

S Karthik vs N Subhash Chand Jain on 23 September, 2021

Equivalent citations: AIR 2021 SUPREME COURT 4559, AIRONLINE 2021 SC 765

Author: B.R. Gavai

Bench: B.V. Nagarathna, B.R. Gavai, L. Nageswara Rao

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5920 – 5923/2021
[Arising out of Special Leave Petition (Civil) No.8614–8617 of 2020]

S. KARTHIK & ORS.

...APPELLANT(S)

VERSUS

N. SUBHASH CHAND JAIN & ORS.

.... RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. This case is a classic example as to how an ingenious litigant, by taking recourse to a series of proceedings one after the other, has been successful in blocking the enforcement of a security interest, created in favour of a secured creditor, thereby defeating the very purpose for which the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, Reason:

2002 (hereinafter referred to as ‘the SARFAESI Act’) was enacted.

3. The present appeals challenge the common judgment and order dated 18.11.2019 passed by the High Court of Judicature at Madras in Writ Petition Nos. 30710 and 30712 of 2019 filed by respondent No.1 N. Subhash Chand Jain herein (hereinafter referred to as ‘the auction purchaser’) and in Writ Petition Nos. 28034 and 28036 of 2019 filed by the appellants herein, thereby disposing

of all the four writ petitions.

4. The facts, in brief, giving rise to the present appeals are as under:

Ace Concrete Private Limited (hereinafter referred to as 'the borrower') was a company engaged in the manufacture and sale of ready mixed concrete and related business activities.

The borrower had availed loans from respondent No.5 –Indian Overseas Bank (hereinafter referred to as 'the respondent Bank'). The appellants and respondent Nos. 2 to 4 herein had mortgaged their four properties as collateral security and executed guarantee for the credit facility granted to the borrower. As per the sanction of the respondent Bank dated 30.3.2010, the respondent Bank extended financial assistance to the tune of Rs.21,14,00,000/- to the borrower. The guarantees, which were signed and executed by the appellants and respondent Nos. 2 to 4, were for an amount of Rs.22,74,74,000/-

It appears that thereafter there was a transaction/Memorandum of Understanding between the borrower and one M/s. AKR Holdings Private Limited (hereinafter referred to as 'AKR Holdings'), as per which the entire share capital of the borrower was to be transferred to AKR Holdings and the Management was also to be transferred in favour of AKR Holdings. As per the agreement, AKR Holdings was to take over the entire liability of the borrower and also to get the four mortgaged properties released to the appellants and respondent Nos. 2 to 4. It is, however, the contention of the appellants that the said AKR Holdings in collusion with the respondent Bank sold all the assets of the borrower hypothecated to the respondent Bank and also did not get the mortgaged properties released, as agreed. The borrower was, therefore, categorised as 'Non Performing Asset (NPA)' on 1.4.2011.

The respondent Bank on 23.5.2011 issued notice under Section 13(2) of the SARFAESI Act for a liability of Rs.20,24,05,000/- It is the contention of the appellants that the respondent Bank instead of proceeding against the actual borrowers, i.e., the new Management, who had taken over the control/management of the borrower, invoked its power mala fide against the subsisting guarantors. As such, vide reply dated 11.7.2011, the appellant Nos. 1 and 6, and respondent Nos. 3 and 4 denied the claim of the respondent Bank. According to the appellants, ignoring the same, on 25.8.2011, the respondent Bank took symbolic possession of all the four properties. The respondent Bank issued a sale notice dated 21.1.2012 (First Sale Notice) in respect of all the four mortgaged properties claiming a sum of Rs.23,39,54,702/- as outstanding. The date of sale was scheduled to be 27.2.2012.

On 20.2.2012, the appellants and respondent Nos. 2 to 4 filed a Securitisation Application being S.A. No.69 of 2012 before the Debts Recovery Tribunal, II,

Chennai (hereinafter referred to as 'the DRT, Chennai'), thereby praying to quash the First Sale Notice dated 21.1.2012. The DRT, Chennai, vide order dated 27.2.2012 granted an interim stay restraining the respondent Bank from proceeding further with the First Sale Notice dated 21.1.2012 for a period of 30 days. However, this was subject to deposit of 50% of the outstanding amount within the said period.

On 28.3.2012, a sum of Rs.12.25 crores was remitted to the respondent Bank after sale of the mortgaged property at Item 'B' in the Schedule of Properties. The said sale was through a private treaty. According to the appellants, they had already deposited an amount of Rs.50 lakh on 17.8.2011 and 23.8.2011, i.e., prior to the issuance of the First Sale Notice dated 21.1.2012.

Vide order dated 2.7.2012, the DRT, Chennai, dismissed S.A. No.69 of 2012 filed by the appellants and respondent Nos. 2 to 4.

After the dismissal of S.A. No.69 of 2012, the respondent Bank issued a fresh sale notice dated 9.7.2012 (Second Sale Notice) calling upon the appellants and respondent Nos. 2 to 4 to pay the revised outstanding amount of Rs.11,99,53,926/ within 10 days. The date of sale for the remaining three mortgaged properties was scheduled to be 20.7.2012.

Being aggrieved by the said Second Sale Notice dated 9.7.2012, the appellants and respondent Nos. 2 to 4 filed S.A. No.227 of 2012 before the DRT, Chennai, thereby praying to quash the Second Sale Notice dated 9.7.2012, inter alia, on the ground that the auction/sale has been fixed before the expiry of 30 days from the date of service of Second Sale Notice. There is some dispute with regard to the actual date of filing of the said S.A.No.227 of 2012. However, for adjudication of the present appeals, it is not necessary to go into the said aspect.

On 20.7.2012, the mortgaged properties at Item 'A' and Item 'D' of the Schedule of Properties mentioned in the First Sale Notice dated 21.1.2012 were sold for a sale consideration of Rs.4,86,21,000/ to the auction purchaser.

Vide interim order dated 24.7.2012, the DRT, Chennai, directed the appellants and respondent Nos. 2 to 4 to deposit Rs. 1 crore to show their bona fides and granted a month's time to procure prospective purchasers to clear the entire dues by selling the mortgaged properties. Accordingly, an amount of Rs.1 crore came to be deposited on 31.7.2012.

The claim of the appellants and respondent Nos. 2 to 4 before the DRT, Chennai, in S.A. No. 227 of 2012 came to be resisted by the respondent Bank by filing a reply statement dated 2.8.2012.

The DRT, Chennai, passed an interim order dated 7.8.2012, thereby restraining the respondent Bank from bringing the mortgaged properties for sale pursuant to the Second Sale Notice dated 9.7.2012 for a period of 30 days subject to deposit of Rs.4,80,00,000/ by the appellants and respondent Nos. 2 to 4 within the said period, failing which the said interim order dated 7.8.2012 was to stand vacated.

However, instead of complying with the said order, the guarantors filed an application being I.A. No.437 of 2012 in S.A. No.227 of 2012. By the said application, they sought a direction that the amount so directed to be deposited (i.e. Rs.4,80,00,000/-) by the DRT, Chennai, vide order dated 7.8.2012, should be permitted to be deposited either in the purchasers account or in separate suspense account in the Indian Overseas Bank, Kilpauk Branch. This was on the pretext of an ongoing investigation by the CBI with regard to some fraudulent activities of the Officers of the respondent Bank. The said I.A. No.437 of 2012 came to be dismissed by the DRT, Chennai, on 12.9.2012. Vide the said order dated 12.9.2012, the respondent Bank was granted liberty to proceed with the sale and the main S.A. No.227 of 2012 was directed to be posted for final hearing on 20.9.2012 After the deposit of the balance sale consideration by the auction purchaser on 12.9.2012, a sale certificate came to be issued on 13.9.2012.

Being aggrieved by the order passed by the DRT, Chennai, dated 12.9.2012, Civil Revision Petition No.3487 of 2012 came to be filed before the High Court of Judicature at Madras. Another Civil Revision Petition No.3597 of 2012 came to be filed against the interim order passed by the DRT, Chennai, dated 7.8.2012 in S.A. No. 227 of 2012 before the Madras High Court.

During the pendency of the said Civil Revision Petitions before the Madras High Court, a Third Sale Notice dated 27.9.2012 was issued by the respondent Bank for recovery of a sum of Rs.6,76,07,054/- The date of sale was scheduled to be 30.10.2012.

Vide various interim orders passed in the said Civil Revision Petitions, the Madras High Court restrained the respondent Bank and the auction purchaser from taking physical possession of the mortgaged properties. During the pendency of the said Civil Revision Petitions, a sum of Rs.12 crore was paid to the respondent Bank against the sale of mortgaged property at Item 'C' of the Schedule of Properties in First Sale Notice dated 21.1.2012, owned by respondent No.3 Shanthi Sivasamy.

Vide common order dated 29.7.2013, the High Court dismissed the said Civil Revision Petitions. The appellants and respondent Nos. 2 to 4 challenged the said order dated 29.7.2013 before this Court by filing Special Leave Petition (Civil) Nos. 28402 and 28403 of 2013. This Court vide order dated 7.7.2014 issued notice in the said Special Leave Petitions confined to the question as to whether any excess payment made by the appellants and respondent Nos. 2 to 4 was to be refunded by the respondent Bank. This Court also directed the Debts Recovery Appellate Tribunal, Chennai (hereinafter referred to as 'the DRAT, Chennai'), to dispose of M.A.(S.A.) No.70 of 2014 expeditiously and preferably within a month's time.

The said Special Leave Petition (Civil) Nos. 28402 and 28403 of 2013 filed by the appellants and respondent Nos. 2 to 4 were permitted to be withdrawn by this Court vide order dated 17.4.2015. While granting leave to withdraw, this Court observed that since the special leave petitions are withdrawn, there will be no impediment for the Tribunal to pass final orders.

