Celir Llp vs Bafna Motors (Mumbai) Pvt. Ltd. on 21 September, 2023

Author: Dhananjaya Y. Chandrachud

Bench: Dhananjaya Y. Chandrachud

2023INSC838

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5542 - 5543 OF 2023

CELIR LLP

VERSUS

BAFNA MOTORS (MUMBAI)
PVT. LTD. & ORS.

JUDGMENT

J. B. PARDIWALA, J.:

For the convenience of the exposition, this judgment is divided in the following parts:

1. Since the issues raised in both the captioned appeals are same, the parties are also the same and the challenge is also to the self-same judgment and order passed by the High Court those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, we clarify that the appellant herein is an auction purchaser, the respondent No. 1 is the Borrower, the respondent No. 2 is the Guarantor and the respondent No. 3 is the Bank (Secured Creditor).

3. These appeals are at the instance of an auction purchaser left high and dry by the respondents herein and is directed against the common judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No. 9523 of 2023 with Interim Application (ST) No. 21706 of 2023 (for impleadment) by which the High Court allowed the writ petition filed by the borrowers and thereby directed the Bank to permit the borrowers to redeem the mortgage of the secured asset more particularly after the auction proceedings attained finality.

FACTUAL MATRIX

4. It appears from the materials on record that the borrowers had availed credit facility from the Bank on 03.07.2017. Accordingly, the Bank sanctioned Lease Rental Discounting (for short, 'the LRD') credit facility to the tune of Rs. 100 crore in favour of the borrower with the respondent No. 2 standing as a guarantor. Out of the total amount sanctioned, the amount of Rs. 65 crore was adjusted against the then existing LRD facility granted by the previous bank and for the balance amount of Rs. 35 crore a security in the form of a simple mortgage was created over a parcel of land admeasuring 16200 sq. metres having buildings and ancillary structures on it at plot Nos. D-105, D-110 and D-111 respectively situated at the Trans Thane Creek Industrial Area MIDC Village Shirwane, Thane, Belapur Road, Nerul, Navi Mumbai, Thane, Maharashtra in lieu of the sanctioned credit.

5. The borrower defaulted in repayment of the loan amount and accordingly the loan account was declared as a Non-Performing Asset (NPA).

6. The Bank issued a demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, 'the SARFAESI Act') for repayment of the principal amount along with interest, cost, charges, etc. As on 30.04.23, an aggregate sum of Rs. 123.83 crore was due and payable by the borrower to the Bank.

7. Owing to the failure of the borrower & the guarantor in repaying the outstanding amount referred to above, the Bank proceeded to take measures for possession of the secured asset under the provisions of the SARFAESI Act. The Bank decided to put the secured asset to auction. It appears that between April 2022 & June 2023, the Bank attempted eight auctions but all failed.

8. In the meantime, the borrowers preferred a Securitization Application being SA No. 46 of 2022 before the Debt Recovery Tribunal-I, Mumbai (for short, "DRT") inter alia challenging the demand notice issued under Section 13(2) of the SARFAESI Act and also for quashing of the sale notice dated 25.03.22 in respect of the secured asset. It is not in dispute that the said application as on date is still pending before the DRT.

9. It appears that the borrowers informed the Bank that they were trying to sell the secured asset but were not getting good offers. The borrowers informed the Bank that the maximum they might be able to fetch from the sale of the secured asset would be around Rs. 91-92 crore and they were willing to settle the entire account by offering such amount to the Bank.

10. The Bank decided to go for one more auction. On 14.06.23, the Bank published the auction notice for the 9th time for sale of the secured asset at a reserve price of Rs. 105 crore. On publication of the auction notice, the appellant herein participated in the auction proceedings conducted on 27.06.23 and submitted its bid of Rs. 105.05 crore, along with a deposit of Rs. 10.5 crore as earnest money.

11. In the 9th auction conducted by the Bank, the appellant herein was declared as the highest bidder. The Bank on 30.06.2023 vide its email sent a "Sale Confirmation Letter" to the appellant, declaring him as the highest bidder / H1 in the auction of the secured asset and called upon the appellant to deposit 25% of the bid amount by 01.07.23 and the balance amount on or before 15.07.23. The email is reproduced below: -

