collusive for the reason that at the initial stage when securitization application No.150 of 2017 was filed by the principal borrower Jai Prakash, and securitization application no.19 of 2018 was filed by Mrs. Sunita Nishad and her husband, they had engaged the same Advocate and they had made pleadings on behalf of each other in the said Securitization Applications.

12., 13., \*\*\*

14. This Court has gone through the counter affidavit that has been filed to the original writ petition Writ-C No.35050 of 2019 and also the writ petition no.31115 of 2017, a copy of which has been annexed to the counter affidavit filed in the instant petition. From the same, it is evident that documents have been filed by the Bank to show that the petitioners had signed the documents as guarantors for the principal borrower, annexed as annexure-5 to the counter affidavit. Therefore, the amendment as proposed by addition of paragraph 1A cannot be allowed. It would only permit the petitioners to resile from their pleadings and set up a new case altogether before this Court.

15. In so far as the proposed amendments and addition of paragraphs- 70A and 70B are concerned, such addition to the pleadings raise legal grounds, which can be taken at any stage.

16. Such pleadings are proposed to be made the basis of the legal grounds which could be raised at any stage even at the stage of final hearing as they do not require additional evidence to be led. Such proposed amendments by addition of paragraph-70A and 70B, the grounds (hh) and (ii) as well as the relief clause (v) are permissible in law to be added and are therefore allowed.

17. Consequently, the amendment application C.M. Application No. I.A.12/ 2023 is partly allowed."

25. In effect, this Court had allowed amendments relating to UP Agricultural Credit Act, 1973, by addition of paragraphs 70A and 70B and grounds relating to the same. It however, did not allow paragraph 1A to be added where the petitioners had stated that, although in Writ Petition No. 31115 (MB) of 2017, they had stated that recovery should first be sought to be made from the principal borrower before proceeding against the guarantor and had inadvertently suggested their acceptance as guarantors to the loan taken by Jai Prakash, the petitioners only meant that even if they are treated as guarantors, the recovery should first follow the proper legal procedure. It was also stated that they had unknowingly signed the pleadings under pressure as their residential house was under auction.

26. After amendment of the petition by addition of paragraph 70A and 70B, the respondent bank filed another application for dismissal of the petition on 03.04.2024, along with a supplementary counter affidavit, saying that the petitioners have acknowledged their role as guarantors for the term loan of Rs.90 lakhs extended to Jai Prakash under Kamdhenu Dairy Scheme additionally through letter dated 27.11.2017, they admitted to providing the guarantee and requested the bank to auction the borrowers property first. They had further sought a deferment of auction of their house property situated in Sharda Nagar Yojna and Indira Nagar Vistar. Also, after rejection of interim relief application in Securitisation Application, the petitioners had filed Writ Petition No. 31115 (MB) of 2017 and had made various averments on behalf of the borrower and they had also engaged the same counsel and through this petition as well as repeated applications moved by the petitioners, they have indirectly benefited the borrower.

27. Moreover, the petitioners have filed false affidavits before this Court and the Supreme Court in the case of State of Orissa and Others Vs. Laxmi Narayan Das (2023) 15 SCC 273, has observed that if a petitioner does not disclose all material facts fairly and truly before the Court but stated them in a distorted manner and tried to mislead the Court, the Court has inherent power to protect itself and to prevent an abuse of its process and dismiss the petition. The respondent bank has also placed reliance upon Hari Narayan Vs Badari AIR 1963 Supreme Court 1558, G. Narayana Swamy Reddy Vs. Govt. of Karnataka 1991 (3) SCC 261 and several other cases where the High Court denied relief to the litigant on the ground that he had not approached the court with clean hands and writ jurisdiction was equitable jurisdiction, which could not be allowed to be abused. With regard to contents of paragraphs 70A and 70B, it has been submitted that securitisation proceedings can be initiated by a secured creditor for realisation of debt through transfer of security interest created on the secured asset by way of sale/lease, etc. under the Act of 2002. There is no provision in the Act of 2002, which bars the bank from initiating securitisation proceedings under the Kamdhenu Scheme.