It appears that in the meantime on 21.6.2013 since the appellants and respondent Nos. 2 to 4 were unrepresented, the S.A. No.227 of 2012 came to be dismissed in default by the DRT, Chennai. An application being M.A. No.112 of 2013 was preferred by the appellants and respondent Nos. 2 to 4 to

recall the said dismissal order dated 21.6.2013. The said application was rejected on 20.9.2013. The said order came to be challenged by the appellants and respondent Nos. 2 to 4 before the High Court by filing C.R.P. PD. No.4410 of 2013. However, the said C.R.P. PD. No.4410 of 2013 came to be dismissed by the High Court vide order dated 3.12.2013 with liberty to the appellants and respondent Nos. 2 to 4 to approach the DRAT, Chennai. It appears that the appellants and respondent Nos. 2 to 4 approached the DRAT, Chennai, by filing M.A. (S.A.) No.70 of 2014. The DRAT, Chennai, vide order dated 10.7.2014 allowed the said M.A. (S.A.) No.70 of 2014 and directed the DRT, Chennai, to restore S.A. No.227 of 2012 and dispose of the same in accordance with law as expeditiously as possible.

It also appears from the record that there were certain proceedings initiated at the instance of the auction purchaser praying for transfer of the proceedings from the DRT-II, Chennai, which was seized of S.A. No.227 of 2012, wherein the auction purchaser reached upto the High Court, but could not succeed.

It appears from the record that in the meantime the third respondent-Shanthi Sivasamy filed I.A. No.903 of 2016 in S.A. No.227 of 2012 seeking refund of the excess amount of Rs.4.48 crore lying with the respondent-Bank claiming that she was the owner of the mortgaged property situated at Chrompet, Chennai, that was sold and that the excess money lying with the respondent-Bank belonged to her.

The DRT, Chennai, vide order dated 25.6.2018, allowed S.A. No.227 of 2012 and set aside the Second Sale Notice dated 9.7.2012 and consequent sale of the mortgaged properties and imposed cost of Rs.50,000/- on the respondent-Bank for wilfully violating the provisions of law. Vide the said order dated 25.6.2018, the DRT, Chennai, directed the respondent-Bank to refund the amounts paid by the auction purchaser along with 10% interest per annum. It further directed the respondent-Bank to refund the surplus sum of Rs.4.48 crore to the third respondent-Shanthi Sivasamy with 10% interest per annum.

The aforesaid order dated 25.6.2018 passed by the DRT, Chennai, came to be challenged before the DRAT, Chennai, by the respondent-Bank as well as by the auction purchaser by filing appeals being R.A. (S.A.) No.143 of 2018 and R.A. (S.A.) No. 141 of 2018 respectively.

Vide common order dated 6.9.2019, the DRAT, Chennai, allowed both the appeals and set aside the order dated 25.6.2018 passed by the DRT, Chennai. It, however, maintained the direction of the DRT, Chennai, insofar as the payment of excess amount to the third respondent is concerned.

The said order dated 6.9.2019 passed by the DRAT, Chennai, came to be challenged by the appellants before the High Court by filing Writ Petition Nos. 28034 and 28036 of 2019. The auction purchaser also challenged the said order dated 6.9.2019 passed by the the DRAT, Chennai, before the High Court by filing Writ Petition Nos. 30710 and 30712 of 2019.

Vide the impugned common order dated 18.11.2019, all the four writ petitions were disposed of. Hence, the present appeals by way of special leave.

5. We have heard Shri K.V. Viswanathan, learned Senior Counsel appearing on behalf of the appellants, Ms. Anitha Shenoy, learned Senior Counsel appearing on behalf of the respondent□ Bank, Mr. K.K. Mani, learned counsel appearing on behalf of the auction purchaser and Mr. Saju Jakob, learned counsel appearing on behalf of respondent No.3.

6. Shri K.V. Viswanathan, learned Senior Counsel appearing on behalf of the appellants, submitted that in the Second Sale Notice dated 9.7.2012, the period given for paying revised outstanding dues was only 10 days. Learned Senior Counsel submitted that the date fixed for auction was immediately on the next day, i.e., the 11 th day. Learned Senior Counsel therefore submits that the said notice was in blatant breach of Rule 8(6) and Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as ‘the said Rules’). It is submitted that the said Rules statutorily mandate that there must be 30 days’ time gap between the date of notice and the date of sale of the immovable assets.

Relying on the judgment of this Court in the case of Mathew Varghese v. M. Amritha Kumar and others¹, the learned Senior Counsel submits that if the sale does not take place pursuant to a notice issued under Rules 8 and 9 of the said Rules, then the procedure prescribed by the said 1 (2014) 5 SCC 610 Rules will have to be followed afresh, and a fresh notice of 30 days’ period will have to be given.

Relying on the judgment of this Court in the case of Vasu P. Shetty v. Hotel Vandana Palace and others², Shri K.V. Viswanathan, learned Senior Counsel, would submit that the sale, which is in breach of the mandatory requirements imposed by the Rules, would be null and void. He submits that it has been held by this Court in the case of Vasu P. Shetty (supra) that the earlier attempts of the borrower to thwart the sale would not constitute a waiver, and the Bank could not be relieved from its obligation to follow the mandatory procedure contained in the Rules. He further submits that this Court, in the case of J. Rajiv Subramaniam and another v. Pandiyas and others³, has reiterated the same legal position.

Learned Senior Counsel further submits that the respondent□ Bank also understood that even for a subsequent notice, a 30 days’ mandatory period has to be provided inasmuch as in the First Sale Notice dated 21.1.2012, and in the Third Sale Notice dated 27.9.2012, a 2 (2014) 5 SCC 660 3 (2014) 5 SCC 651 period of more than one month has been provided. It is only with regard to the Second Sale Notice dated 9.7.2012, a period of only 10 days has been provided. It is submitted that this has been done in haste and with a mala fide intention.

Learned Senior Counsel would further submit that the contention of the respondent□ Bank that the Second Sale Notice dated 9.7.2012 is a continuation of the First Sale Notice dated 21.1.2012 is totally erroneous. He submitted that the schedule of the properties in the First Sale Notice dated 21.1.2012 and in the Second Sale Notice dated 9.7.2012 is totally different. Not only that, but the amount called upon to be paid is also totally different.

Shri Viswanathan further submits that the finding of all the Authorities, i.e., the DRT, Chennai, the DRAT, Chennai, as well as the High Court, that the third respondent□ Shanthi Sivasamy was entitled

to the excess amount is contrary to the record and the pleadings. He submitted that the amount that was received, was received from the sale of all the four mortgaged properties of which two were sold through a private treaty and the remaining two were sold through an auction sale. As such, the excess amount, which was generated, was on account of the sale of all the four mortgaged properties and not only on account of the sale of the mortgaged property of the respondent No.3. He further submits that it was a consistent stand of the appellants as well as the respondent Nos. 2 to 4 that the said amount was required to be kept by the respondent Bank in an Escrow account so that in the event the auction sale in respect of properties at Item 'A' and Item 'D' of the Schedule of Properties in First Sale Notice dated 21.1.2012 is set aside, the amount can be refunded to the auction purchaser with interest. It is, however, submitted that the said amount has, in an illegal manner, been permitted to be withdrawn by the respondent No.3, along with interest accrued thereon.

Shri Viswanathan, learned Senior Counsel, further submits that the present appeals need to be allowed by quashing and setting aside the sale in respect of properties at Items 'A' and 'D' of the Schedule of Properties in the First Sale Notice dated 21.1.2012. He further submits that a direction needs to be issued to respondent No.3 to pay back the amount to the respondent Bank, which should be directed to utilise the said amount to compensate the auction purchaser.

7. Ms. Anitha Shenoy, learned Senior Counsel appearing on behalf of the respondent Bank, submits that the Second Sale Notice dated 9.7.2012 cannot be construed to be a fresh notice, but a continuation of the First Sale Notice dated 21.1.2012. Learned Senior Counsel submits that the Second Sale Notice dated 9.7.2012 was issued in line with the law laid down by the Division Bench of the Madras High Court in the case of Kalpesh P.C. Surana v. Indian Bank⁴. It is submitted that it has been held in the case of Kalpesh P.C. Surana (supra) that though a 30 days' period is to be provided for auction sale in the First Notice, there is no requirement under the law to provide a 30 day's clear period in the subsequent notice. She further submits that though the DRT, Chennai, the DRAT, Chennai, and the High Court had granted several opportunities to the appellants to make the payments, they have defaulted to do so⁴ (2010) 3 CTC 287 so. It is submitted that only in pursuance to the directions of the DRT, Chennai, dated 12.9.2012, the sale was completed in favour of the auction purchaser. Learned Senior Counsel therefore submits that since the respondent Bank has always acted in compliance with the orders passed by the Tribunals and the High Court, no fault could be attributed to the respondent Bank.

8. Shri K.K. Mani, learned counsel appearing on behalf of the respondent No.1 the auction purchaser, submitted that on account of the litigation, though the auction purchaser has deposited the entire amount in the year 2012 itself, he is deprived of the benefit of the said sale. Learned counsel relying on the judgment of this Court in the case of Dwarika Prasad v. State of Uttar Pradesh and others⁵, submitted that though the appellants have lost before all the forums in several rounds of litigation and that the auction purchaser by virtue of law is the owner of the properties since 2012 onwards, he is being deprived of the benefit of the rent from the properties at Items 'A' and 'D' of the Schedule of Properties in First Sale Notice dated 5 (2018) 5 SCC 491 21.1.2012, which rent is being received by the appellants. Learned counsel also relying on the judgment of this Court in the case of Shakeena and Anr. v. Bank of India & Ors.⁶, further submits that the role of the respondent Bank in the present case also needs to be noted. He submits that though the respondent Bank could very

well have taken steps under Section 14 of the SARFAESI Act for recovery of physical possession, for last 9 years, the respondent Bank has not taken any steps.