> "admin@mstcauction.com SALE CONFIRMATION LETTER (Property-
>
> UBINMUMSAM2888) To: Mac, Cc: samvmumbai@unionbankofindia.bank, ibapiop@mstcauction.com CELIR LLP Date: 30-06-2023:
>
> C-708 teerth technospace 7th floor Sr no 103 baner Pune 411045 INDIA Date: 30.06.2023 Time: 06:36 PM Dear Sir / Madam, Your Bid of amount Rs.1050500000. for the property ID No. UBINMUMSAM2888 during online auction held on e-BKRAY portal on Date: 30-06-2023, is accepted as highest bid and accordingly you have been declared H1 bidder for the said property.
>
> In terms of Sale Notice issued under the provisions of SARFAESI Act, you are required to deposit 25% of the Bid amount, which comes to Rs.262625000. Including 10% of reserve price as EMO amount, which has been deducted from your Global EMO Wallet, immediately, but not later than 01-07-2023. In case 01.07.2023 is a holiday, payment should be made within the next working day at concerned branch of Bank in account No.087021980050000. Further, you are required to deposit the balance amount of Rs.787875000, being 75% of entire bid amount within 15 days i.e. on or before 15.07.2023 at Concerned Branch of Bank in account No.087021980050000.

> Please be informed that in case you fail to deposit due amount by scheduled dates, sale shall be cancelled and any amount deposited by you related to this bid, shall be forfeited.
>
> Authorized officer Name of Authorized Officer: Sidharath S. Mhade Name of Bank: UNION BANK OF INDIA Contact No. or AO: 898-518779 e-Mail to or AO: samvmumbai@unionbankofinida.bank (This mail is from Authorized Officer and being generated through computer system, hence needs no signature)"

12. On 01.07.2023, the appellant deposited 25% of the total bid amount (minus the earnest money deposit). In the wake of such development, the borrowers filed an Interim Application No. 2339 of 2023 on 04.07.2023, titled Redemption Application in S.A. No. 46 of 2022 before the DRT-I, Mumbai for redemption of the mortgage in respect of the secured asset by payment of the total outstanding sum of Rs 123.83 crore (approx.) on or before 31.08.23.

13. On 27.07.23, the appellant herein deposited the balance sum of the total bid amount which was duly received and accepted by the Bank. On the very same day, the redemption application referred to above was also heard by the DRT-I. The redemption application was opposed by both the appellant herein as well as the Bank. The DRT after hearing the parties at length, reserved orders to be pronounced on 02.08.23.

14. While the parties were awaiting for the DRT to pass appropriate an on order on the redemption application, the borrowers went to the High Court and filed the Writ Petition No. 9523 of 2023, seeking directions to the Bank to permit them to redeem the mortgage of the secured asset.

15. The writ petition was filed on the premise that the borrowers had strong apprehension that the DRT may reject their redemption application and the entire matter would become infructuous more particularly, the Bank having accepted the entire amount from the appellant herein of the total bid.

16. Before the High Court, the borrowers expressed their willingness to pay a total sum of Rs. 129 crore for redeeming the mortgage by 31.08.23. The Bank which had earlier opposed the plea for redemption of mortgage before the DRT for some good reason expressed its willingness before the High Court to accept the offer of the borrowers. The Bank perhaps got lured by the fact that the borrowers were paying almost Rs. 23.95 crore more than what was paid by the appellant herein and Rs. 5 crore more than the outstanding amount.

17. It also appears that the appellant herein having come to know about such writ petition filed in the High Court preferred Interim Application (ST) No. 21706 of 2023 for being impleaded in the writ petition.

18. The writ petition along with interim application was heard by the High Court and vide its impugned judgment and order dated 17.08.2023 allowed the writ petition and permitted the borrowers to redeem the mortgage of the secured asset subject to payment of Rs. 25 crore on the same day and the balance amount of Rs. 104 crore on or before 31.08.2023, failing which the sale of

secured asset in favour of the appellant herein would be confirmed.

19. The operative part of the impugned order passed by the High Court reads thus:

> "(a) The Petitioner shall hand over a sum of Rs. 25 crores to the Respondent Bank today. In compliance with this direction, Mr. Khandeparkar has handed over three Demand Drafts in the sum of Rs. 10 crores, 10 crores and 5 crores respectively to the learned Advocate appearing on behalf of the Respondent Bank which is duly acknowledged by him. The Bank is entitled to encash these Demand Drafts and appropriate the sum of Rs.25 crores towards the outstanding dues of the Petitioners.
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> (b) The balance amount of Rs. 104 crores shall be paid by the Petitioners to the Respondent Bank on or before 31 st August 2023 in the designated account below: -
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> | | |
> |---|---|
> | Union Bank of India | Stressed Asset Management Branch, Mumbai |
> | IFSC | UBIN0908703 |
> | A/c. No. | 087021980050000 |
>
> (c) If the amount of Rs. 104 crores are paid in the said account on or before 31st August 2023, the same shall be appropriated by the Respondent-Bank towards the dues of the Petitioners. The Bank shall then return the original title deeds of the secured asset to the Petitioners, execute all such documents for cancellation of mortgage, and issue a 'No Dues Certificate' to the Petitioners.
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> (d) Mr. Shinde, the learned Advocate appearing for the Respondent-