28. A short counter affidavit has been filed by the respondent no.4 Mamta Yadav on 19.04.2024, stating that she had bought the property in question in auction sale held by the bank and completed all formalities and deposited the money by taking a home loan of Rs.75 lakhs from Indian bank sanctioned on 14.12.2017. The auction purchaser was paying the monthly installments for repayment of such loan to Indian bank, but had not been given actual physical possession of the property, sale certificate in regard to which had been issued by the respondent bank.

Sri Shailendra Singh Rajawat, Advocate appearing for the auction purchaser respondent no.4 has argued that the encumbrance or charge, if any, in respect of the property in question can only be challenged by the auction purchaser, and therefore, the petitioner as such being the guarantors and mortgagors, in the instant case have no locus to raise any objection against the alleged encumbrances or charge. For establishing a charge or encumbrance, the petitioner has to show three parties, one who created the encumbrance, two, who has a superior or first charge under any statute and three, who has inferior or second charge.

It has been argued by the learned counsel appearing for the respondent no.4 that since a Sale Certificate has been issued by the bank, which held the first charge on the property in question, mentioning there in that such sale has been conducted in a public auction in proceedings under the

SARFAESI Act, and transferred title, free from all encumbrances on the auction purchaser, such Sale Certificate gives absolute title and interest to the auction purchaser on the property in question.

29. It has been argued by Shri Amrendra Nath Tripathi, learned counsel for the petitioners that the Tribunal has failed to correctly appreciate the facts and law. The DRT had allowed the Securitisation Application on three grounds, namely, that the Demand Notice was not served on the Sunita Nishad; prior notice before taking symbolic possession was not issued to the guarantor; the encumbrance on the secured asset was not mentioned in the sale notice. The DRAT while allowing the appeal gave an erroneous finding that the mentioning of the name 'Savita' on the postal receipt was a typographical error and since Securitisation Application had been filed by both Sunita Nishad and her husband, Om Prakash and there was no pleading on record that Om Prakash, who lived in the same property on the same address as Sunita had not been served a copy of the demand notice, it could not be said that notice was not served upon Sunita Nishad. Notice having not returned undelivered, would be deemed to have been served.

30. It has been argued that the Appellate Tribunal also erroneously observed that non-service of notice of possession would be of no consequence as the bank had resorted to Section 14 of the SARFAESI Act proceedings and summons was issued by the District Magistrate which was served on the guarantor. It has been submitted that the Appellate Tribunal erred in interpreting the judgement of the Supreme Court in Standard Chartered Bank Vs. Noble Kumar(supra).

31. It has further been argued that the Tribunal committed a gross error of law in holding that the petitioners have created extended mortgage of the property when the original mortgage was not made and signed, extended mortgage could not have been made at all.

32. It has also been argued on behalf of the petitioners that the Tribunal has wrongly held that non-mentioning of encumbrances on the property proposed to be sold is of no consequence as prior mortgage had been created by the petitioners in favour of the self same bank.

33. It has been further argued by the learned Counsel appearing on behalf of the petitioners that Kamdhenu Dairy Scheme had been launched by the Government of U.P. as an Agricultural Credit Scheme under the U.P. Agricultural Credit Act, 1973. If the loan had been extended under an Agricultural Credit Scheme to Jai Prakash, which could not be repaid by the borrower, then proceedings should have been initiated under Sections 11, 12, 12 A, 12B and 12C of the Uttar Pradesh Agricultural Credit Act of 1973. No proceedings could have been initiated under the Act of 2002 to effectuate recovery of agricultural loan. Also, the properties which were allegedly mortgaged to the bank for securing the agricultural loan for a project to be set up by Jai Prakash were agricultural and situated at Barabanki and Principal Borrower was at Lucknow and the Bank of Baroda Branch at Gomti Nagar had no jurisdiction to sanction loan in District Barabanki. This irregularity when revealed to the higher management of the bank had prompted them to take disciplinary action against the staff involved in sanctioning of loan to Jai Prakash, the principal borrower.

