Varimadugu Obi Reddy vs B. Sreenivasulu on 16 November, 2022

Author: Ajay Rastogi

Bench: C.T. Ravikumar, Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 8470 OF 2022
(Arising out of Special Leave Petition (C) No(s).30038 of 2019)

VARIMADUGU OBI REDDY ….APPELLANT(S)

VERSUS

B. SREENIVASULU & ORS. ….RESPONDENT(S)

JUDGMENT

Rastogi, J.

1. Leave granted.

2. The instant appeal has been preferred at the instance of the auction purchaser (appellant herein) assailing the impugned judgment and order dated 20th November, 2019 passed by the High Court for the State of Telangana at Hyderabad setting aside the e□auction sale held by the respondent Bank (secured creditor) under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter being referred to as the "SARFAESI Act, 2002").

3. The relevant facts in brief to appreciate the controversy are that respondent nos.1□3 have availed three loan facilities vide Mortgage Loan of Rs.10 lakhs, Cash Credit Loan of Rs.8 lakhs and Car Loan of Rs.8 lakhs from the respondent Bank (secured creditor) after executing necessary security documents. Respondent No.4 herein stood as guarantor and created equitable mortgage over her immovable property as security for due repayment of the said loan amount.

4. After availing the above loan facilities, the respondent borrowers have committed default in repaying the outstanding loan amount and have also failed to pay the interest accrued to the loan accounts from time to time. Finally, the loan accounts have been classified as Non-Performing Assets (NPAs) on 30 th September, 2012 and in furtherance, the respondent Bank initiated recovery proceedings under the provisions of the SARFAESI Act, 2002 and issued demand notice dated 15 th November, 2012 calling upon the respondent borrowers/guarantor to repay and discharge the outstanding loan amount with interest and costs within 60 days. After following the procedure as contemplated under the provisions of the SARFAESI Act, 2002 and Rules made thereunder, on 14 th February, 2013, the respondent Bank published a possession notice in the daily newspapers under Section 13(4) of the SARFAESI Act, 2002 and obtained the order from the District Collector on 23rd June, 2013 to take physical possession of the scheduled property from the respondent borrowers/ guarantor and hand over to the respondent Bank (secured creditor).

5. These proceedings came to be challenged by the respondent borrowers by filing a Securitization Application (SA) before the Debts Recovery Tribunal which finally came to be dismissed by the Tribunal by order dated 12th December, 2014 and it is on record that no appeal was preferred against the order dated 12 th December, 2014 passed by the Debts Recovery Tribunal and that became final.

6. After taking possession of the mortgaged property, on 29 th November, 2014, the respondent Bank (secured creditor) issued a notice prior to e-auction to the respondent borrowers after obtaining valuation of the subject property from an approved valuer in terms of Rules 8(5) and 8(6) of the Security Interest (Enforcement) Rules, 2002 (hereinafter being referred to as the "Rules, 2002") calling upon the borrowers/guarantor to repay the outstanding loan amount as demanded. When the respondent borrowers/guarantor failed to respond, the respondent bank proceeded further and issued e-auction sale notice dated 25th February, 2015 fixing the date of auction of the schedule property on 28th March, 2015 and the said notice was widely published in Indian Express (English) and Eenadu (Telugu) daily newspapers dated 26th February, 2015.

7. That the aforesaid e-auction sale notice came to be challenged by the respondent borrowers before the Debts Recovery Tribunal and by an interim order dated 26 th March, 2015, the Tribunal directed the respondent Bank (secured creditor) to proceed with the auction sale of the secured asset scheduled on 28 th March, 2015 with a further direction not to issue the sale certificate provided the respondent borrowers deposits Rs.6 lakhs within 15 days from the date of the said order. It was made clear that in the event of respondent borrowers fail to deposit the said amount, the respondent Bank will be at liberty to issue the sale certificate in favour of the highest bidder. It is not disputed that in terms of the interim order passed by the Tribunal, the respondent borrowers had to deposit Rs.6 lakhs by 9 th April, 2015 but failed to deposit the said amount and at this stage, the respondent borrowers filed an application on 9th April, 2015 seeking extension of further 15 days' time from 10th April, 2015 to deposit the amount of Rs.6 lakhs and the Tribunal by an order dated 17 th April, 2015 granted extension of 15 days' time to deposit the sum of Rs.6 lakhs with direction to the respondent Bank (secured creditor) and the respondent borrowers to maintain status-quo.