9. Shri Saju Jakob, learned counsel appearing for respondent No.3 Shanthi Sivasamy, submits that all the appellants are either Promoters/Directors or their direct relatives. He submits that respondent No.3 is not directly related to any of the Promoters or Directors but is related only through marriage of her daughter in one of the appellants' family. He submits that the amount of Rs.12 crore received by the respondent Bank was with regard to Third Sale Notice dated 27.9.2012, which was only with respect to the mortgaged property at Item 'C' in the Schedule of Properties in First Sale Notice dated 21.1.2012 6 2019 SCC Online SC 1059 owned exclusively by her. He submits that since the said sale notice was for an amount of Rs.6,76,07,054/- the excess amount of Rs.4.48 crore was lying with the respondent Bank in respect of sale of the said property. It is submitted that the amount towards the First and Second Sale Notice was already accounted by the respondent Bank through sale of the mortgaged properties at Items 'A', 'B' and 'D' in the Schedule of Properties in the First Sale Notice dated 21.1.2012, which properties belonged either to Promoters/Directors or their family members. Learned counsel submits that since the Third Sale Notice dated 27.9.2012 was only for an amount of Rs.6,76,07,054/- and in respect of the property owned by the respondent No.3, there is no error in directing refund of the excess amount along with interest to the respondent No.3.

10. The sheet anchor of the contentions made on behalf of the appellants is that even in case of Second Sale Notice dated 9.7.2012, a mandatory period of 30 days has to be provided. It is therefore the submission on behalf of the appellants that since the Second Sale Notice dated 9.7.2012 does not provide for 30 days' mandatory period and provides for a period of only 10 days, the said notice and the consequent sale is invalid in law. Heavy reliance has been placed on the judgment of this Court in the case of Mathew Varghese (supra).

11. This Court in the case of Mathew Varghese (supra) has elaborately considered the provisions of Section 13(1), 13(8), 35 and 37 of the SARFAESI Act so also Rules 8 and 9 of the said Rules. We, therefore, do not wish to burden the present judgment by reproducing all those provisions since they have already been reproduced and considered in the case of Mathew Varghese (supra). We only refer to the relevant paragraphs, which are relied upon by the learned counsel for the parties.

12. Before advertng to the observations made by this Court in the case of Mathew Varghese (supra), it will be relevant to note the facts therein.

The first and second respondents therein stood as guarantors in respect of a credit facility granted by the fourth respondent Bank therein in favour of a Company called 'Jerry Merry Exports Pvt. Ltd.'. As guarantors, they created an equitable mortgage in favour of the fourth respondent Bank therein by depositing the title deeds of their property. When the transaction became a non-performing asset, the respondent Bank issued notices under Section 13(2) and 13(4) of the SARFAESI Act. The guarantors filed a Securitisation Application (S.A.) No.20 of 2007 before the DRT, Ernakulam, challenging the possession notice issued under Section 13(4) of the SARFAESI Act. After issuance of notices under Section 13(2) and 13(4) of the SARFAESI Act, the respondent Bank issued a notice on

14.8.2007 to the guarantors as well as others of its intention to sell the property under Rule 8(6) of the said Rules by fixing a reserve price of Rs.1,25,00,000/-. On 23.8.2007, the respondent Bank published its notice of sale of property in Indian Express and Mathrubhoomi, inviting tenders cum auction from the public. The guarantors vide notice dated 30.8.2007 were informed by the respondent Bank about the publication made on 23.8.2007. In pursuance of the tender notice, the appellant Mathew Varghese and one M/s Kent Construction submitted their tenders on 30.8.2007 and 1.9.2007 respectively. The guarantors filed a writ petition being WP No.27182 of 2007 before the Kerala High Court challenging the proceedings initiated under the SARFAESI Act. The said writ petition was disposed of by a learned single judge of the Kerala High Court by order dated 20.9.2007. The High Court after taking note of the Original Application (OA) filed by the respondent Bank as well as Securitisation Application (SA) filed by the guarantors, directed the DRT to hear the parties and dispose of the cases without any delay. While disposing of the writ petition, the High Court also gave liberty to the parties to settle the liability and directed the respondent Bank to defer the sale posted on 25.9.2007 by six weeks. While doing so, the High Court imposed a condition on the guarantors to deposit a sum of Rs.10 lakh before the date of sale, i.e., 25.9.2007. As such, the sale, which was scheduled to be held on 25.9.2007, was postponed. Even after the expiry of period of six weeks prescribed in the order of the High Court dated 20.9.2007, the sale was not effected. It was the case of the guarantors that in pursuance of the order passed by the High Court, they had deposited a sum of Rs.10 lakh with the respondent Bank. The said S.A. No.20 of 2007 came to be dismissed by the DRT vide order dated 27.12.2007. Immediately on the next day, i.e., 28.12.2007, the respondent Bank accepted the tender of the appellant Mathew Varghese and asked him to deposit 25% of the amount on that day itself, which was accordingly deposited. He was asked to pay the balance amount within 15 days. Mathew Varghese deposited the balance amount on 11.1.2008. After deposit of 25% of the bid amount on 31.12.2007 by Mathew Varghese, the fourth respondent Bank confirmed the sale in his favour and granted him further time of 15 days for depositing the balance amount.

13. It is only upon deposit of the balance amount by Mathew Varghese on 11.1.2008 and the confirmation of the sale in his favour, the fourth respondent Bank informed the guarantors on 2.2.2008 about the confirmation of the sale in favour of Mathew Varghese and also the receipt of the entire consideration. The respondent Bank directed the guarantors to collect the balance amount available with it. As such, the guarantors filed Review Petition in the Writ Petition, which was disposed of on 20.9.2007. The said review petition was dismissed on 12.2.2008 giving liberty to the guarantors to challenge the sale. The guarantors thereafter filed another Writ Petition being Writ Petition No.5876 of 2008 on 18.2.2008, challenging the vires of the 2002 Rules. It was their specific case that the respondent Bank had acted surreptitiously in selling the property without informing them. The said writ petition was dismissed by the learned single judge of the High Court by order dated 12.6.2009. Being aggrieved thereby, an appeal was carried before the Division Bench of the High Court. The Division Bench of the High Court took the view that the sale was not conducted in a fair and proper manner inasmuch as when the sale was initially postponed by six weeks from 25.9.2007, the respondent Bank ought to have renotified the sale or at least extended the time for receiving further tenders. The Division bench set aside the sale by imposing a condition that the guarantors furnish a demand draft of Rs.2,00,00,000/- from a local branch of a nationalized bank in favour of Mathew Varghese and hand over the same to him within a period of two months from

the date of the order. The Division Bench further directed that if payment was not made, as directed, the sale in favour of Mathew Varghese would stand confirmed and the writ appeal would automatically stand dismissed. There were further directions to the sub-Registrar with regard to restoration of the property etc.

14. The guarantors did not make the payment within the said date, as directed by the Division Bench. Instead, an application was filed by the guarantors, thereby seeking for further six weeks' time to effect the payment of Rs.2,00,00,000/- to Mathew Varghese. In the said application, the Division Bench passed an order dated 18.6.2010 extending the time period till 20.6.2010. It appears that the guarantors had agreed to sell the property in favour of Mr. Koshi Phillip. The High Court therefore by the said order dated 18.6.2010 directed said Mr. Koshi Phillip to deposit an amount of Rs.2,03,00,000/- before the respondent-Bank and further directed that on such deposit being made, the sale made by the respondent-Bank in favour of Mathew Varghese stood cancelled and the respondent-Bank should effect the sale in favour of said Mr. Koshi Phillip. In this background, Mathew Varghese had approached this Court.

15. It will be relevant to refer to the following observations of this Court in the case of Mathew Varghese (supra):

“29.1. A plain reading of sub-section (8) would show that a borrower can tender to the secured creditor the dues together with all costs, charges and expenses incurred by the secured creditor at any time before the date fixed for sale or transfer. In the event of such tender once made as stipulated in the said provision, the mandate is that the secured asset should not be sold or transferred by the secured creditor. It is further reinforced to the effect that no further step should also be taken by the secured creditor for transfer or sale of the secured asset. The contingency stipulated in the event of the tender being made by a debtor of the dues inclusive of the costs, charges, etc., would be that such tender being made before the date fixed for sale or transfer, the secured creditor should stop all further steps for effecting the sale or transfer. That apart, no further step should also be taken for transfer or sale.

29.2. When we analyse in depth the stipulations contained in the said sub-section (8), we find that there is a valuable right recognised and asserted in favour of the borrower, who is the owner of the secured asset and who is extended an opportunity to take all efforts to stop the sale or transfer till the last minute before which the said sale or transfer is to be effected. Having regard to such a valuable right of a debtor having been embedded in the said sub-section, it will have to be stated in uncontroverted terms that the said provision has been engrafted in the SARFAESI Act primarily with a view to protect the rights of a borrower, inasmuch as, such an ownership right is a constitutional right protected under Article 300A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law.

29.3. Therefore, de hors the extent of borrowing made and whatever costs, charges were incurred by the secured creditor in respect of such borrowings, when it comes to the question of realising the dues by bringing the property entrusted with the secured creditor for sale to realise money advanced without approaching any court or tribunal, the secured creditor as a TRUSTEE cannot deal with the said property in any manner it likes and can be disposed of only in the manner prescribed in the SARFAESI Act.