Bank, has brought to our attention that out of the entire amount of Rs. 105.05 crores deposited by the Auction Purchaser, the Respondent-Bank has appropriated the sum of Rs. 63,50,45,000/- towards the loan amount of the Petitioners. We therefore direct that the Respondent-Bank shall reverse this entry and immediately keep the entire amount of Rs. 105.05 crores [deposited by the auction purchaser] in a No Lien interest bearing account. If the Petitioners pay the balance amount of Rs.104 crores to the Respondent Bank by 31st August 2023, then the Respondent-Bank shall refund the amount of Rs. 105.05 crores deposited by the Auction Purchaser together with accrued interest on or before 7th September 2023.

(e) In the event the balance amount of Rs. 104 crores are not paid by the Petitioners to the Respondent-Bank on or before 31st August 2023, the Respondent Bank shall then be entitled to appropriate the money from the No Lien interest bearing account towards the dues payable by the Petitioners and the sale of the secured asset shall be confirmed in favour of the Auction Purchaser and a sale certificate shall be issued in their favour. All formalities in relation to registration of that certificate shall also be done by the Respondent- Bank and the Auction Purchaser.

(f) In light of this order, Mr. Khandeparkar has stated that, nothing would survive in Securitization Application No. 46 of 2022 and/or the Interim Applications filed therein and seeks leave to withdraw the same within a period of one week from today. The said statement is accepted as an undertaking given to the Court. It is needless to clarify that even if the Petitioners do not withdraw the Securitization Application, the same shall stand dismissed in light of this order and the Petitioners will not be permitted to litigate any further with the Respondent Bank in relation to the secured asset. In other words, if the Petitioners default in making the balance payment of Rs.104 crores to the Respondent Bank by 31 st August 2023, the Auction Purchaser shall get the secured asset free from litigation. As per the statement made by Mr. Khandeparkar, and which is accepted as an undertaking given to the Court, if the Petitioners default in making the balance payment of Rs.104 crores by 31st August 2023, physical, vacant, quiet, and peaceful possession of the secured asset shall be handed over to the Auction Purchaser on or before 5th September 2023."

20. It appears that during the pendency of the present appeals, the borrowers transferred the balance amount of Rs. 104 crore on 26.08.2023 to the Bank in terms of the impugned order passed by the High Court. With the transfer of the amount of Rs. 104 crore, the Bank issued a "No Dues Certificate" on 28.08.23. On the very same day, the borrowers entered into an Agreement of Assignment of Leasehold Rights with a third-party viz. M/s Greenscape I.T. Park LLP for the transfer of leasehold rights in the secured asset and the said agreement was registered before the Joint Sub Registrar, Thane 8 vide Registration No. 19286 of 2023.

21. Being aggrieved and dissatisfied with the aforesaid order passed by the High Court, the appellant is here before this Court with the present appeals. SUBMISSIONS ON BEHALF OF THE APPELLANT

22. Mr. Mukul Rohatgi, the learned Senior Counsel and Mr. Neeraj Kishan Kaul, the learned Senior Counsel appearing for the appellant made the following submissions:

> a. The writ petition filed by the borrowers before the High Court was not maintainable in view of the alternative remedy available to them under Section 17 of the SARFAESI Act and more particularly when such alternative remedy had already been availed by the borrowers.
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> b. The High Court ought not to have entertained the writ petition on the ground that although the auction proceedings had attained finality and the appellant herein was declared as the successful highest bidder yet the bank was getting more amount as offered by the appellant compared to the sale bid.
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> c. Mere apprehension on the part of the litigant that an adverse order might be passed by a forum which was already looking into the issue cannot be a ground to invoke the extraordinary jurisdiction under Article 226 of the Constitution.
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> d. The High Court failed to consider that in view of the amended provision of Section 13(8) of the SARFAESI Act, the right of redemption of mortgage stood extinguished

upon publication of the auction notice. If the Borrower is permitted to redeem the mortgage at the very last moment, more particularly even after payment of entire amount by the auction purchaser, then no auction would ever attain finality and indirectly, the borrower is given indefinite time to repay the outstanding amount.

e. The High Court failed to appreciate an important fact that the Bank had already confirmed the sale of the secured asset to the appellant and as such the appellant had a vested right to the secured asset. Once the sale was confirmed, the Bank in accordance with Rule 9(2) read with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002, ("Rules of 2002") was under a legal obligation to issue a sale certificate to the appellant. The Bank could not have consented before the High Court to the borrowers' plea of redemption.