34. On the basis of pleadings on record, the counsel for the petitioner has argued that firstly the petitioners did not create any mortgage and also never took any guarantee in the matter of loan

availed by Jai Prakash under the Kamdhenu Dairy Scheme. Even if such mortgage is shown by the bank to have been created, the same is defective. Secondly, the bank did not follow the procedure prescribed under the SARFAESI Act and Rules to auction the property of the petitioner in so far as no demand notice under Section 13(2) was received by the petitioner no.1, no possession notice under Section 13(4) was given in time prior to taking over of symbolic possession, and the Auction Notice did not disclose the encumbrances on the property. Even the Sale Certificate which was issued to the respondent no. 4 was defective.

35. To substantiate such arguments, counsel for the petitioners has stated that service of demand notice on petitioner no.2, who is the husband of petitioner no.1, cannot be said to be sufficient service on petitioner no.1. The Appellate Tribunal findings are contrary to the mandatory requirement under Rule 3(1) and Rule 3(4) of the Rules of 2002 which require that demand notice shall be served either by hand or by registered post acknowledgment due, or by speed post or by courier, or by any other means of transmission of documents like through fax or electronic mail service upon the borrower or his agent and the demand notice shall be served on each borrower. In case of the petitioners, the only mode of service of demand notice as shown by the bank is through registered post and a perusal of demand notice filed at page-413 of the counter affidavit of the bank shows that it mentions the same having been issued in pursuance of some 'General Form of Guarantee' dated 02.03.2015. No such form or guarantee dated 02.03.2015 has been brought on record by the bank either before the Tribunal or before this court. It is the case of the petitioners that Loan Sanction Letter dated 01.03.2015 of Jai Prakash had only one 'General Form of Guarantee' of Om Prakash petitioner no.2, and not petitioner no.1, as is evident from serial no.4 of the sureties mentioned at page-292 of the counter affidavit of the respondent no.3 Bank.

36. I have gone through page no.292, as pointed out by the learned counsel appearing for the petitioners, which is part of enclosures to Supplementary Affidavit SA 19 OF 2018 filed by Chief Manager of Bank of Baroda in Securitisation Application No.19 of 2018. S.A.-1 is the Loan Sanction Letter and it shows that Jai Prakash had taken a term loan of rupees 90 lakhs under Kamdhenu Dairy Scheme and offered as securities several properties, some of which also belonged to Om Prakash and Sunita Nishad. Prior to loan sanction to Jai Prakash on 01.03.2015, the petitioners had taken a housing loan of rupees 29.50 lakhs on 28.01.2015. Copies of Loan Sanction Letter dated 28.01.2015 to Om Prakash and Sunita Nishad and Loan Sanction Letter dated 01.03.2015 in favour of Jai Prakash have been filed along with the said supplementary affidavit in Securitization Application No. 19 of 2018. The security documents mentioned in the Loan Sanction Letter dated 28.01.2015 in favour of the petitioners mentions primary mortgage of House No.13/88 situated at Indira Nagar, Lucknow belonging to Om Prakash and Sunita Nishad his wife, and plot no. 3/334 situated at Rajni Khand Sharda Nagar, Raebareli Road, Lucknow as collateral. Attendance Sheet for Creation of Mortgage, Declaration in the Matter of Mortgage by deposit of Title Deed of property, Stamped Undertaking for Creation of Equitable Mortgage soon after execution of Sale Deed, letter of Confirmation of Mortgage Creation/Extension; have all been mentioned as enclosures to the sanction letter. All such documents have signatures of Sunita Nishad as also of Om Prakash, her husband.