29.4. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property or at least ensure that in the process of sale the secured asset derives the maximum benefit and the secured creditor or anyone on its behalf is not allowed to exploit the situation of the borrower by virtue of the proceedings initiated under the SARFAESI Act. More so, under Section 13(1) of the SARFAESI Act, the secured creditor is given a free hand to resort to sale of the property without approaching the court or Tribunal.

30. Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, in particular, Section 13(8), any sale or transfer of a secured asset, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.

31. Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said Rules prescribe as to the procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings under Sections 13(1) to (4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the Rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorised officer should serve to the borrower a notice of 30 days for the sale of the immovable secured assets.

Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days' time gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be affected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should provide for 30 days' clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with the proviso to sub-rule (6) of Rule 8, 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act.

32. The other prescriptions contained in the proviso to sub-rule (6) of Rule 8 relates to the details to be set out in the newspaper publication, one of which should be in “vernacular language” with sufficient circulation in the locality by setting out the terms of the sale. While setting out the terms of the sale, it should contain the description of the immovable property to be sold, the known encumbrances of the secured creditor, the secured debt for which the property is to be sold, the reserve price below which the sale cannot be effected, the time and place of public auction or the time after which sale by any other mode would be completed, the deposit of earnest money to be made and any other details which the authorised officer considers material for a purchaser to know in order to judge the nature and value of the property.

33. Such a detailed procedure while resorting to a sale of an immovable secured asset is prescribed under Rules 8 and 9(1). In our considered opinion, it has got a twin objective to be achieved:

33.1. In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time.

33.2. Secondly, when such a secured asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question.

33.3. Be that as it may, the paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or transfer, or ensure that the secured asset derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed.”

16. It could thus be seen that this Court has held that the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property or at least to ensure that in the process of sale, the secured asset derives the maximum benefit, and that the secured creditor or anyone on its behalf, is not allowed to exploit the situation of the borrower. This Court held that Rule 9(1) of the said Rules prescribed that no sale of

an immovable property under the said Rules should take place before the expiry of 30 days from the date on which the public notice of sale was published in the newspapers or notice of sale has been served to the borrower. This Court further held that the expression “or” in Rule 9(1) should be read as “and” and as such there should be clear notice of 30 days between the notice of sale to the borrower so also the publication in the newspaper and the actual date of sale. This Court held that this would serve twin purpose. Firstly, the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made inasmuch as, that would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time.

Secondly, when such a secured asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. This Court further held that the purpose of the Rule is to ensure that the secured asset derives the maximum price, and no one is allowed to exploit the vulnerable situation in which the borrower is placed.

17. After referring to the judgment of this Court in the case of *Narandas Karsondas v. S.A. Kamtam and another*⁷, this Court in the case of *Mathew Varghese* (*supra*) observed thus:

“38. On a reading of the above paragraphs, we are able to discern the ratio to the effect that a mere conferment of power to sell without intervention of the court in the mortgage deed by itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the expiry of the period, that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The ratio is also to the effect that the power to sell should not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. The above proposition of law of course was laid down by this Court in *Narandas Karsondas* [(1977) 3 SCC 247] while construing Section 60 of the TP Act. But as rightly contended by Mr Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the SARFAESI Act, read 7 (1977) 3 SCC 247 along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying Section 60 of the TP Act, this Court has envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed. It was also stated

that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed.

The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property.

39. When we apply the above principles stated with reference to Section 60 of the TP Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Under subsection (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said subsection also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the TP Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the abovestated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.”

18. It could thus be seen that this Court observed that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. This Court further observed that applying the principles stated with reference to Section 60 of the Transfer of Property Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. It has, however, been held that under Section 13(8), it is clearly stipulated that the mortgagor, i.e., the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. This Court further held that if the tender is made by the borrower at the last moment before the sale or transfer, the secured asset should not be sold or transferred by the secured creditor. This Court held that there was no reason as to why the general principle laid down by this Court in the case of Narandas Karsondas (supra) with reference to Section 60 of the Transfer of Property Act could not have application in respect of a secured interest in a secured asset created in favour of a secured creditor. It has been held that the said principles will apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

19. The most relevant observation of this Court could be found in paragraph 53 of the judgment in the case of Mathew Varghese (supra), which reads thus:

“53. We, therefore, hold that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor. In the event of any such sale properly notified after giving 30 days' clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is subrule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as subrule (8) is concerned, the parties referred to can only relate to the secured creditor and the borrower. It is, therefore, imperative that for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8 read along with Rule 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the SARFAESI Act, in particular Sections 13(1) and (8) of the said Act.” (emphasis supplied)

20. This Court, in unequivocal terms, held that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor. It further held that in the event of any such sale properly notified after giving a 30 days' clear notice to the borrower did not take place as scheduled for reasons, which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. This Court held that once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed will have to be followed afresh.

21. In the light of these observations, we have to consider the factual position in the present matter.

22. It is not in dispute that an equitable mortgage in favour of the respondent Bank guaranteeing the loan taken by the borrower was in respect of four properties. The chart showing the schedule of properties, the owners (as mentioned in the First Sale Notice dated 21.1.2012) and the mode of sale is as under:

“SALE NOTICE DT. 21.01.2012 □ SCHEDULE OF PROPERTIES S.NO. SCHEDULE OWNERS MODE OF PROPERTY SALE 1 Item □ A – Late Mr. C. Surendran,

Impugned Vepery Mr. C.Ravindran [R□2] auction Property Mrs. R. Rajalakshmi [P□6] sale to Mr. R. Rajarajan [P□3] Respondent Ms. R. Abirami [P□5] 2 Item□B – Late Mr. C. Surendran Private Madura□Mrs. R. Sivasakthi [R□4] Treaty Sale voyal Mrs. R. Rajalakshmi [P□6] Property 3 Item□C – Mrs. Shanti Sivaswamy Private Chrompet [R□3] Treaty Sale Property 4 Item□D Late Mr. C. Surendran Impugned Sholingam Mr. S.Karthik [P□] auction sale allur to Property Respondent

23. It can thus be seen that the properties at Items ‘B’ and ‘C’ in the Schedule of Properties in First Sale Notice dated 21.1.2012 have been sold through a private treaty, and as such, the said sales are not impugned in the present appeals. It is only the properties at Items ‘A’ and ‘D’ in the Schedule of Properties in First Sale Notice dated 21.1.2012, which have been sold consequent to Second Sale Notice dated 9.7.2012 by public auction in favour of the auction purchaser, are impugned. We will therefore have to examine the correctness of the submission that since the Second Sale Notice dated 9.7.2012 provided for a period of only 10 days, the auction sale held on 20.7.2012 is vitiated in view of the law laid down by this Court in the case of Mathew Varghese (supra). For that, it will be necessary to refer to various orders passed by the Tribunals as well as the High Court.

24. It is not in dispute that the First Sale Notice dated 21.1.2012 notifying auction sale on 27.2.2012 was for recovery of Rs.23,39,54,702/□and in respect of all the four scheduled properties at Items ‘A’, ‘B’, ‘C’ and ‘D’. It is also not in dispute that the First Sale Notice dated 21.1.2012 provided for a clear period of 30 days’ notice.

25. It is pertinent to note that immediately after the First Sale Notice was issued on 21.1.2012, a Securitisation Application being S.A. No. 69 of 2012 under Section 17(1) of the SARFAESI Act came to be filed before the DRT, Chennai, by the appellants and respondent Nos. 2 to 4. It will be relevant to refer to the interim order passed by DRT, Chennai, on 27.2.2012 in S.A. No. 69 of 2012, which reads thus:

“4. The Ld. Counsel for the applicant submitted that he can sell the property within 15 days and make substantial payment (entire sale consideration) with the bank within 15 days and the balance amount due to the bank will be settled within one month. If an interim injunction is not granted at this juncture, it will cause irreparable injury to the applicants.

5. Hence in the interest of justice interim stay is granted for a period of 30 days restraining the respondent bank from proceeding further pursuant to the sale notice dated 21.01.2012 subject to deposit of 50% of the outstanding amount within the period. For compliance call on 29.03.2012.”

26. It could thus be seen that the counsel for the applicants therein, i.e., the appellants and the respondent Nos. 2 to 4 herein submitted that the applicants could sell the property within 15 days and make substantial payment, i.e., the entire sale consideration with the respondent□Bank within 15 days, and the balance amount due to the respondent□Bank will be settled within one month. Acting on the said statement made by the appellants and respondent Nos. 2 to 4, the DRT, Chennai,

granted interim stay for a period of 30 days restraining the respondent Bank from proceeding further pursuant to the First Sale Notice dated 21.1.2012. However, this was subject to deposit of 50% of the outstanding amount within the said period. The matter was kept for compliance on 29.3.2012.

27. It is not in dispute that during the pendency of the said S.A. No.69 of 2012, an amount of Rs.12.25 crore, which was received from the sale of mortgaged property at Item 'B' through a private treaty on 28.3.2012, was remitted to the respondent Bank. It is the further contention of the appellants that they had also deposited a sum of Rs.50 lakh with the respondent Bank prior to the receipt of First Sale Notice dated 21.1.2012, and as such, an amount of Rs.12.75 crore was already paid to the respondent Bank.

28. When the said S.A. No.69 of 2012 came up for final hearing before the DRT, Chennai, on 2.7.2012, the DRT, Chennai, made the following observation:

“As I said earlier, the impugned Sale Notice was published in two dailies namely, New Sunday Express and Dinamani on 22.1.2012. The applicants have no case that these dailies have no wide circulation in the locality. It is also evident that Sale Notice was properly served to the borrower. It is evident that there is clear notice of 30 days from the date on which public notice of sale is published in newspapers. Therefore, there is no violation of sub-rule (1) of Rule 9 as contended. Hence I could not find any merit in the contention raised by the Ld. Counsel for the applicants.”