8. The fact to be noticed at this stage is that since the dispute was on□going before the Tribunal and the respondent borrowers have failed to comply with the interim order of the Tribunal dated 26th March, 2015 to deposit Rs.6 lakhs within 15 days from the date of passing of the order by 10th April, 2015, the respondent Bank (secured creditor) proceeded with the auction sale pursuant to the e□ auction sale notice dated 25 th February, 2015 in terms of liberty granted by the Tribunal.

9. The present appellant had initially deposited the earnest money of Rs.5,54,000/□on 26 th March, 2015 and after being declared the highest bidder with an offer of Rs.64,23,000/, further deposited a sum of Rs.10,51,750/□which comes to Rs.16,05,750/ i.e. 25% of the total auction price and the balance 75% of the bid amount i.e. Rs.48,17,250/□was deposited by the appellant on 15 th April, 2015 and sale certificate was issued in favour of the appellant (auction purchaser). It is to be noticed that the day when the order came to be passed by the Tribunal on 17 th April, 2015 granting further extension of 15 days' time to the respondent borrowers to deposit a sum of Rs.6 lakhs, auction sale was finalised and sale certificate dated 15th April, 2015 was issued in favour of the appellant (auction purchaser).

10. Respondent borrowers raised two primary objections before the Tribunal that there was an error in the description of mortgaged property indicated in the e□auction sale notice dated 25th February, 2015 and to be more specific, the scheduled property bearing Door No.12□3□39, 3rd Cross, Sai Nagar, Ananthapuramu was mortgaged as a security for the aforesaid loan while in the e□auction sale notice, the property was described as Door No."12□3□393" instead of "12□3□39" and this, according to the respondent borrowers was the manifest error committed by the respondent Bank and because of the wrong description of the property put to auction, that property could not have fetched the value which it ought to have fetched in the course of business.

11. In addition, further objection raised by the respondent borrowers was that in terms of Rule 9(4) of the Rules, 2002, the auction price was to be deposited by the auction purchaser within 15 days which expired on 10 th April, 2015 but it was admittedly deposited by the auction purchaser (appellant) on 15 th April, 2015 which is in clear breach of Rule 9(4) of the Rules 2002, in consequence thereof, the e□auction sale notice and all further proceedings initiated pursuant thereto deserve to be declared null and void.

12. The contentions were repelled by the Tribunal and the Tribunal dismissed the applications filed by the respondent borrowers. Although it was an appealable order before the Debts Recovery Appellate Tribunal, still the respondent borrowers approached the High Court under Article 226 of the Constitution and the Division Bench of the High Court reversed the findings returned by the Tribunal on the premise that there was an error in the description of the scheduled property in e□ auction sale notice dated 25th February, 2015 and that was considered to be a serious infirmity in the process and cannot be sanctified and further held that since the appellant (auction purchaser) failed to deposit balance 75% of the bid amount within the stipulated time of 15 days which ought to have been deposited by him on or before 10 th April, 2015, that admittedly deposited by him on 15 th April, 2015, is in clear breach of Rule 9(4) of the Rules, 2002 and accordingly, set aside all the proceedings initiated from the stage of Section 13(2) of the SARFAESI Act, 2002 till the delivery of physical possession of the scheduled property to the auction purchaser (appellant) by the

respondent Bank by an order dated 23 rd November, 2018, which is the subject matter of challenge before us.