37. The Loan Sanction Letter dated 01.03.2015 in favour of Jai Prakash mentions sanction of term loan of rupees 90 lakhs under Kamdhenu Dairy Interest Subsidy Scheme and mentions as securities at serial no. 4 General Form of Guarantee signed by Om Prakash and at serial nos. 5, 6, 7 and 8 declaration under Section 6(1) of the Agricultural Credit Act, 1973 of Khasara plot nos. 71, 73, 72, 81 and parts thereof, situated at Gram Athri Pargana Bhetauli, Tehsil Ramnagar, District Barabanki. These four properties mention of which finds place as securities at serial numbers 5 to 8, have not been proceeded against under the SARFAESI Act and Rules, being agricultural properties. At serial no.9 of the same document, mention has been made of Extension of property of Jai Prakash house no. 645B on plot no. 223, Abhishek Puram Mandiyaon, Jankipuram Vistar, Lucknow. At serial no. 10 mention has been made of Extension of property of House No. 13/88, Sector 13, Indira Nagar Vistar Yojna owned by Om Prakash and his wife, Sunita Nishad. At serial no.11, Extension of property of plot no. 3/334, Type-C Rajni Khand Sharda Nagar Yojna, Raebareli Road, Lucknow by Om Prakash and Sunita Nishad have been mentioned. Such document has also been signed by Sunita and her husband, Om Prakash along with Jaiprakash, the principal borrower.

38. In the same supplementary affidavit, copies of LDOC 90 (P), relating to letter of Confirmation of Creation/Extension of Mortgage dated 07.05.2015; LDOC 90 (C) Declaration in the matter of Mortgage by Deposit of Title Deeds in respect of immovables dated 06.05.2015, and Composite Memorandum for Extension of Title Deeds by two or more mortgagors, dated 06.05.2015; and Attendance Note of the Mortgagor dated 06.05.2015 has been filed as Exhibit-S.A.2.

39. This Court has carefully gone through S.A.-2 and finds both petitioner no.1 and petitioner no.2 had signed such document 90(P) for Creation/Extension of Mortgage and had undertaken to create charge in favour of the bank for due repayment of or redemption of credit facilities of Rs.90,00,000/- with interest and costs and charges payable thereon. Similarly, the Declaration Document 90(C) and the Schedule of Properties mentions Extension of Equitable Mortgage of plot no.3/33 4C Type situated in Rajini Khand Sharda Nagar, Yojna and also extension of equitable mortgage of house no.13/88 situated at Indira Nagar Vistar Yojna, Lucknow. All such documents filed as exhibits in the Supplementary Affidavit filed by the Chief Manager of the bank before the D.R.T. in Securitization Application No.- 19 of 2018 have been signed by Sunita Nishad and her husband, and specific mention has been made at page-300 of the counter affidavit of the properties mentioned in Schedule 2A and 2B being mortgaged in housing loan of Rs.29.50 lakhs of Om Prakash and Sunita Nishad; papers for which had already been deposited in the bank, being extended as guarantee/security for loan of Rs.90 lakhs to Jai Prakash.

40. This Court has also gone through the Attendance Note of the mortgage which mentions the names and signatures of Om Prakash and Sunita Nishad as also of Jai Prakash and two officers of the bank.

It is these documents that have been relied upon by the D.R.T. Lucknow in giving a specific finding that both Sunita Nishad and her husband Om Prakash had signed documents relating to extension of equitable mortgage of house, property situated at Sector 13 Indira Nagar, Lucknow, as security for repayment of loan of Rs. 90 lakhs by Jai Prakash. Such specific finding given in the judgement of D.R.T. dated 20.08.2018 has not been challenged by the petitioners and being a finding of fact

which has been corroborated by documents filed along with the counter affidavit of the bank and perused carefully by this Court, indicates that the petitioners have resorted to misrepresentation and deliberate falsehood before this Court which is sitting in equitable and extraordinary writ jurisdiction.