29. With these observations, S.A. No.69 of 2012 came to be dismissed by the DRT, Chennai, vide order dated 2.7.2012.

30. After the said S.A. No. 69 of 2012 was dismissed, the respondent Bank issued a fresh notice on 9.7.2012 (Second Sale Notice), thereby informing the guarantors that an amount of Rs. 11,99,53,926/- was due to the respondent Bank. It was therefore informed that sale of the mortgaged properties at Items 'A', 'C' and 'D' in the Schedule of Properties in the First Sale Notice dated 21.1.2012 will be held on 20.7.2012. The Schedule of Properties in the Second Sale Notice dated 9.7.2012 consisted of three properties out of four properties mentioned in the earlier notice dated 21.1.2012 (First Sale Notice) excluding the property mentioned at item 'B' in the First Sale Notice, which was sold by a private treaty on 28.3.2012.

31. The second round of litigation starts with S.A. No.227 of 2012. It is the contention of the appellants that the guarantors had immediately challenged the Second Sale Notice dated 9.7.2012 before the DRT, Chennai, by filing S.A. No.227 of 2012 on 18.7.2012. However, on account of some technical difficulties, S.A. No.227 of 2012 could be first heard on 24.7.2012. On 24.7.2012, the DRT, Chennai, passed the following order in S.A. No.227 of 2012:

“Advanced. Both parties present. Heard. Petitioner agreed to deposit Rs.1 crore within 2.8.2012 to show their bonafides. They want breathing time to procure prospective purchaser to clear the entire dues within one month from today by selling

the remaining property. They want one month time since it is Aady month, no sale would be taken place. Hence for compliance, call on 2.8.2012.”

32. It could thus be seen that the guarantors represented to the DRT, Chennai, that they want some breathing time to procure prospective purchaser and that they would clear the entire dues of the respondent Bank within one month from that day by selling the remaining property.

33. The matter thereafter came up for hearing on 7.8.2012 on which date the DRT, Chennai, passed the following interim order:

“8. The applicants have made out a strong case and the balance of convenience is also in their favour. Therefore, interim injunction is granted for 30 days restraining the Authorised Officer of respondent bank from brining the properties described in the Schedule for sale consequent upon the impugned Auction Sale Notice dated 9.7.2012, subject to deposit of Rs.4,80,00,000/-(Rupees Four Crores Eighty Lakhs only) with the respondent bank within the period, failing which this order will stand vacated.”

34. Perusal of the aforesaid interim order would reveal that an interim injunction was granted for a period of 30 days restraining the Authorised Officer of the respondent Bank from bringing the properties described in the Schedule for sale consequent upon the impugned Sale Notice dated 9.7.2012. This was made subject to deposit of Rs.4,80,00,000/- with the respondent Bank within the said period. It was, however, clarified that failing the same, the interim order would stand vacated. The matter was kept for compliance on 10.9.2012.

35. However, instead of complying with the said order, the guarantors filed an application being I.A. No.437 of 2012 in S.A. No.227 of 2012. By the said application, they sought a direction that the amount so directed to be deposited (i.e. Rs.4,80,00,000/-) by the DRT, Chennai, vide order dated 7.8.2012, should be permitted to be deposited either in the purchasers account or in separate suspense account in the Indian Overseas Bank, Kilpauk Branch. This was on the pretext of an ongoing investigation by the CBI with regard to some fraudulent activities of the Officers of the respondent Bank. The said I.A. No.437 of 2012 came to be dismissed by the DRT, Chennai, on 12.9.2012. Vide the said order dated 12.9.2012, the respondent Bank was granted liberty to proceed with the sale and the main S.A. No.227 of 2012 was directed to be posted for final hearing on 20.9.2012.

36. The orders passed by the DRT, Chennai, dated 7.8.2012 and 12.9.2012 came to be challenged by the appellants and respondent Nos. 2 to 4 before the High Court of Judicature at Madras by way of Civil Revision Petitions being C.R.P No.3597 of 2012 and C.R.P. No.3487 of 2012 respectively. On 9.11.2012, the Madras High Court passed the following order in the said Civil Revision Petitions:

“2. Considering the submissions made by the learned senior counsel for the petitioners that the Petitioners are prepared to pay entire dues to the Bank including the amount deposited by the auction purchaser, without prejudice to their other contentions, and taking into account the fact that the ultimate beneficiary in the Bank in view of the offer of the Petitioners to make the entire payment, we restrain the bank and the auction purchaser from taking physical possession of the properties from the Petitioners and their tenants, until further orders.”

37. It could thus be seen that again a representation was made to the Division Bench of the High Court that the appellants were prepared to pay entire dues to the respondent Bank including the amount deposited by the auction purchaser, without prejudice to their other contentions. Acting on the said representation, the Division Bench of the High Court granted interim protection to the appellants.

38. It appears that in the meantime since the property at Item ‘C’ belonging to respondent No.3 could not be sold in pursuance of the earlier sale notices, a third notice dated 27.9.2012 was issued in respect of property at Item ‘C’. It further appears that in the said Civil Revision proceedings, the Division Bench of the Madras High Court was informed about the said sale notice and the appellants again made a representation that they were willing to make payment of the entire amount. It will be relevant to refer to the following part of the order passed by the Division Bench of the Madras High Court dated 15.11.2012 in the Civil Revision proceedings:

“5. Taking into consideration the affidavit filed by the Petitioners agreeing to pay the entire amount within 90 days and part payment of Rs.4,80,00,000/within 45 days and also in view of the submission made by the Bank that there would be no bidders in case permission is not granted to confirm the bid, we stay the auction scheduled to be held on Friday 16 November 2012.”

39. When the Civil Revision Petitions were listed on

8.1.2013, the Division Bench of the Madras High Court passed the following order:

“2. The learned senior counsel for the petitioners submitted that, the petitioners have now identified a purchaser by name Redbrick Realtors Private Limited and they have agreed to purchase the property at Old No.99, New No.51, Anna Salai, Nagalkeni, Pammal Village, Chromepet, Chennai-44 (Item No.4) for a total consideration of Rs.12 crores. The prospective purchaser has taken a demand draft for a sum of Rs.75 lakh in the name of respondent Bank. Even though the prospective purchaser has agreed to settle the remaining amount within a period of sixty days, during the course of submission, the representative of the prospective purchaser sought 90 days time to pay the remaining amount. The prospective purchaser agreed to file an affidavit indicating that a sum of Rs.6 crore will be paid on or before 28.3.2013 and the balance amount will be paid on or before 26.4.2013.

... ..

5. The Director, Redbrick Realtors Private Limited, is directed to file an affidavit indicating that a sum of Rs.6 crores would be paid by 26 March 2013 and the balance of Rs.5.25 crore would be paid on or before 26 April 2013. The affidavit should contain a clear undertaking that in case of failure to adhere to the time limit, the purchase has no objection for forfeiting the amount of Rs.75 lakhs.”

40. On, 22.1.2013, the Division Bench passed the following order:

“2. Pursuant to our earlier orders dated 8.1.2013 and 11.1.2013, the Bank is permitted to appropriate the amount of Rs.75 lakhs towards the loan account of M/s Ace Concrete Pvt. Ltd. Similarly, the amount of Rs.6 crore payable by the prospective purchaser, as per our earlier order dated 8.1.2013 shall be paid to the loan account of M/s Ace Concrete Pvt.

Ltd. On such payment, the Bank is permitted to appropriate the said amount.”

41. It appears that during the pendency of the proceedings before the High Court, the mortgaged property at Item ‘C’ was sold by a private treaty, and an amount of Rs. 9 crore was paid by the purchaser M/s. Redbrick Realtors Private Limited on different dates. It is also the contention of the appellants that an amount of Rs.3 crore was deposited on 2.4.2013 by late Shri C. Surendran in compliance of the undertaking given to the High Court.

42. When the said Civil Revision Petitions came up for hearing on 30.4.2013, a grievance was made on behalf of the auction purchaser that even after issuance of sale certificate, he was not able to enjoy the fruits of the sale. It was also contended that the guarantors were collecting huge amount of rent of more than Rs.4 lakh, and though the auction purchaser was the owner of the property, he was deprived of the same. It will be relevant to refer to the following observations of the Division Bench in the said order dated 30.4.2013 passed in the Civil Revision Petitions:

“....According to him, even after issuance of sale certificate, as early as on 30.09.2012, they are not able to enjoy the fruits of the sale. Further, according Petitions, if the petitioner is allowed to collect rent from the premises in question, they have to face hardship in getting back the rent collected by the petitioner during the pendency of the Civil Revision Petitions. In view of this, we are of the opinion that ends of justice will be met by directing the petitioners to deposit the amount collected by way of rent before the Debt Recovery Tribunal No.III, Chennai.

2. Consequently, the petitioner is directed to deposit the amount collected by way of rent before the Debt Recovery Tribunal No.III, Chennai.”

43. It will be further relevant to note that it was sought to be urged on behalf of the respondent□ Bank that balance amount of Rs.4.48 crore was lying with the respondent□Bank. However, the EPF

and ESI authorities were pressuring to make payment to them. The Division Bench of the High Court vide order dated 30.4.2013 therefore directed that status quo be maintained with regard to the said amount.