13. Learned counsel for the appellant submits that so far as the description of the scheduled property put to auction is concerned, from the stage when the initial notice was issued by the respondent Bank (secured creditor) under Section 13(2) of the SARFAESI Act, 2002, the mortgaged property was described as “Door No.12□3□393” instead of “Door No.12□3□39”, but it was never the case of the respondent borrowers either before the Tribunal or before the High Court that the description in the e□auction sale notice indicating the boundaries, measurement, ward number, block number, TS number and extent of land, etc. left any ambiguity or confusion in the minds of the participants in the e□auction bid and it was also not the case of the respondent borrowers that there is some other property in the locality/vicinity with the number as indicated in the e□auction sale notice i.e. “12□3□393”. Thus, in the given facts and circumstances, merely because there appears to be a typographical inadvertent human error in reference to door number of the subject property may not leave ambiguity with regard to mortgaged property put to auction and this typographical error is inconsequential and does not vitiate the e□auction sale proceedings held on 28th March, 2015.

14. So far as the non□compliance of Rule 9(4) of the Rules, 2002 is concerned, learned counsel for the appellant submits that during pendency of e□auction proceedings initiated pursuant to e□ auction sale notice dated 25th February, 2015, the sale of the scheduled property was to be held on 28 th March, 2015 and the said notice was published in Indian Express (English) and Eenadu (Telugu) daily newspapers dated 26th February, 2015 and this process was initiated after giving full opportunity and notice to the respondent borrowers in compliance of Rule 8(6) of Rules, 2002 and the appellant was held to be the highest bidder and auction bid was much higher than the reserve price indicated in the e□auction sale notice which was Rs.64,23,000/□and he has complied with all the conditions of e□auction sale notice.

15. Learned counsel submits that the appellant was ready and willing to deposit the balance of 75% of auction bid before 11 th April, 2015 but because of the intervention made by the Tribunal that created confusion in the mind of the appellant and for the aforesaid reason, delay of four days was caused in depositing the balance 75% of the bid amount which was deposited on 15 th April, 2015 and the time under Rule 9(4) of Rules, 2002 is not that sacrosanct. This fact has not been noticed by the High Court and in the given circumstances, the finding recorded by the High Court in the impugned judgment, is not sustainable in law and deserves to be set aside.

16. Learned counsel further submits that the conduct of the respondent borrowers is equally to be looked into for the reason that when the e□auction sale notice came to be published by the respondent Bank, simultaneously, application was filed by the respondent borrowers before the Tribunal on 23 rd March, 2015 and interim order was passed by the Tribunal on 26 th March, 2015 to see the bonafides of the respondent borrowers, they were directed to deposit Rs.6 lakhs within 15 days from the date of order but admittedly, the respondent borrowers have failed to deposit with the respondent Bank and sought further time to deposit, on which order came to be passed on 17th April, 2015 and they are only interested to nullify the e□auction proceedings initiated by the

respondent Bank either by taking legal recourse or by any other mechanism, which is possible under the law and after failed to deposit the amount as directed by the Tribunal at least, they are not entitled to seek any indulgence from the High Court in the writ jurisdiction filed at their instance under Article 226 of the Constitution.

17. Per contra, learned counsel for the respondents, while supporting the finding returned by the High Court submits that once the appellant has failed to deposit the balance 75% of the bid amount by 11th April, 2015, which was the deadline in terms of e-auction sale notice published by the respondent Bank and admittedly 75% of the bid amount was deposited by the appellant on 15th April, 2015 which is in violation of Rule 9(4) of Rules, 2002 and that itself is sufficient to nullify the e-auction sale initiated by the respondent Bank and in support of his submission, placed reliance on the judgement of this Court in General Manager, Sri Siddeshwara Cooperative Bank Limited and Another vs. Ikbal and Others1. Para 14 of the judgment is relevant for the purpose and is extracted below: -"14. A reading of sub-rule (1) of Rule 9 makes it manifest that the provision is mandatory. The plain language of Rule 9(1) suggests this. Similarly, Rule 9(3) which provides that the purchaser shall pay a deposit of 25% of the amount of the sale price on the sale of immovable property also indicates that the said provision is mandatory in nature. As regards balance amount of purchase price, sub-rule (4) provides that the said amount shall be paid by the purchaser on or before the fifteenth day of confirmation of sale of immovable property or such extended period as may be agreed upon in writing between the parties. The period of fifteen days in Rule 9(4) is not that sacrosanct and it is extendable if there is a written agreement between the parties for such extension. What is the meaning of the expression "written agreement between the parties" in Rule 9(4)? The 2002 Rules do not prescribe any particular form for such agreement except that it must be in writing. The use of the term "written agreement" means a mutual understanding or an arrangement about relative rights and duties by the parties. For the purposes of Rule 9(4), the expression "written agreement" means nothing more than a manifestation of mutual assent in writing. The word "parties" for the purposes of Rule 9(4) we think must mean the secured creditor, borrower and auction-purchaser."