41. In so far as the argument relating to non-service of demand notice under Section 13, Sub Clause 2 of the Act is concerned and reference to Rule 3 (4) having been made by the counsel for the petitioners, this court has carefully gone through documents enclosed with the counter affidavit of the respondent bank referred to the arguments of the counsel for the bank. The counter affidavit filed in Writ Petition No.35050/2019 has copy of entire Petition No.31115/2017 enclosed to it. In paragraph-3 and in subsequent paragraphs, the petitioners have clearly admitted to being guarantors to the loan taken by Jai Prakash and they have challenged the sale notice dated 18.10.2017 on the ground that the bank should have proceeded first against the principal borrower. A copy of letter dated 27.10.2017, written by Sunita Nishad and her husband, Om Prakash, has been filed Annexure 5 to the said Writ Petition No. 31115/2017, wherein it has been clearly stated by the petitioners that they are guarantors of loan taken by Jai Prakash and had offered House No. 88 situated at Sector 13, Indira Nagar, Lucknow as security to the loan taken by Jai Prakash and that notice has been sent by the bank, not only to the borrower but also to the petitioners who are guarantors for sale of property in question, whereas the property of the borrower should have been proceeded against first and then only auction of properties offered by the petitioners as securities should be proceeded against. In this petition, there is no mention of non-service of notice under Section 13(2) and Section 13(4) on the petitioners.

42. This Court has noticed that in paragraph 3 of the affidavit filed in support of Writ Petition No. 35050 of 2019, Sunita Nishad has solemnly affirmed on oath that Annexure no.4 of the petition, including other Annexures is a true copy of its original. The demand notice dated 21.07.2016 has been filed as an Annexure no.4 to the writ petition and it shows that it was properly served upon petitioner no.1 also. Along with the demand notice dated 21.07.2016, the bank had also sent a demand notice to the borrower and the house property situated at Indira Nagar was mentioned in paragraph-2 of the said demand notice as belonging to the petitioners. All details of secured asset were clearly mentioned in the demand notice dated 21.07.2016 issued under Section 13 (2) of the Act which was sent through registered post acknowledgment due, to the petitioner no.1 and also petitioner no.2 at their correct address that is House No.88, Sector-13, Indira Nagar, Lucknow. Such letter was never returned unserved. The demand notice/letter dated 21.07.2016, clearly mentions the name and address of the petitioner no.1 correctly. The postal receipt issued in the name of 'Savita' by the Post Office instead of showing the name, Sunita has no relevance in view of Section 27 of the General Clauses Act 1897, which defines service by post and service shall be deemed to be effected by properly, addressing, pre-paying and posting by registered post, a letter containing the document (demand notice), and unless the contrary is proved, it shall be treated to have been effected at the time at which the letter would be delivered in the ordinary course of post.

43. In Krishna Kumar Gupta Vs. Manoj K Sahu reported in (2022) SCC OnLine All. 528, this court considered Section 27 of the General Clauses Act and judgment rendered by the Supreme Court in the case of C.C. Alavi Haji Vs. Palapetty Muhammed & Anr reported in (2007) 6 SCC 555, where the

Supreme Court considered Section 114 of the Indian Evidence Act 1872, and observed that if a registered letter addressed to a person at his residential address does not get served in normal course, and is returned, it can only be attributed to addressee's own conduct. The dispatch of notice by registered post is sufficient compliance of service of notice by the landlord on the tenant. The Supreme Court had also observed that the presumption under Section 114 of the Act of 1872 would be that notice was served on the defendant unless he rebuts the said presumption by adducing evidence in rebuttal. Where a registered envelope with correct address is posted. The presumption is regarding its delivery unless the same is returned unclaimed. This Court also placed reliance upon judgment rendered by the Supreme Court in *M/s Ajeet Seeds Ltd Vs. K. Gopala Krishnaiah* reported in (2014) 12 SCC 685. The Supreme Court had observed that under Section 114 of the Evidence Act when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw a presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks, likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case. Consequently, the Court can presume that the common course of business has been followed in particular case. When applied to communications sent by post, Section 114, enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the General Clauses Act is a far stronger presumption. Further, Section 114 of the Evidence Act refers to a general presumption, Section 27 of the General Clauses Act refers to a specific presumption. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver that in spite of return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been affected at the time at which the letter would have been delivered in the ordinary course of business.