44. The said Civil Revision Petitions were finally heard and dismissed by the Division Bench of the High Court on 29.7.2013. While dismissing the said Civil Revision Petitions, the Division Bench of the High Court observed thus:

“10. Under such circumstances, after the confirmation of sale and after the issue of sale certificate, when that issue is not before this Court, certainly, we cannot entertain the request of the learned Senior Counsel appearing for the petitioners to set aside the sale. Further, as pointed out earlier, with regard to the orders which are under challenge in these Civil Revision Petitions, no infirmity has been brought to the notice, of this Court. Consequently, both the Civil Revision Petitions are dismissed. Connected Miscellaneous Petitions are closed.

Further, this Court is constrained to impose costs of Rs. 5,000/- on the petitioners, payable to the Chief Justice Relief fund, for the reason that, though, from the very beginning of the argument, it was brought to the notice of the learned Senior Counsel appearing for the petitioners that this Court cannot entertain any submission regarding the, alleged irregularity or illegality in the sale effected and this Court cannot set aside the sale also in the absence of any challenge to the same, this Court has been pressurized by the learned Senior Counsel appearing for the petitioners to grant the relief of setting aside the sale, and by this, in the considered opinion of this Court, the time of this Court has been wasted, Whatever be the length of time consumed in advancing arguments with regard to the relief sought in the Civil Revision Petitions, certainly, arguments have to be heard by this Court, But, arguments at length cannot be allowed for a relief which is not sought in these Civil Revision Petitions.”

45. It could thus be seen that the Division Bench of the High Court also imposed costs of Rs.5,000/- on the petitioners therein as it was of the view that the learned counsel for the petitioners therein had exceeded in his limit while arguing the matter.

46. Litigation did not stop right there, rather it came upto this Court by way of Special Leave Petition (Civil) Nos. 28402 and 28403 of 2013. This Court vide order dated 7.7.2014 in the said Special Leave Petitions, passed the following order:

“Issue notice confined to the question as to whether any excess payment made by the petitioners is to be refunded by the bank. We also direct the Debts Recovery Appellate Tribunal to dispose of the appeal, M.A. (S.A.) No.70/2014, expeditiously preferably within a month’s time.”

47. It could thus be seen that this Court had issued notice confined only to the question as to whether any excess payment made by the petitioners therein was to be refunded by the respondent Bank. This Court also directed the DRAT, Chennai to dispose of the appeal, M.A. (S.A.) No.70/2014, expeditiously preferably within a month's time.

48. The said Special Leave Petitions subsequently were permitted to be withdrawn by this Court vide order dated 17.4.2015, which reads thus:

“The special leave petitions are permitted to be withdrawn.

Since, the special leave petitions are withdrawn, there is no impediment for the Tribunal to pass final orders.”

49. It appears that in the meantime on 21.6.2013 since the appellants and respondent Nos. 2 to 4 were unrepresented, the S.A. No.227 of 2012 came to be dismissed in default by the DRT, Chennai. An application being M.A. No.112 of 2013 was preferred by the appellants and respondent Nos. 2 to 4 to recall the said dismissal order dated 21.6.2013. The said application was rejected by the DRT, Chennai, vide order dated 20.9.2013. The said order came to be challenged by the appellants and respondent Nos. 2 to 4 before the High Court by filing C.R.P. No.4410 of 2013. However, the said C.R.P. No.4410 of 2013 came to be disposed of by the High Court with liberty to the appellants and respondent Nos. 2 to 4 to approach the DRAT, Chennai.

It further appears that the appellants and the respondent Nos. 2 to 4 approached the DRAT, Chennai, by filing M.A. (S.A.) No.70 of 2014. The DRAT, Chennai, vide order dated 10.7.2014 allowed the said M.A. (S.A.) No.70 of 2014 and directed the DRT, Chennai, to restore S.A. No.227 of 2012 and dispose of the same in accordance with law as expeditiously as possible.

50. It also appears from the record that there were certain proceedings initiated at the instance of the auction purchaser praying for transfer of the proceedings from the DRT II, Chennai, which was seized of S.A. No.227 of 2012, which reached upto the High Court, wherein the auction purchaser could not succeed.

51. It appears from the record that in the meantime the third respondent Shanthi Sivasamy filed I.A. No.903 of 2016 in S.A. No.227 of 2012 seeking refund of the excess amount of Rs.4.48 crore lying with the respondent Bank claiming that she was the owner of the mortgaged property situated at Chrompet, Chennai, that was sold and that the excess money lying with the respondent Bank belonged to her.

52. The third round of litigation begins with the order passed by DRT, Chennai, dated 25.6.2018 in S.A. No.227 of 2012 in pursuance of the order of the DRAT, Chennai, dated 10.7.2014 restoring S.A. No.227 of 2012. The relevant paragraphs of the order dated 25.6.2018 passed by the DRT, Chennai, in S.A. No.227 of 2012 read thus:

“10.8 From the perusal of records and written submissions filed by all the parties, It is evident that the first respondent bank did not follow the procedure as far as the subject impugned sale notice is concerned as warranted under law and it is settled principle of law that every notice of sale shall have a distinct cause of action and hence requires the statutory compliance of Rule 9(1) of the Security Interest (Enforcement) Rules, 2002, which mandates issuance of 30 days clear notice to the borrowers before initiating the process of sale. As the respondent bank has failed to adhere to the same, the sale notice dated 9.7.2012 scheduling the sale on 20.7.2012 is riddled with infirmity and hence is liable to be set aside. Accordingly, owing to infirmities the sale notice dated 9.7.2012 is set aside, Consequent to which, the sale purported to have been conducted and confirmed in favour of the second respondent over Item 'A' and 'C' schedule properties is also set aside.

Point 8 (III) 11.0 In the result SA No. 227/2012 is allowed setting aside the sale notice' dated 9.7.2012 and the consequent sale of Item 'A' and 'C' schedule properties of the subject impugned sale notice with costs of Rs. 50,000 /□payable by the 1st respondent bank to the appellant for willfully violating the provisions of law and continuing their allegation on the same ground for several years without conceding to their defect and correcting themselves at the first opportune time, This fact is evident, when the same respondent bank, in the same matter, had got issued yet another sale notice trying to bring the Item 'B' schedule mentioned property of the subject impugned sale notice by a sale notice dated 27.9.2012 scheduling the sale to 30.10.2012, which concludes that the first respondent bank is very much aware of the compliance of provisions of law, but had willfully, exhibited their disrespect for the same, owing to which imposition of costs is necessitated as a deterrent and not to repeat the same.

11. 1 Further, in view of the foregoing, the First Respondent bank is directed to refund the amounts as received from the 2nd respondent/auction purchaser together with interest @ 10% p.a. (simple) from the respective dates of receipt till the date of payment in full.

11.2 The further facts of the case is that during the pendency of these proceedings, the appellants had augmented funds to the tune of Rs.

5,23,92,946/□and remitted the same.

Both parties viz., the appellants and the 1st respondent bank had filed their calculation memos into this Tribunal, where under it has been commonly conceded to and accepted that a sum of Rs. 4,48,00,000/□being the surplus sale proceeds of 'B' schedule property is lying with the bank from the date of deposit by the auction purchaser of item 'B' schedule property, which was sold pursuant to the sale notice dated 27.09.2012 scheduling the auction sale to 30.10.2012, and which sale was never challenged and thus attained finality.

Therefore, the 1st respondent bank is directed to refund the said sum of Rs.

4,48,00,000/□(sic however, a sum of Rs.

4,46 crores is claimed by the 4th appellant in IA No. 903/2013) to the 4th appellant herein, who is the owner/mortgagor of the said Item 'B' schedule property since that is the property which has been sold for recovering the overdue amounts after adjusting the payments made by the appellants, together with subsequent interest @ 10% p.a. (simple) from the date of receipt till the date of actual payment by the 1st respondent bank.”

53. It could thus be seen that the DRT, Chennai, came to the conclusion that the notice dated 9.7.2012, scheduling the sale on 20.7.2012, was contrary to the provisions as contained in Rule 9(1) of the said Rules, and as such, was liable to be set aside. Consequently, the sale purported to have been conducted and confirmed in favour of the auction purchaser over Item 'A' and Item 'C' properties in the Schedule of Properties in Second Sale Notice dated 9.7.2012 was also set aside. Vide the said order dated 25.6.2018, the DRT, Chennai, directed the respondent Bank to refund the amounts as received from the auction purchaser together with interest at the rate of 10% per annum. The DRT, Chennai, also directed the respondent Bank to refund sum of Rs.4.48 crore with interest at the rate of 10% per annum to respondent No.3, who was the owner and mortgagor of the property sold pursuant to the notice dated 27.9.2012. While allowing S.A. No. 227 of 2012, the DRT, Chennai, had also imposed costs of Rs.50,000/- on the respondent Bank.

54. Being aggrieved thereby, the auction purchaser as well as the respondent Bank approached the DRAT, Chennai, by filing R.A. (S.A.) No.141 of 2018 and R.A. (S.A.) No.143 of 2018 respectively. Vide common order dated 6.9.2019, the DRAT, Chennai, allowed the said appeals. The DRAT, Chennai, reversed the order of the DRT, Chennai, dated 25.6.2018 insofar as setting aside the sale and imposition of costs is concerned. However, insofar as direction to pay amount of Rs.4.48 crore with interest at the rate of 10% per annum to respondent No.3 is concerned, the same was maintained.

55. Being aggrieved thereby, four writ petitions were filed before the Madras High Court; two writ petitions being Writ Petition Nos. 28034 and 28036 of 2019 were filed by the appellants and two writ petitions being Writ Petition Nos. 30710 and 30712 of 2019 were filed by the auction purchaser. The writ petitions filed by the auction purchaser was with limited grievance that though he had purchased the properties, he was deprived of the rent realised therefrom since 2012 onwards, and therefore, either the borrowers or the respondent Bank should be directed to pay him the rent realized from the properties purchased by him in the year 2012 or in the alternative, to set aside the auction and refund the amount deposited by him with interest. Insofar as the present appellants are concerned, they were aggrieved by the finding of the DRAT, Chennai, reversing the order passed by the DRT, Chennai, setting aside the sale.