18. Learned counsel for the respondent borrowers further submits that description of the scheduled property has also created a confusion in the minds of the participants in the e-auction sale notice and in support thereof, submits that when the property was mortgaged and security interest was created, the value of the property assessed was much higher in value than what being indicated as the reserve price by the respondent bank in the 1(2013) 10 SCC 83 e-auction sale notice pursuant to which the auction proceedings were initiated and because of the wrong description of the property put to auction, certainly inference can be drawn that property could not have fetched the value it ought to have fetched and that is the reason the High Court has interfered with and set aside the notice under Section 13(2) of the SARFAESI Act, 2002 and all other consequential proceedings initiated by the respondent Bank, and therefore, needs no further interference of this Court.

19. Learned counsel for the respondent Bank (secured creditor) has raised an objection that order of the Tribunal was appealable order before the Debts Recovery Appellate Tribunal under Section 18 of the SARFAESI Act, 2002 and the petition filed by the respondent borrowers directly before the High Court against the order of the Tribunal was not maintainable and for the delay in depositing the

balance 75% of the bid amount, respondent Bank has tendered a reasonable justification and also filed a counter affidavit before this Court wherein, it has specifically stated that though the auction purchaser was ready to pay the balance of 75% of the bid amount on time, it is the respondent Bank who requested the auction purchaser to wait for some time because the respondent borrowers were negotiating with the Bank at that point of time in light of the interim order dated 26 th March, 2015 passed by the Tribunal and that was the reason for which the delay of four days was caused in depositing the balance 75% of the bid amount, which ought to have been paid by 11th April, 2015 but actually deposited by 15th April, 2015.

20. Learned counsel for the respondent Bank further submits that the auction proceedings were initiated under Section 13(2) of the SARFAESI Act, 2002 in reference to the scheduled property and although there was a factual inadvertent error indicated in the door number in the notice issued under Sections 13(2) and 13(4) of the SARFAESI Act, 2002 mentioned as “Plot No.65” with the schedule of property with boundaries, ward number, block number, T.S. number, etc., there is no door number existing in the locality/vicinity as “Door No.12□3□393”, but no prejudice has been caused to the respondent borrowers that vitiate the auction proceedings and further submits that after depositing 75% of auction bid amount on 15th April, 2015, sale certificate was issued and possession was later transferred to the auction purchaser (appellant herein). In the given facts and circumstances, interference made by the High court was not valid and deserves to be interfered by this Court.

21. To complete the facts, learned counsel for the respondent Bank further submits that on 15th April, 2015 after receiving the complete bid amount of Rs.64,23,000/□the value of property under e□auction and after adjustments of the outstanding loan accounts and other ancillary charges, the surplus amount remain payable to the borrowers of Rs.16,30,000/□which was offered to the respondent borrowers and since they failed to accept the balance amount, it was accordingly kept in FDR and at present, the aforesaid amount is lying in FDR and with accumulation of interest, the said amount has come to approximately Rs.18.80 lakhs, which is due and payable to the respondent borrowers and it can be transferred to the borrowers/guarantor in compliance of the order of this Court.

22. We have heard the learned counsel for the parties and with their assistance perused the material available on record.

23. The indisputed facts which manifest from the record are that the respondent borrowers availed three loan facilities from the respondent Bank (secured creditor) to the tune of Rs.26 lakhs after executing necessary security documents. Respondent no.4 stood as guarantor and created equitable mortgage over her immovable property as security for due payment of the said loan amounts. The property is a residential building of 266 sq. yards of land. The description of the property mortgaged can be identified from the notice issued in the first instance under Section 13(2) of the Act as follows:□Borrowers Names & Properties under Guarantors Outstanding Addresses (1) Mortgage (2) Name & amount due Addresses (3)

1)Sri Bandi Srinivasulu, Property situated in Smt. Bandi 24,87,616.00 as S/o Late B. Narasimhulu the RD and SRD of Jaya on 08.11.2012 +

2) Smt. Bandi Swarna Anantapur and within Lakshmamma, future interest & Latha, W/o B. Srinivasulu, the Anantapur W/o Late B. expenses.