f. The High Court committed a serious error of law in considering the equities in favour of the borrowers unmindful of the fact that equity follows the law.

g. In the last, Mr. Rohatgi submitted that his client is ready and willing to make good the entire amount of Rs. 129 crore by depositing Rs. 23.95 crore with the Bank, in addition to the amount of Rs. 105.05 already deposited with the Bank.

h. With a view to fortify the aforesaid submissions reliance was placed on the following decisions:

i) United Bank of India v. Satyawati Tondon & Ors., (2010) 8 SCC 110;

ii) Varimadugu OBI Reddy v. B. Sreenivasulu & Ors., (2023) 2 SCC 168;

iii) Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd. and Ors., (2008) 9 SCC 299;

iv) Authorised Officer State Bank of India v. C. Natarajan and Anr., 2023 SCC OnLine SC 510; and

v) Sadashiv Prasad Singh v. Harendar Singh & Ors., (2015) 5 SCC 574.

SUBMISSIONS ON BEHALF OF THE BORROWERS

23. Mr. Shyam Divan, the learned Senior Counsel and Mr. Nikhil Nayyer, the learned Senior counsel appearing for the borrowers made the following submissions:

a. That after the impugned order was dictated in the open court on 17.8.2023 and subsequently uploaded on the website of Bombay High Court on 26.8.2023, the following developments took place:

(i) The borrowers transferred an amount of Rs. 104 Crores to the Union Bank of India vide RTGS, having UTR No. HDFCR52023082882894716.

(ii) This was followed by the Respondent No.3, i.e., Union Bank of India issuing a No Dues Certificate dated 28.08.2023 thereby acknowledging that the borrowers do not owe any further amount to the Bank and releasing the personal guarantees as well.

(iii) Further, after the No Dues Certificate was issued by the Bank, the borrowers executed a registered Deed of Release in favour of the Tata Motors Financial Solutions Limited registered with the Joint Sub Registrar, Thane 8 having registration No. 19283/2023, whereby the second charge that the Tata Motors Finance Solutions Limited had on the second property came to be released, pursuant to payment of Rs. 15 Crore (Rs. 10 Crore on 18.08.2023 and Rs. 5 Crore on 22.08.2023), which came to be duly acknowledged by the Tata Motors Finance Solutions Limited.

(iv) Following this, the borrowers have also entered into a registered Agreement of Assignment of Leasehold Rights for the transfer of leasehold rights in the secured asset with M/s Greenscape L.T. Park LLP on 28.8.2023, which came to be registered before the Joint Sub Registrar, Thane 8 having registration No. 19286/2023.

b. Since there has been full compliance of the Impugned Order by the borrowers herein as well as the Bank, the appeals have essentially become infructuous.

c. The only issue which remains is the refund of the amount deposited by the appellant herein. This is an issue between the appellant and the Bank and the borrowers have no reason to come in the way of the refund of the amount to the appellant herein.

d. There is a specific direction issued by the High Court that the Respondent Bank shall immediately keep the entire amount of Rs. 105.05 crore (deposited by the Auction Purchaser/appellant herein) in a “No Lien Interest Bearing Account” and if the borrowers pay the balance amount of Rs. 104 crore to the Respondent Bank by 31.8.2023 (which it has), then the Respondent Bank shall refund the amount of Rs. 105.05 Crores deposited by the Auction Purchaser together with the accrued interest on or before 7.9.2023.

e. The High Court correctly interpreted Section 13(8) of the SARFAESI Act. The right of redemption is nowhere mentioned in the SARFAESI Act and in such circumstances, Section 60 of the Transfer of Property Act, 1882 (for short, ‘the Act 1882’) should be looked into. Section 60 of the Act 1882 has been interpreted to reserve the right of mortgagor to redeem the property till the stage of the same being conveyed /transferred to a third party. f. The aforesaid interpretation is discernible from the decision of this Court in the case of Narandas Karsondas v. S.A. Kamtam and Another reported in 1977 (3) SCC 247, wherein it has been held that:

> "34. 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. The combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Indian Registration Act is that a contract for sale in respect of immovable property of the value of more than one hundred rupees without registration cannot extinguish the equity of redemption. In India it is 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. The conferment of power to sell without intervention of the Court in a Mortgage Deed by itself will not deprive the mortgagor of his right to redemption. The extinction of the right of redemption has to be subsequent to the deed conferring such power. The right of redemption is not extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for sale.
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> 35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further Section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption." (Emphasis supplied) g. The aforesaid position has also been echoed in the case of Mathew Varghese v. M. Amritha Kumar and Ors., (2014) 5 SCC 610, wherein this Court held that upon a combined reading of Sections 60 and 54 respectively of the Act 1882 with Section 17 of the Registration Act, 1908, it can be concluded that the extension of the right of redemption comes much later than the sale notice.