56. It will be relevant to note that this Court in the case of Mathew Varghese (supra) itself has held that in the event of any such sale properly notified after giving a 30 days' clear notice to the borrower does not take place as scheduled for the reasons, which are not solely attributable to the borrower, then the secured creditor cannot effect the sale and he will have to initiate the procedure de novo. Therefore, the question, that will have to be considered, is, as to whether the sale, which was notified as per the notice dated 21.1.2012, could not take place on the date scheduled in the said notice for the reasons, which are solely attributable to the guarantors or not.

57. It could be seen that immediately after the notice was issued on 21.1.2012, the guarantors approached the DRT, Chennai, by way of S.A. No.69 of 2012. The guarantors gave an impression to the DRT, Chennai, that they can sell the property within 15 days and make the payment of the entire consideration within 15 days, and that the balance amount could be settled within one month. Acting on the representation of the guarantors, the DRT, Chennai, vide order dated 27.2.2012 granted interim stay for a period of 30 days, restraining the respondent Bank from proceeding further, pursuant to the sale notice dated 21.1.2012. However, this was subject to deposit of 50% of the outstanding amount within the said period. It could thus be seen that the sale as per the notice dated 21.1.2012, which was scheduled to take place on 27.2.2012, could not take place on the scheduled date on account of interim orders passed by the DRT, Chennai, which were passed on the representation of the guarantors.

58. It is not in dispute that notice dated 21.1.2012 clearly provided a 30 days' period as prescribed in the said Rules. It is also not in dispute that as per the representation made to the DRT, Chennai, on 27.2.2012, the appellants did not settle the entire amount within a period of one month. It appears that S.A. No.69 of 2012 was pending till 2.7.2012 and it came to be dismissed on the said date, i.e., 2.7.2012. In the meanwhile, the appellants had sold the property at Item 'B' in the Schedule of Properties in the First Sale Notice dated 21.1.2012 through a private treaty for an amount of Rs.12.25 crore, and the said amount was deposited with the respondent Bank. However, it is not in dispute that the entire claim of the respondent Bank was not satisfied till 2.7.2012 on which date the DRT, Chennai, dismissed S.A. No.69 of 2012.

59. After dismissal of S.A. No.69 of 2012 on 2.7.2012 by the DRT, Chennai, a fresh notice dated 9.7.2012 (Second Sale Notice) came to be issued by the respondent Bank to the appellants. In the said notice, the Schedule of Properties was the same as that in the First Sale Notice dated 21.1.2012, except the property at Item 'B', which was sold through a private treaty. Therefore, in the Second Sale Notice dated 9.7.2012, the property at Item 'C' became Item 'B' and the property at Item 'D' became Item 'C'. The amount claimed in the Second Sale Notice dated 9.7.2012 was Rs.11,99,53,926/- i.e., the amount claimed in the First Sale Notice dated 21.1.2012 minus the amount realized from the sale of property at Item 'B' through a private treaty.

60. It could thus be seen that the Second Sale Notice dated 9.7.2012 was in continuation of the proceedings of the First Sale Notice dated 21.1.2012, which sale could not be effected only on account of the interim orders passed by the DRT, Chennai, on the representation made by the appellants and respondent Nos. 2 to 4. It could further be seen that even in view of the law laid down by this Court in the case of Mathew Varghese (supra), since the sale scheduled on 27.2.2012, as per the First Sale Notice dated 21.1.2012, could not be held due to the reasons attributable solely to the guarantors, there was no necessity of again following the same procedure of providing a 30 days' clear notice. In any case, the respondent Bank issued a fresh Second Sale Notice on 9.7.2012 to the appellants, scheduling the sale on 20.7.2012. There is a substantial distinction of facts in the present case as compared to those in the case of Mathew Varghese (supra). In the case of Mathew Varghese (supra) after the dismissal of S.A., the respondent Bank had surreptitiously accepted the tender of the auction purchaser on the very next day of dismissal of S.A. without issuing a notice to the guarantors/borrowers and also confirmed the sale, and only after the confirmation of sale and

receipt of the entire amount, informed the borrowers/guarantors about the sale being confirmed. It is not the case here. In the present case, after the S.A. was dismissed on 2.7.2012, the respondent Bank again issued a fresh Notice on 9.7.2012 scheduling the sale on 20.7.2012.

61. The facts in the case of Mathew Varghese (supra) are also distinguishable inasmuch as though between the date of publication of notice in the newspapers and the date scheduled for sale, a clear 30 days' period was provided, but insofar as the individual notice to the borrowers/guarantors and the date scheduled for sale, a 30 days' clear period was not provided. And this was with regard to the very first notice. On the aforesaid premise, this Court in the case of Mathew Varghese (supra) held that the word 'or' used in Rule 9 of the said Rules will have to be read as 'and', and that there should be a clear 30 days' period between the date of publication of notice in the newspapers as well as individual notice to the borrower/guarantor and the date scheduled for sale. Clearly, in the present case, there has been compliance with the same, insofar as the first notice is concerned, whereas in the case of Mathew Varghese (supra), there was no 30 days' period between individual notice and the date of sale.

62. The matter does not rest at that. Immediately after the Second Sale Notice dated 9.7.2012 is issued, the appellants along with respondent Nos. 2 to 4 filed S.A. No.227 of 2012 challenging the notice dated 9.7.2012. There is some dispute between the parties with regard to the date on which the said S.A. No.227 of 2012 was filed. However, in the light of the view that we are taking, the same would not be relevant.

63. When the matter (S.A. No.227 of 2012) came up for hearing before the DRT, Chennai, on 24.7.2012, a representation was made by the appellants to the DRT, Chennai, that they wanted some breathing time to procure prospective purchaser to clear the entire dues within one month from the said date by selling the remaining property. The said S.A. No.227 of 2012 thereafter came up for hearing before the DRT, Chennai, on 7.8.2012. On the said date, the DRT, Chennai, passed an order of interim injunction for a period of 30 days restraining the respondent Bank from giving effect to the sale notice dated 9.7.2012 subject to deposit of Rs.4.80 crore within the said period of 30 days. The said order dated 7.8.2012 also made it clear that on failure to make such payment, the said order would stand vacated.

64. It is not in dispute that in pursuance of the said order dated 7.8.2012, the appellants have not deposited the amount of Rs.4.80 crore within 30 days. It is to be noted that the order dated 7.8.2012 was self-operative. On failure on the part of the appellants to deposit the amount of Rs.4.80 crore prior to 7.9.2012, the interim injunction stood automatically vacated. It could thus be seen that even on this occasion, the appellants had an opportunity for redemption of the mortgage and clearing their properties from encumbrances. However, the appellants, even during this period, did not avail of the said opportunity.

65. It is to be noted that in the meanwhile, the auction purchaser had bid for the properties at Items 'A' and 'C' in the Schedule of Properties in the Second Sale Notice dated 9.7.2012 (i.e. the properties at Items 'A' and 'D' in the Schedule of Properties in the First Sale Notice dated 21.1.2012). In the said sale, which was held on 20.7.2012, the auction purchaser was the successful bidder having bid for

Rs.1,45,66,000/□and Rs.3,40,55,000/□respectively, in all totaling to Rs.4,86,21,000/□ Upon payment of the entire amount, the sale was confirmed on 21.7.2012. Not only that, the sale was duly registered on 14.9.2012 after the auction purchaser had spent a sum of Rs.38,89,880/□towards the registration charges. It is to be noted that the appellants instead of complying with the directions, had filed I.A. No.437 of 2012 in S.A. No.227 of 2012 seeking certain directions with regard to deposit of the amount in some other account. The DRT, Chennai, vide order dated 12.9.2012, dismissed the said I.A. No.437 of 2012, and thereby, granted liberty to the respondent□Bank to proceed with the sale. It is only thereafter, that the sale came to be registered in favour of the auction purchaser on 14.9.2012. It is, thus, clear that the sale came to be registered in favour of the auction purchaser in view of the liberty granted by the DRT, Chennai, in its order dated 12.9.2012.

66. Even thereafter, the guarantors continued with their effort to prolong the proceedings. Various orders came to be passed in the Civil Revision Petitions, which we have already referred to hereinabove. In one of the orders passed by the High Court, i.e., the order dated 30.4.2013, the appellants were also directed to deposit the amount collected by way of rent before the DRT, Chennai. Finally, finding that after the confirmation of sale and after the issuance of the sale certificate, the Court could not interfere, the said Civil Revision Petitions came to be dismissed on 29.7.2013.

67. Being aggrieved thereby, the appellants approached this Court by way of Special Leave Petition (Civil) Nos. 28402 and 28403 of 2013, wherein this Court issued notice vide order dated 7.7.2014. The said Special Leave Petitions subsequently were permitted to be withdrawn by this Court vide order dated 17.4.2015. However, in view of the observations made by this Court in its order dated 7.7.2014, the M.A. No.70 of 2014, which was filed before the DRAT, Chennai, challenging the order of the DRT, Chennai dated 20.9.2013 refusing to restore the S.A. No.227 of 2012, which was dismissed in default, was heard on 10.7.2014 and the S.A. No.227 of 2012 was restored to the file. As already pointed out hereinabove, the said S.A. No.227 of 2012 was allowed by the DRT, Chennai, vide order dated 25.6.2018, which order was reversed by the DRAT, Chennai, vide order dated 6.9.2019, and the order of the DRAT, Chennai, dated 6.9.2019 was maintained by the High Court vide the impugned judgment and order dated 18.11.2019.