D.No.12-3-393, 3 rd Cross, Municipal Limits. Narasimhulu,
Sai Nagar, Anantapur Ward No.4, Block D.No.12-3-393,
No.18, T.S. 3rd Cross, Sai
A/C. Nos.31758622533; No.2005,Paiki Ac. 0.05 Nagar,
32344540051; Cents, Plot No.65. Anantapur.
Present Door No.12-3-
31684374998
393, Assessment
No.1001035935
Measurements: East
West: 33 Ft and North
South:66 Ft.;
Boundaries: East: Plot
of Pushpavathamma;
West: House of
Yaganti; North: Road;

South: Plot of
Pushpavathamma.

Place: Anantapur Sd/- Authorised Officer,
Date: 05-12-2012 State Bank of India, Gandhi Bazar
Branch

24. On account of default, the loan amounts of the respondent borrowers were classified as Non□ Performing Assets (NPAs) and the bank issued a demand notice dated 15 th November, 2012 under Section 13(2) of the Act which later came to be published in Hindu (English) and Eenadu (Telugu) daily newspapers on 5 th December, 2012 and later possession notice dated 14 th February, 2013 came to be published in Hindu (English) and Eenadu (Telugu) daily newspapers on 20th February, 2013 and after initiating proceedings under Section 14 of the Act, the respondent Bank took possession of the scheduled property under the orders of the District Collector from the respondent borrowers on 23rd June, 2013.

25. At this stage, the proceedings initiated by the respondent bank came to be assailed by the respondent borrowers before the Debts Recovery Tribunal of Andhra Pradesh at Hyderabad under Section 17(1) of the Act. It may be relevant to note that in the description of the property under Sections 13(2) and 13(4) of the Act, door number indicated was "12□3□393" in place of "12□3□39" and this question about the alleged error in the door number of the mortgaged property was available to the borrowers in the first round of litigation before the Tribunal, if at all, it has any

material bearing in reference to the proceedings initiated by the respondent Bank (secured creditor), but the proceedings initiated at the instance of the respondent borrowers before the Tribunal came to be dismissed by a judgment dated 12 th December, 2014 and no further appeal was preferred and accordingly it has attained finality.

26. The e□auction notice came to be published by the respondent Bank on 25th February, 2015 fixing the date of auction as 28th March, 2015 with a reserve price of Rs.55,33,000/□and e□auction notice was widely published in Indian Express (English) and Eenadu (Telugu) daily newspapers dated 26th February, 2015.

27. That e□auction notice came to the challenged by the respondent borrowers in the fresh proceedings instituted before the Tribunal on 23rd March, 2015. Pursuant thereto, interim order came to be passed by the Tribunal on 26th March, 2015 with a direction that the sale certificate shall not be issued in favour of the highest bidder provided the borrower deposit a sum of Rs.6 lakhs. Relevant extract of the order of the Tribunal is quoted below:□"The Respondent Bank is hereby permitted to proceed with the auction sale of the schedule property on 28.03.2015 in pursuance of the Auction Notice dt. 25.02.2015 and however the Respondent Bank is hereby directed not to issue the sale certificate in favour of the highest bidder in the auction subject to the condition that the Applicant shall deposit a sum of Rs.6.00 lakhs directly with the Respondent Bank within 15 days from today. It is made clear that in the event the Applicant fails to deposit the amount, as stated supra, the Respondent Bank shall be at liberty to issue the sale certificate in favour of the highest bidder in the auction and such sale shall be subject to the result of the above SA."