h. Although the decision in Mathew Varghese (supra) was prior to the 2016 amendment to the SARFAESI Act, yet its applicability has been held valid even after the amendment of the said Act. A Division Bench of the High Court of Telangana in the case of Concern Readymix, rep. by its Proprietor, Smt. Y. Sunitha v. Authorised Officer, Corporation Bank and Anr., reported in 2018 SCC OnLine Hyd 783 has held after juxtaposing the amended and unamended provisions of Section 13(8) of the SARFAESI Act, with respect to the right of redemption available to the Mortgagor that the amended Section 13(8) of the SARFAESI Act only puts a restriction on the right of the mortgagee to deal with the property and does not speak in express terms about the equity of redemption available to the mortgagor. It was further held that the danger of interpreting Section 13(8) as though it relates to the right of redemption is if the payments are not made in accordance with Section 13(8), the right of redemption may get lost even before the sale is complete in all respects and that holding that the right of redemption would be extinguished at the stage of issue of notice under Rule 9(1) would tantamount to annulling the relevant provision of the Act 1882 which do not stand expressly excluded insofar as the question of redemption is concerned. The said judgment of the Telangana High Court was challenged before this Court vide SLP(C) D. No. 28967

of 2019 and the same came to be dismissed.

i. The view expressed in Concern Readymix (supra) was echoed by a Division Bench of the High Court of Punjab and Haryana in the case of M/s Pal Alloys and Metal India Private Limited & Ors. v. Allahabad Bank & Ors., reported in 2021 SCC OnLine P&H 2733, wherein the High Court, inter alia, considered the specific issue "(a) till what time and date can the right of redemption of the Mortgage can be exercised by the Mortgagors / Borrowers in the light of the amendment to Section 13(8) of the SARFAESI Act". j. While answering the aforesaid question, the Court considered the report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 (the Report) as well as the law laid down by this Court in Mathew Varghese (supra) and the judgment in Concern Readymix (supra), in order to determine whether the said right of redemption was available up to the date of transfer of the asset or only up to the date of publication of the sale notice. On a consideration of Section 60 of the Act 1882 as well as the judgment in Narandas Karsondas (supra), it was observed that:

> "62. Thus even if the sale of secured assets is under a special statute like State Financial Corporations Act, there is no deviation from the general principle that the mortgagor's right of redemption is not extinguished till the execution of conveyance." k. It was ultimately held as below:-
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> "96. ... that the amended Section 13(8) of the SARFAESI Act merely prohibits a secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale; a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor, the payment of the amount mentioned in Section 13 (8) of the SARFAESI Act ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Act; that redemption comes later; extinction of the right of redemption comes much later than the sale notice; and the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted. We also hold that such a right would continue till the execution of a conveyance i.e. issuance of sale certificate in favour of the mortgagee. A similar view has been taken by this Bench in Hoshiarpur Roller Flour Mill Private Limited V/s Punjab National Bank (CWP No. 14440 of 2021, decided on 10.12.2021).
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> 97. It would, therefore, certainly be available to the petitioners herein before the issuance of sale certificate in favour of respondents No. 2 and 3. Point (a) is answered accordingly in favour of the petitioners and against the respondents." l. The said judgment also considered and distinguished the judgment of this Court in Shakeena and Anr. v. Bank of India and Ors., (2021) 12 SCC 761, holding that the said case did not consider the concept of redemption under Section 60 of the Act 1882. The observations in para 30 of Shakeena are in the nature of obiter dicta as in the said case the auction had concluded prior to the amendment of Section 13(8) and in any event the sale certificate had already been issued. Thus, the question of interpretation of Section 13(8) was not directly in issue.

m. A perusal of the Report (the report of Joint Committee on the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Bill, 2016), more particularly para 24, indicates that the proposed amendment to Section 13(8) of the Act was intended to deal with: - "Provisions to stop secured creditor to lease or assignment or sale in the prescribed conditions". The important thing to note is also that the report does not indicate that the Committee had considered the effect of Section 60 of the Transfer of Property Act, 1882, which is a general law regarding redemption of mortgage vis-a-vis the provisions of SARFAESI.

n. The focus of the Committee in the said report is on the obligations of the Mortgagee to not create third party rights up to a certain time-period, but it is silent on the rights of the Mortgagor to exercise its redemption for which Section 60 of the Act 1882 is the relevant provision. o. It is further necessary to note that the non obstante clause in Section 13 specifically excludes only Sections 69 and 69A respectively of the Act 1882. This section does not specifically include the words "Notwithstanding anything contained in any other Act for the time being in force" which is the standard term used in non obstante clauses. In view thereof, the legislative intent should be interpreted to only exclude Sections 69 and 69A respectively of the Act 1882 and the same does not affect the applicability of Section 60 of the Act 1882.

p. Various High Courts have consistently held that the right of redemption has to be exercised in terms of Section 60 of the Act 1882 and not under Section 13(8) of the SARFAESI Act and the amendment to Section 13(8) does not affect or take away this right in any manner.