68. It could thus be seen that the appellants had more than one opportunity for redemption of the mortgage. However, from their conduct, it appears that they were only interested in protracting the litigation. It is the appellants at whose intervention and on whose incorrect representation, the sale, which was scheduled to be held on 27.2.2012 in pursuance of the notice dated 21.1.2012, could not be held. Even after the dismissal of S.A. No.69 of 2012 on 2.7.2012, the respondent□Bank again issued a Second Sale Notice on 9.7.2012 scheduling the sale on 20.7.2012 in which the auction purchaser emerged as a successful bidder. It is thus clear that the appellants had enough time from 21.1.2012 till 2.7.2012 for redemption of their mortgaged properties. However, they did not avail of that opportunity. Even after the auction purchaser emerged successful in the bid and had paid the bid money, an opportunity was given by the DRT, Chennai, vide order dated 7.8.2012, to the appellants to deposit the amount of Rs.4.80 crore within one month. However, without complying with the same, the appellants continued with their dilatory tactics by filing an application being I.A. No.437 of 2012 in S.A. No.227 of 2012. Even thereafter, they continued with the proceedings before

the High Court, wherein certain interim orders were passed, and finally, the High Court, finding that in view of the sale being confirmed and the sale being registered no interference could be warranted, dismissed the Civil Revision Petitions. Thereafter again, they approached this Court by way of Special Leave Petitions, which were subsequently withdrawn. Ideally, the litigation ought to have stopped at least at that stage.

69. However, after the M.A. No.70 of 2014 was allowed and the S.A. No.227 of 2012 was restored, it gave fresh lease to the litigation, wherein the S.A. No.227 of 2012 was allowed by the DRT, Chennai. The order of the DRT, Chennai, was reversed by the DRAT, Chennai, which was in turn upheld by the High Court vide the impugned judgment.

70. As we have already discussed hereinabove, the facts in the case of Mathew Varghese (supra) and the facts in the present case are totally different. In any case, in view of the observations made in paragraph 53 of the judgment of this Court in the case of Mathew Varghese (supra), we are of the view that since the sale scheduled on 27.2.2012 in pursuance to the notice dated 21.1.2012 could not be held on account of the reasons solely attributable to the appellants/guarantors, there was no necessity to provide 30 days' period in the Second Sale Notice dated 9.7.2012, which was in continuation of the First Sale Notice dated 21.1.2012.

71. Insofar as the reliance placed on the judgment of this Court in the case of J. Rajiv Subramaniyan (supra) is concerned, the said judgment relies on the judgment of this Court in the case of Mathew Varghese (supra). However, on facts, the issue in the said case was different. In the said case, the property was sold by the respondent Bank through a private treaty. This Court found that there were no terms settled in writing between the borrowers and the Bank that the sale can be effected by a private treaty, and as such, it was in violation of the provisions of Rule 8 (8) of the said Rules.

72. In the case of Vasu P. Shetty (supra), after the first notice was issued, the same was challenged before the High Court. Though the High Court did not grant stay against the scheduled auction, it granted stay against the confirmation of sale. It was the Bank's case therein that in view of the partial stay order by the High Court, nobody came forward to participate in the auction and the exercise went into futility. After dismissal of the writ petition, it came to the notice of the Bank that there were other encumbrances on the property, which required the reserve price to be changed. Thereafter, there were proposals exchanged between the Bank and the borrower with regard to One Time Settlement ('OTS'). On failure to arrive at OTS, a fresh notice came to be issued. In the said notice, the mandatory period of 30 days from the date of publication was not provided. The matter was proceeded in this background.

73. The present case is totally on different facts. Though the appellants had ample opportunities for redemption of mortgage, they failed to avail of the said opportunities.

74. Even if viewed from another angle, the claim of the appellants is not sustainable. The two Judges Bench of this Court in the case of Mathew Varghese (supra), has heavily relied on the judgment of the three Judges Bench of this Court in the case of Narandas Karsondas (supra). It has been held by this Court in the case of Narandas Karsondas (supra), that the right of redemption,

which is embodied in Section 60 of the Transfer of Property Act, is available to the mortgagor unless it has been extinguished by the act of parties. It has been held, that only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument, that the mortgagor's right of redemption will be extinguished. In the present case, the DRT, Chennai, vide order dated 12.9.2012, had granted liberty to the respondent Bank to proceed with the sale. The sale came to be registered in favour of the auction purchaser on 14.9.2012. As such, in any case, the mortgagor's right of redemption stood extinguished on 14.9.2012. The Division Bench of the Madras High Court had, therefore, rightly dismissed the Civil Revision Petitions, vide order dated 29.7.2013. The said order of the Madras High Court dated 29.7.2013 came to be challenged before this Court by way of Special Leave Petitions. This Court, vide order dated 7.7.2014, had issued limited notice in the said Special Leave Petitions. However, vide order dated 17.4.2015, the said Special Leave Petitions came to be dismissed as withdrawn. It is in the third round of litigation, that the DRT, Chennai, allowed the S.A. No.227 of 2012, vide order dated 25.6.2018. Applying the law, as laid in the case of Narandas Karsondas (supra) and in the case of Mathew Varghese (supra), the order passed by the DRT, Chennai, dated 25.6.2018, was not sustainable insofar as setting aside the sale notice dated 9.7.2012 and the consequent sale. The DRAT, Chennai, has rightly reversed the same, which has been upheld by the High Court vide the impugned judgment.

75. It is further relevant to note that, this Court in the case of Dwarika Prasad (supra) and in the case of Shakeena (supra) held that the right to redemption stands extinguished on the sale certificate getting registered.

76. We will have to take into consideration the purpose with which the SARFAESI Act came to be enacted. Unlike international banks, the banks and financial institutions in India did not have power to take possession of securities and sell them. It was, therefore, noticed, that it had resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. It was also noticed that there were certain areas in which the banking and financial sector did not have a level playing field as compared to other participants in the financial markets in the world. It was further noticed that the existing legal framework relating to commercial transactions had not kept pace with the changing commercial practices and financial sector reforms. As such, the SARFAESI Act was enacted with the purpose for securitization and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the Court.

77. If we look at the facts in the present case, it would show that, every attempt has been made to frustrate the purpose of the SARFAESI Act. The respondent Bank was required to indulge in three rounds of litigations, out of which, the two have reached upto this Court.

78. Though the auction purchaser emerged as the successful bidder, in the bids held on 20.7.2012, and though the sale was confirmed on 21.7.2012, and though the sale has been registered in his favour on 14.9.2012, for a period of last 9 years, he could not enjoy the fruits of the said sale. Not only that, but the appellants continued to enjoy the rent of the properties, the ownership of which vests in the auction purchaser.

79. In that view of the matter, we do not find any merit insofar as the challenge to the notice dated 9.7.2012 is concerned.

80. That leaves us with the other issue raised by Shri K.V. Viswanathan, learned Senior Counsel. Shri Viswanathan submitted that the amount received by the respondent Bank was on account of sale of all the four properties mentioned in the First Sale Notice dated 21.1.2012, and as such, the direction to pay an amount of Rs.4.48 crore with interest only to respondent No.3 is not sustainable.

81. We find no merit in this submission. The property at Item 'B' of the Schedule of Properties in First Sale Notice dated 21.1.2012 was sold through a private treaty during the pendency of the first round of litigation. The properties at Item 'A' and Item 'D' of the Schedule of Properties in First Sale Notice dated 21.1.2012 came to be sold in pursuance of the sale taken place on 20.7.2012, which was in pursuance of the Second Sale Notice dated 9.7.2012. As such, the only property left was the property at Item 'C' belonging to the respondent No.3 in respect of which a third notice dated 27.9.2012 came to be issued. It is only in pursuance of the said notice dated 27.9.2012, that the property at Item 'C' was sold by a private treaty to M/s. Redbrick Realtors Private Limited. As such, the excess amount, which remained with the respondent Bank, has rightly been directed to be paid to respondent No.3 by the DRT, Chennai, which has been concurrently upheld by the DRAT, Chennai, as well as the High Court.

82. Even on equitable grounds, rest of the guarantors are either the Promoters/Directors or their family members, it is only the respondent No.3, who happens to be outside the family and is only connected on account of her daughter being married in the family of one of the Promoters/Directors. As such, on equitable grounds, we do not find any reason to interfere with the said direction.

83. The appeals are therefore found to be without merit, and as such, are dismissed with costs. The appellants shall pay the costs quantified at Rs.1,00,000/-(Rupees One lakh only) payable each to the respondent Bank and the auction purchaser. Pending applications, if any, shall also stand disposed of.

84. While dismissing the appeals, taking into consideration the fact that, though the auction purchaser has become the owner of the properties at Items 'A' and 'D' of the Schedule of Properties in the First Sale Notice dated 21.1.2012, he could not enjoy the fruits of the same, and that the appellants have continued to enjoy the rent of the properties, we find that this is a fit case wherein the powers under Article 142 of the Constitution of India need to be invoked.

85. We, therefore, direct the appellants to handover the vacant and peaceful possession of the properties at Items 'A' and 'D' of the Schedule of Properties in the First Sale Notice dated 21.1.2012, within a period of 8 weeks from the date of this judgment to the auction purchaser. We further direct the appellants to pay the rent, received by them, from the said properties, since 15.9.2012 till date, within a period of three months from the date of this judgment. However, in the facts of this case, we do not intend to pass any orders with regard to interest on the said amount.

....., J.

[L. NAGESWARA RAO], J.

[B.R. GAVAI], J.

[B.V. NAGARATHNA] NEW DELHI;

SEPTEMBER 23, 2021