28. In terms of the aforesaid order, respondent borrowers were to deposit the sum of Rs.6 lakhs on or before 9 th April, 2015, but admittedly, the borrowers failed to deposit the aforesaid amount and on the said date i.e. 9th April, 2015 I.A. No.1687 of 2015 came to filed before the Tribunal seeking extension of time period by another 15 days to deposit the sum of Rs.6 lakhs and extension of 15 days' time was granted by the Tribunal to deposit the sum of Rs.6 lakhs to the borrowers by an order dated 17 th April, 2015. The extract of the order dated 17th April, 2015 is reproduced hereinbelow:

> "The Applicant is hereby directed to deposit the said sum of Rs.6.00 lakhs into the 'interest bearing no□lien account' with the Respondent Bank within 15 days from 10.04.2015, as sought by the Applicant, and accordingly, the Respondent Bank and the Auction Purchaser are hereby directed to maintain status□quo. Accordingly, the present IA is disposed of."
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> 29. It may be relevant to note that in the interregnum period, since the respondent Bank (secured creditor) was permitted to proceed with the auction proceedings, appellant deposited initially the earnest money of Rs.5,54,000/□for participating in the proposed e□auction sale on 26th March, 2015 and after the auction purchaser was declared as the highest bidder with the offer of Rs.64,23,000/□, further sum of Rs.10,51,750/□totalling Rs.16,05,750/□was deposited (25% of Rs.64,23,000/□) on 28th March, 2015.

30. In terms of Rule 9(4) of the Rules, 2002, the balance 75% of the bid amount being Rs.48,17,250/□was to be deposited by the appellant auction purchaser on or before 11 th April, 2015, but prior thereto, an application was filed by the respondent borrowers on 9th April, 2015 seeking extension of time and as the matter was sub□ judice before the Tribunal, the balance 75% of the bid amount could not have been deposited on 11 th April, 2015, but it was deposited by the appellant on 15 th April, 2015 and the sale certificate was issued in favour of auction purchasers and as there was factual error in the door number of the subject property, which was indicated as "12□3□393" instead of "12□3□39", rectification deed dated 21st April, 2015 was executed with the correct description of the scheduled property.

31. That since the respondent borrowers failed to deposit a sum of Rs.6 lakhs in the extended period granted by an order dated 17 th April, 2015, the Tribunal by its order dated 1 st May, 2015 granted further time to the respondent borrowers till 10 th May, 2015 to deposit the amount of Rs.6 lakhs, but by that time the auction proceedings were finalised and the sale certificate dated 15 th April, 2015 was duly registered and the physical possession of scheduled property was handed over to the appellant on 23 rd November, 2018.

The Tribunal, after taking into consideration the so□called alleged description of mortgaged property in reference to which there was great emphasis that Door No."12□3□393" was mentioned instead of "12□3□39" and so also the breach of Rule 9(4) of the Rules, 2002, the Debts Recovery Tribunal dismissed the application by an order dated 1st August, 2019.

32. The order of the Tribunal dated 1st August, 2019 was an appealable order under Section 18 of the SARFAESI Act, 2002 and in the ordinary course of business, the borrowers/person aggrieved was supposed to avail the statutory remedy of appeal which the law provides under Section 18 of the SARFAESI Act, 2002 in the absence of efficacious alternative remedy being availed, there was no reasonable justification tendered by the respondent borrowers in approaching the High Court and filing writ application assailing order of the Tribunal dated 1st August, 2019 under its jurisdiction under Article 226 of the Constitution without exhausting the statutory right of appeal available at its command.

33. This Court in the judgment in United Bank of India vs. Satyawati Tondon & Others2, was concerned with the argument of alternative remedy provided under the SARFAESI Act, 2002 and dealing with the argument of alternative remedy, this Court had observed that where an effective remedy is available to an aggrieved 2(2010) 8 SCC 110 person, the High Court ordinarily must insist that before availing the remedy under Article 226 of the Constitution, the alternative remedy available under the relevant statute must be exhausted. Paras 43, 44 and 45 of the said judgment are relevant for the purpose and are extracted below:

"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."

34. 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 2nd proviso to Section 18 of the Act 2002.

35. The High Court under the impugned judgment has non-suited the present appellant (auction purchaser) on the premise that there is an error in the description of the door number of the property and instead of "12-3-39", it was indicated as "12-3-393", although there was no error in the description of the property rather the dimensions with measurement and boundaries were properly indicated of the mortgaged property and on the premise that Rule 9(4) of the Rules has not been followed by the appellants by depositing 75% of the bid amount which ought to have been deposited by 11th April, 2015, instead it was deposited on 15 th April, 2015.