24. The Telangana High Court in the case of Amme Srisailam v. Union Bank of India, Regional Office, Guntur, rep. by its Region Head & Deputy General Manager, Andhra Pradesh & Ors., W.P. No. 11435 of 2021 decided on 17.08.2022 has referred to and relied upon on Concern Readymix (supra) and Pal Alloys (supra). The Telangana High Court in Amme Srisailam (supra) in turn has relied upon the decision of this Court in the case of S. Karthik & Ors. v. N. Subhash Chand Jain & Ors., (2022) 10 SCC 641. The Telangana High Court in Amme Srisailam (supra) held as under:

> "44. Before we revert back to the facts of the present case, we may also refer to Sections 35 and 37 of the SARFAESI Act. While Section 35 says that the provisions of the SARFAESI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, Section 37 clarifies that provisions of the SARFAESI Act or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force.
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> 45. This brings us to Section 60 of the Transfer of Property Act, 1882. Section 60 says that at any time after the principal amount has become due, the mortgagor has a right, on payment or tender, of the mortgage money, to require the mortgagee (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof back to the mortgagor, and (c) at the cost of the mortgagor either to re-

transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. As per the proviso, the right conferred under the aforesaid provision shall not be extinguished by any act of the parties or by decree of a Court.

46. Therefore, on a careful application of Sections 35 and 37 of the SARFAESI Act, it is evident that the situation contemplated under Section 13(8) of the SARFAESI Act does not exclude application of Section 60 of the Transfer of Property Act, 1882. As explained by this Court in Concern Readymix (supra), a restriction on the right of the mortgagee to deal with the property post issuance of notice for public auction is not the same as the right of redemption available to the mortgagor.

47. In so far the present case is concerned, admittedly the bid amount of the petitioner was Rs.57.00 lakhs. Though the auction was conducted on 16.03.2021 and payment was made by the petitioner within the stipulated period, there is clear dispute between the parties as regards issuance of sale certificate by respondent Nos.1 and 2 in favour of the petitioner. However, admittedly there is no registration of any sale certificate. On the other hand, the borrower had approached respondent Nos.1 and 2 for settlement of the loan account under OTS Scheme on 18.03.2021 which was recommended by second respondent on 20.03.2021 and was accepted by first respondent on 31.03.2021 for an amount of Rs.5.10 crores, which has been paid by the borrower i.e., third respondent. On the one hand petitioner's amount was Rs.57.00 lakhs which the petitioner had paid but on the other hand third respondent has paid Rs.5.10 crores as per the OTS. Lending of money, recovery of dues and entering into OTS are all commercial decisions which are taken by the banks/financial institutions in their best interest, subject of course within the statutory framework. In this case, we have already come to the conclusion that third respondent had not lost the right of redemption upon publication of notice for auction sale. If that be the position, then it should be left to the discretion of the secured creditor as to which course of action would be more beneficial to it. Evidently, the OTS with the third respondent is much more beneficial to the secured creditors i.e., respondent Nos.1 and 2 and as has been explained above such a course of action is not restricted or extinguished by Section 13(8) of the SARFAESI Act.

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50. Right to property is a valuable right. Though no longer a fundamental right, it is still a constitutional right. The interpretation which we have adopted subserves such a right. That apart, third respondent had not lost the right of redemption upon publication of notice for auction sale; his right of redemption would have been lost only upon the sale certificate getting registered which admittedly has not taken place. Therefore, the action of respondent Nos.1 and 2 in accepting the higher OTS amount of the third respondent though after publication of notice for public auction and auction is justified and cannot be faulted."

25. In such circumstances referred to above, the learned counsel prayed that there being no merit in the present appeals, those may be dismissed. ANALYSIS

26. Having heard the learned counsel appearing for the parties and having gone through the materials on record the following questions fall for our consideration:

(a) Whether the High Court was justified in exercising its writ jurisdiction under Article 226 of the constitution more particularly when the alternative remedy available to the Borrowers had already been availed of?

(b) Whether the confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right?

(c) What is the impact of the amended Section 13(8) of the SARFAESI Act on the Borrowers' right of redemption in an auction conducted under the SARFAESI Act? Or in other words, what is the effect of amendment to Section 13(8) of the SARFAESI Act read with Section 60 of the Act 1882?