44. This court is of the considered opinion that the argument regarding non-disclosure of encumbrances in the sale notice is unacceptable as the petitioner being the guarantor and the mortgager cannot raise such objection. For establishing a charge as an encumbrance, the petitioners have to show three parties. One, who created the encumbrance, two, who has a superior or first charge under any Statute, and three, who has the inferior or second charge. It was also necessary that due to such encumbrance, the value of the property should diminish. In the case at hand however, there are only two parties. The bank which has the first charge also has the second charge. The second party in this case being Respondent No.4, Mamta Yadav. The Sale Certificate has therefore been correctly issued free from all encumbrances. It is also registered in the office of the Sub-Registrar, Lucknow on 21.12.2017, as is evident from page-265 of the counter affidavit filed on 27.03.2021 by the bank. The Supreme Court has also held that after issuance of sale certificate on completion of SARFAESI proceedings, there is no provision for registration of sale certificate in the case of *B. Arvind Kumar Vs. Government of India and Others* reported in (2007) 5 SCC 745; *Shakeena and Others Vs. Bank of India and Others* reported in (2021) 12 SCC 761; *Indian Overseas*

Bank Vs. RCM Infrastructure Limited and Others reported in (2022) 8 SCC 516.

45. In *B. Arvind Kumar (supra)*, the Supreme Court observed in paragraph-10 that the Sales Certificate is merely the evidence of title having been transferred in favour of the auction purchaser. It is well settled that when an auction purchaser derived title and confirmation of sale in his favour, and a Sale Certificate when issued, is evidence of such sale and title. No further deed of transfer from the Court is contemplated or required. Sale Certificate issued by an officer authorized by the Court does not need to be registered Section 17 (2) (xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which required registration under Sub-Section (b) and (c) of Section 17 (1) of the said Act.

46. In *Shakina Vs. Bank of India (Supra)*, the Supreme Court placed reliance upon observations made by it in *Mardia Chemicals Limited Vs. Union of India* reported in (2004) 4 SCC 311. It was observed that the registration of Sale Certificate as per Section 17 (2) (xii) of the Registration Act is not mandatory for the completion of the sale, pursuant to the public auction and issuance of Sale Certificate under the scheme of SARFAESI Act. The Supreme Court held as follows:-

"Assuming, the right of redemption conferred under the Transfer of Property Act is protected under Section 37 of the SARFAESI Act, and independently available without reference to the registration of the Sale Certificate under Section 17 (2) (xiii) of the Registration Act, the sale already effected satisfying the conditions contemplated under Section 13 (8) of the SARFAESI Act, shall by virtue of Section 37 of the SARFAESI Act, prevail over such other rights, much less the right of redemption conferred under the Transfer of Property Act, which is protected under Section 37 of the SARFAESI Act, in view of the non obstante clause provided under Section 35 of the SARFAESI Act, because a non obstante clause provided under Section 35 of the SARFAESI Act, makes it clear that even though there are inconsistencies to such other rights conferred under any other law for the time being in force that are protected under Section 37 of the SARFAESI Act, the action initiated under the provisions of the SARFAESI Act shall have the overriding effect as per Section 35 of the SARFAESI Act, because SARFAESI Act is a special Act, which aims to accelerate the growth of the economy of our country empowering the lenders, namely nationalised banks, private sector banks and other financial institutions to realise the dues from the defaulting borrowers who are very lethargic in repayment of the loans, borrowed by them, by exercising the right of expeditious attachment and foreclosure for the enforcement of security, and therefore, Section 35 and Section 37 of the SARFAESI Act have to be read conjointly to achieve the object of the SARFAESI Act, but not to defeat the same, and therefore, we do not see any conflict between them."

47. In *Indian Overseas Bank Vs. R.C.M. Infrastructure Limited (Supra)*, the Supreme Court has observed that in *Shakina*, the Supreme Court had already held that Sale Certificate issued in favour of the respondent did not require registration and that the sale process was complete on issuance of



Sale Certificate. Such observations were followed by the Supreme Court again in the case of S. Karthik and Others Vs. N. Subhash Chand Jain and Others reported in (2022) 10 SCC 641.