36. We find substance in the submissions made by the learned counsel for the appellant for the reason that so far as the error in the description of door number of the property is concerned, which admittedly indicated throughout as "12□3□393" instead of "12□3□39", but the fact is that the description of the mortgaged property from the commencement of the proceedings under Section 13(2) of the SARFAESI Act, 2002, due to human error instead of "12□3□39", door number was indicated as "12□3□393", but admittedly the fact is that there is no such property available in the locality/vicinity with Door no."12□3□393" and as full description of the mortgaged property was mentioned/indicated, although there was a typographical error, but the respondent borrowers failed to demonstrate any prejudice being caused on account of the inadvertent error being caused in description of the mortgaged property. At the same time, the borrower failed to demonstrate that because of a typographical inadvertent error in door number, as indicated above, the property could not have fetched the value as it ought to have fetched and that apart, there was no documentary evidence placed on record to substantiate the kind of prejudice, if any, being caused.

37. It is true that the secured creditor is under an obligation to undertake the exercise and cross□ check the description of the mortgaged property at the stage when the initial proceedings under Section 13(2) are initiated or in the later consequential proceedings, but at the same time, mere typographical error due to inadvertence which has not caused any prejudice to the borrowers, that in itself could not be considered to be the ground to annul the process held by the secured creditor which, in our view, is in due compliance with the requirement as contemplated under the provisions of Rules, 2002 and this was extensively considered by the Tribunal and that apart, it is not the case of the respondents that participants in e□auction sale are misguided because of the error in description of the property put to auction and when there is no ambiguity with regard to the detailed description of the mortgaged property put to auction, mere mentioning of the door number "12□3□393" instead of "12□3□39" is inconsequential and does not vitiate the auction proceedings held on 28th March, 2015.

38. So far as the second objection raised by the respondent, which prevailed upon before the High Court regarding the breach of Rule 9(4) of Rules, 2002 is concerned, it will be apposite to note Rules 9(4) and 9(5) of the Rules 2002 (pre□amended) which reads as under:

> "9. Time of sale, issues of sale certificate and delivery of possession, etc.□.....
>
> (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 as may be agreed upon in writing between the parties. (5) In default of payment within the period mentioned in sub□ rule (4), the deposit shall be forfeited 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.

.....".

39. It will be relevant to note that amendment was made in Rule 9(4) and Rule 9(5) of the Rules, 2002 of which reference has been made by GSR No.1046(E) dated 3rd November, 2016 effective from 4th November, 2016 and it reads as under:

> "9. Time of sale, issue of sale certificate and delivery of possession, etc.□.....
>
> (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 [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 [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.

.....".

40. It clearly manifests that the pre□amended Rule 9(4) refers to the period of 15 days for confirmation of sale or such extended period, but the outer limit has not been defined and that appears to be not as sacrosanct and the period can be extended, as agreed upon in writing between the parties. In sequel thereto, if the time stands extended, the auction purchaser would not be considered to be a defaulter as referred to under Rule 9(5) of the Rules and if the amended provisions are being taken note of, of which reference has been made, effective from 4 th November, 2016, however, may not be relevant as the auction in the instant case was held in March 2015, but the fact remains that by an amendment, the legislature with its consciousness has clarified that the agreement has to be between the purchaser and the secured creditor exceeding 15 days but in any case may not exceed three months although who are the parties to the agreement are not clear in the pre□amended Rule 9(4) of the Rules.

41. This Court, while examining the pre□amended Scheme of Rule 9(4) in judgment in General Manager, Sri Siddeshwara Cooperative Bank Limited (supra) was of the view that the period which is referred to in Rule 9(4) is not that sacrosanct and may be extended if there is a written agreement between the parties and since parties to the written agreement is not defined in Rule 9(4), this Court was of the view that it covers into its fold the secured creditor, the auction purchaser and the borrower, but later the legislature taking into consideration the judgment of this Court made its intention clear by making an appropriate amendment in Rule 9(4) of the Rules, 2002 which came into effect by a notification dated 3rd November, 2016 effective from 4 th November, 2016.