(d) Whether a Bank after having confirmed the sale under Rule 9(2), can withhold the sale certificate under Rule 9(6) of the Rules of 2002 and enter into a private arrangement with a borrower?

(e) Whether the High Court under Article 226, could have applied equitable considerations to override the outcome contemplated by the statutory auction process prescribed by the SARFAESI Act?

(f) Whether the right of redemption of mortgage stood extinguished upon publication of notice of auction? Or in other words till what point of time the right of redemption of mortgage can be exercised in respect of secured asset under the SARFAESI Act?

(g) Whether the decisions of Telangana High Court in the case of Concern Readymix (supra) and Amme Srisailam (supra) lay down the correct position of law?

LEGISLATIVE HISTORY AND SCHEME OF THE SARFAESI ACT

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

28. On account of lack of infrastructure and manpower, the regular civil courts were not in a position to cope up with the speed in the adjudication of recovery cases. In the light of recommendations of the Tiwari Committee the special tribunals came to be set up under the provisions of the Act 1993 referred to above for the recovery of huge accumulated NPA of the Bank loans.

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

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

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

> "STATEMENT OF OBJECTS AND REASONS The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These Committees, inter alia, have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court. Acting on these suggestions, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the Ordinance would enable banks and financial institutions to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce nonperforming assets by adopting measures for

recovery or reconstruction."

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

> "34. Some facts which need to be taken note of are that the banks and the financial institutions have heavily financed the petitioners and other industries. It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through courts is lengthy and time taken is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the economic progress followed by a large number of other consequential ill effects. Considering all these circumstances, the Recovery of Debts Due to Banks and Financial Institutions Act was enacted in 1993 but as the figures show it also did not bring the desired results. Though it is submitted on behalf of the petitioners that it so happened due to inaction on the part of the Governments in creating Debts Recovery Tribunals and appointing presiding officers, for a long time. Even after leaving that margin, it is to be noted that things in the spheres concerned are desired to move faster. In the present- day global economy it may be difficult to stick to old and conventional methods of financing and recovery of dues. Hence, in our view, it cannot be said that a step taken towards securitisation of the debts and to evolve means for faster recovery of NPAs was not called for or that it was superimposition of undesired law since one legislation was already operating in the field, namely, the Recovery of Debts Due to Banks and Financial Institutions Act. It is also to be noted that the idea has not erupted abruptly to resort to such a legislation. It appears that a thought was given to the problems and the Narasimham Committee was constituted which recommended for such a legislation keeping in view the changing times and economic situation whereafter yet another Expert Committee was constituted, then alone the impugned law was enacted. Liquidity of finances and flow of money is essential for any healthy and growth-oriented economy. But certainly, what must be kept in mind is that the law should not be in derogation of the rights which are guaranteed to the people under the Constitution. The procedure should also be fair, reasonable and valid, though it may vary looking to the different situations needed to be tackled and object sought to be achieved.
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> xxx xxx xxx
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> 36. In its Second Report, the Narasimham Committee observed that NPAs in 1992 were uncomfortably high for most of the public sector banks. In Chapter VIII of the Second Report the Narasimham Committee deals about legal and legislative framework and observed:

> "8.1. A legal framework that clearly defines the rights and liabilities of parties to contracts and provides for speedy resolution of disputes is a sine qua non for efficient trade and commerce, especially for financial intermediation. In our system, the evolution of the legal framework has not kept pace with changing commercial practice and with the financial sector reforms. As a result, the economy has not been able to reap the full benefits of the reforms process. As an illustration, we could look at the scheme of mortgage in the Transfer of Property Act, which is critical to the work of financial intermediaries...." One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of assets. It is thus to be seen that the question of non-recoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field. In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the Report of the Narasimham Committee, yet another Committee was constituted headed by Mr Andhyarujina for bringing about the needed steps within the legal framework. We are therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in operation it was uncalled for to have yet another legislation for the recovery of the mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy."

33. In this regard, reference may be made to the following observations of this Court in the case of Satyawati Tondon (supra). The relevant paras are being reproduced hereunder:

> "1. ... With a view to give impetus to the industrial development of the country, the Central and State Governments encouraged the banks and other financial institutions to formulate liberal policies for grant of loans and other financial facilities to those who wanted to set up new industrial units or expand the existing units. Many hundred thousand took advantage of easy financing by the banks and other financial institutions but a large number of them did not repay the amount of loan, etc. Not only this, they instituted frivolous cases and succeeded in persuading the civil courts to pass orders of injunction against the steps taken by banks and financial institutions to recover their dues. Due to lack of adequate infrastructure and non-availability of manpower, the regular courts could not accomplish the task of expeditiously adjudicating the cases instituted by banks and other financial institutions for recovery of their dues. As a result, several hundred crores of public money got blocked in unproductive ventures.