48. This Court after careful perusal of all affidavits and documents filed along with them is of the considered opinion that the Petitioners have not approached this Court with clean hands and the litigation has been protracted unnecessarily by them only to enjoy the interim order granted to them initially by this Court.

49. In State of Orissa Vs. Laxmi Narayan Das (2023) 15 SCC 273, the Supreme Court has made observations that on misrepresentation and concealment on the part of the litigant should be discouraged and viewed seriously. It has observed in Paragraphs 40, 41, 43, 44, 45, 47 and 49 as follows :-

40. As to how a litigant who conceals material facts from the court has to be dealt with, has been gone into by this Court, time and again in plethora of cases and the consistent opinion is that, he is not entitled even to be heard on merits.

41. In Abhyudya Sanstha v. Union of India [Abhyudya Sanstha v. Union of India, (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241 : 4 SCEC 185] , this Court, while declining relief to the petitioners therein, who did not approach the court with clean hands, opined as under :

"18. ... In our view, the appellants deserve to be non-suited because they have not approached the court with clean hands. The plea of inadvertent mistake put forward by the learned Senior Counsel for the appellants and their submission that the court may take lenient view and order regularisation of the admissions already made sounds attractive but does not merit acceptance. Each of the appellants consciously made a statement that it had been granted recognition by NCTE, which necessarily implies that recognition was granted in terms of Section 14 of the Act read with Regulations 7 and 8 of the 2007 Regulations. Those managing the affairs of the appellants do not belong to the category of innocent, illiterate/uneducated persons, who are not conversant with the relevant statutory provisions and the court process. The very fact that each of the appellants had submitted application in terms of Regulation 7 and made itself available for inspection by the team constituted by WRC, Bhopal shows that they were fully aware of the fact that they can get recognition only after fulfilling the conditions specified in the Act and the Regulations and that WRC, Bhopal had not granted recognition to them. Notwithstanding this, they made a bold statement that they had been granted recognition by the competent authority and thereby succeeded in persuading this Court to entertain the special leave petitions and pass interim orders. The minimum which can be said about the appellants is that they have not approached the court with clean hands and succeeded in polluting the stream of justice by making a patently false statement. Therefore, they are not entitled to relief under Article 136 of the Constitution. This view finds support from a plethora of precedents."

(emphasis supplied)

43. In *G. Narayanaswamy Reddy v. State of Karnataka* case [*G. Narayanaswamy Reddy v. State of Karnataka*, (1991) 3 SCC 261], this Court while noticing the fact regarding the stay order passed by the High Court which prevented passing of the award by the Land Acquisition Officer within the prescribed time period was concealed and in the aforesaid context, it observed that:

"2.....It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions."

44. In *Dalip Singh v. State of U.P.* [*Dalip Singh v. State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324], this Court noticed the progressive decline in the values of life and observed :

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahinsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

(emphasis supplied)

45. In *Moti Lal Songara v. Prem Prakash* [*Moti Lal Songara v. Prem Prakash*, (2013) 9 SCC 199 : (2013) 3 SCC (Cri) 872], this Court, considering the issue regarding concealment of facts before the Court, observed that "court is not a laboratory where children come to play", and opined as under :

".....Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim *suppressio veri, expressio falsi* i.e. suppression of the truth is equivalent to the expression of falsehood, gets

attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.

20. The High Court, as we have seen, applied the principle 'when infrastructure collapses, the superstructure is bound to collapse'. However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand."

(emphasis supplied)

47. It has also been laid down by this Court in Chandra Shashi v. Anil Kumar Verma [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In this case, a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and was sentenced to two weeks' imprisonment. It was observed as under :

\*\*\* "1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."

(emphasis supplied)

49. In Dhananjay Sharma vs. State of Haryana [Dhananjay Sharma v. State of Haryana, (1995) 3 SCC 757 : 1995 SCC (Cri) 608], the filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the persons concerned were punished for the same.