42. In the instant case, although there was no written consent by all the three partners, namely, secured creditors, borrowers and auction purchaser, as being referred to by this Court in General Manager, Sri Siddeshwara Cooperative Bank Limited (supra), but this fact cannot be ruled out that in the instant case, the peculiar situation has come forward when the respondent borrowers in the

first instance approached the Tribunal assailing the e□auction notice issued by the respondent Bank (secured creditor) and were able to secure an interim order from the Tribunal dated 26th March, 2015 permitting the auction proceedings to continue, subject to the condition that the borrower shall deposit Rs.6 lakhs directly with the respondent Bank within 15 days from the date of order, which admittedly expired on 9 th April, 2015 and the respondent borrowers failed to deposit the aforesaid amount.

43. On the last date when the period was to expire on 9 th April, 2015, I.A. No.1687 of 2015 was filed seeking extension of time period by 15 days for depositing the sum of Rs.6 lakhs and as there was no stay in withholding the e□auction proceedings, the appellant deposited not only the earnest money but 25% of the bid amount in the first instance on 28th March, 2015, the balance 75% of the bid amount was deposited on 15 th April, 2015 and the interregnum period was in incomplete phase of flux as to what will be the fate of the auction purchaser pending proceedings before the Tribunal, more so when the application was filed by the respondent borrowers on 9th April, 2015 seeking extension of time and that being the situation, 75% of the bid amount was deposited on 15th April, 2015 and sale certificate was issued and still thereafter when the Tribunal granted extension of 15 days' of time to the respondent borrowers by an order dated 17 th April, 2015 to deposit the sum of Rs.6 lakhs, the respondent borrowers failed to deposit the aforesaid amount and as it reveals from the record, a further time was granted to the respondent borrowers to deposit a sum of Rs.6 lakhs by an order dated 1 st May, 2015 and much before that, the auction proceedings were finalised and even the rectification deed came to be executed on 21 st April, 2015.

44. In the given facts and circumstances, the four days' delay which was caused in terms of the original auction notice, in no manner, would frustrate or annul the auction proceedings and the Debts Recovery Tribunal has rightly held that because in such state of flux, particularly when the bank/secured creditor requested the auction purchaser to wait for some time because the borrowers are negotiating with the bank in the light of interim order dated 26th March, 2015 of the Tribunal, delay in depositing 75% of the bid amount by four days in no manner would frustrate the rights of the parties inter se, more so, when the conduct of the borrowers in getting extension orders on two different occasions and still not depositing Rs.6 lakhs in terms of the order of the Tribunal would clearly reflect that the intention of the borrowers was only to frustrate the auction sale by one reason or the other, which they could not succeed.

45. In our considered view, the finding returned by the Tribunal was well reasoned and duly supported with the material on record and the interference made by the High Court under the impugned judgment while recording a finding that it was in breach of Rule 9(4) of the Rules, 2002 is not legally sustainable in law and deserves to be set aside.

46. Before we finally conclude, it is brought to our notice that after sale of property under e□auction, the respondent Bank received a total sum of Rs.64,23,000/□and after due adjustment of the three NPA accounts of the respondent borrowers with other ancillary charges, a balance sum of Rs.16,30,000/□is lying with the respondent bank and the said amount has been deposited by the bank in FDRs and with accumulation of interest, the said amount has come to approx. Rs.18,80,000/□ We make it clear that the original sum of Rs.16,30,000/□with interest yielded over

the said amount upto date shall be transferred to the account of the borrower/guarantors, as the case may be, with their written consent as to in whose account the money is to be transferred. The bank shall transfer the money in the account of borrower/guarantor within eight weeks.

47. Consequently, the appeal deserves to succeed and is accordingly allowed. The judgment impugned of the High Court dated 20th November, 2019 is hereby quashed and set aside with the aforesaid observations.

48. There shall be no order as to costs.

49. Pending application(s), if any, shall stand disposed of.

.....J. (AJAY RASTOGI) .....J. (C.T. RAVIKUMAR) NEW DELHI;

NOVEMBER 16, 2022.