50. In K. Jayaram Vs. BDA, (2022) 12 SCC 815, the Supreme Court observed:-

10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing

anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

11. This Court in *Prestige Lights Ltd. v. SBI* [*Prestige Lights Ltd. v. SBI*, (2007) 8 SCC 449] has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:

"33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

(emphasis supplied)

13. In *K.D. Sharma v. SAIL* [*K.D. Sharma v. SAIL*, (2008) 12 SCC 481], it was held in para 36 & 38 :-

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, 'We will not listen to your application because of what you have done.' The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

38. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

51. In *Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.* [*Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.*, (2008) 1 SCC 560 : (2008) 1 SCC (Civ) 359] , the Supreme Court has reiterated that the writ remedy is an

equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

52. In A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalani Sangam, (2012) 6 SCC 430 : (2012) 3 SCC (Civ) 735 : 2012 SCC OnLine SC 384 the Supreme Court has observed as under:-

"43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice."

(emphasis supplied)

53. The learned counsel for the respondent no.4 has argued that although the entire payment has been made by the auction purchaser and Sale Certificate has been issued in her favour, the actual physical possession of the property has not been given to her due to pending litigation filed by the petitioners on the basis of frivolous grounds.

54. The counsel for the respondent no. 4 in his written submissions has placed on record the fact that the respondent no. 4 has been living in rented premises and has not been able to enjoy the benefits of the property purchased by her, which makes her entitled to mesne profits as well. It has been stated that the auction purchaser has been paying continuous EMI to Indian Bank for loan taken to purchase the property for the last seven years and has incurred enormous monetary loss and deserves to be compensated for the actual damages so caused. The monetary loss has been mentioned in the form of a tabulation chart given in the written submissions, wherein mesne profits, mental agony and harassment, legal expenses, rent paid by Respondent No.4 since January 2018 with 10% annual increments, interest paid for the Bank loan and House tax, water tax and electricity charges etc. have all been described in detail besides other expenses for depreciation of property. The total loss has been calculated of more than Rs. One Crore.

55. This Court having gone through the judicial precedents as aforesaid relating to writ jurisdiction being an equitable jurisdiction and the responsibility of the litigant to approach this Court with frank and full disclosure of facts, avoiding any active misrepresentation and suppression of material facts, finds that the petitioners have filed this writ petition in an attempt to deliberately pollute the stream of justice. Not only this Court has found misrepresentation from the pleadings on record and documentary evidence filed by the Bank in its affidavits, this Court has also found deliberate attempt at protracting of litigation to enable the petitioners to continue to occupy House No.88, Sector-13, Indira Nagar Vistar Yojana, Lucknow, despite the property having been auctioned way back on 21.12.2017.

56. Not only has the Court's precious time which may have been utilized for genuinely suffering litigants has been wasted; the Respondent no.4 has also suffered grievously.

57. This Court even on merits has not found the arguments raised by the counsel for the petitioners to be sustainable. Hence, the writ petition is liable to be dismissed and it is hereby dismissed with costs of Rs.25 lacs [Rupees Twenty Five Lacs only] which shall be payable within three months before this Court by way of Demand Draft made out in favour of the Senior Registrar High Court Lucknow Bench.

58. In case of failure to do so, the Senior Registrar of this Court shall issue a Recovery Certificate to the District Magistrate, Lucknow, who shall recover such costs as arrears of land revenue from the petitioners' movable and immovable properties and deposit the same in the High Court sitting at Lucknow.

59. Such costs when deposited shall be released in favour of the Respondent no.4, namely, Smt. Mamta Yadav by the Senior Registrar on an appropriate application being moved in this regard by the Respondent no.4.

60. Since this writ petition has been dismissed and order of the DRAT stands affirmed, the petitioners are bound to vacate the property in question within one month from today.

(Sangeeta Chandra, J.) Order date: 01.04.2025 Darpan/N.Pal