> 2. In order to redeem the situation, the Government of India constituted a committee under the Chairmanship of Shri T. Tiwari to examine the legal and other difficulties faced by banks and financial institutions in the recovery of their dues and suggest remedial measures. The Tiwari Committee noted that the existing procedure for recovery was very cumbersome and suggested that special tribunals be set up for recovery of the dues of banks and financial institutions by following a summary procedure. The Tiwari Committee also prepared a draft of the proposed legislation which contained a provision for disposal of cases in three months and conferment of power upon the Recovery Officer for expeditious execution of orders made by adjudicating bodies."

34. Section 13 of the SARFAESI Act contains the provisions relating to the enforcement of the security interest and the manner in which the same may be done by the secured creditor without the intervention of the Court or Tribunal in accordance with its provisions, and reads as under: -

> "13. Enforcement of security interest.–(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.
>
> (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).
>
> Provided that –
>
> (i) the requirement of classification of secured debt as non-

performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

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

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

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

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

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

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

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

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

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

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

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

(d) of sub-section (4) in relation to the secured assets under this Act.

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

(13) No borrower shall, after receipt of notice referred to in sub-

section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor." (Emphasis supplied)

35. We are concerned in the present litigation with sub-section 8 of Section 13 of the SARFAESI Act referred to above. Section 13(8) is in two parts; (i) it enables the borrower to exercise his right of redemption upto a particular point of time and at the same time (ii) it enables the secured creditor to exercise its power to deal or dispose off the secured asset. First, by stipulating the time limit during which the borrower can tender all the dues with interest, costs and charges to the secured creditor, and secondly, by providing as to when the secured creditor can proceed to sell, auction, assign or lease the secured asset.

36. Rules 8 and 9 respectively of the Rules of 2002 prescribe the procedure and formalities to be followed for the sale of immovable secured asset as per Section 13 of the SARFAESI Act and reads as under: -

"8. Sale of immovable secured assets. – (1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

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

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

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

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

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

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

(b) by inviting tenders from the public;

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

(d) by private treaty.

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

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

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

(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web-site of the secured creditor, which shall include;

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

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

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

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

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

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

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

9. Time of sale, issue of sale certificate and delivery of possession, etc.–(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

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

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

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

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

(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest

money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again;

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

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

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

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

Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days, from date of finalisation of the sale. (8) On such deposit of money for discharge of the encumbrances, the authorised officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make, the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above. (10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

37. From the above provisions under Rule 8(6) it is clear that the authorised officer of the Bank shall serve on the borrower a notice of thirty days for sale of immovable property, and that if the sale of such secured assets is by way of public auction, the Bank/secured creditor, shall cause publication of such notice in two leading newspapers, one in vernacular, language having sufficient circulation in the locality by setting the out the terms of sale, mentioned in the said provision; and under sub-rule (1) of Rule 9, such sale of immovable of property under these Rules shall not take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as

referred to in the proviso to sub-rule (6), or notice of sale has been served to the borrower.

38. In Mardia Chemicals (supra), this Court examined the provision of Section 13 of the SARFAESI Act and made the following relevant observations reproduced below: -

> "38. We may now consider the main enforcing provision which is pivotal to the whole controversy, namely, Section 13 in Chapter III of the Act. It provides that a secured creditor may enforce any security interest without intervention of the court or tribunal irrespective of Section 69 or Section 69-A of the Transfer of Property Act where according to sub-section (2) of Section 13, the borrower is a defaulter in repayment of the secured debt or any instalment of repayment and further the debt standing against him has been classified as a non-performing asset by the secured creditor. Sub-section (2) of Section 13 further provides that before taking any steps in the direction of realising the dues, the secured creditor must serve a notice in writing to the borrower requiring him to discharge the liabilities within a period of 60 days failing which the secured creditor would be entitled to take any of the measures as provided in sub-section (4) of Section 13. It may also be noted that as per sub-section (3) of Section 13 a notice given to the borrower must contain the details of the amounts payable and the secured assets against which the secured creditor proposes to proceed in the event of non-compliance with the notice given under sub-section (2) of Section 13."

39. Section 35 of the SARFAESI Act contains the overriding clause and provides that the Act shall override any other law which is inconsistent with its provisions, and reads as under: -

> "35. The provisions of this Act to override other laws.–The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

40. Section 37 of the SARFAESI Act provides that the provisions of the SARFAESI Act shall be in addition to the Acts mentioned in or and any other law for the time being in force and that the other laws shall also be applicable alongside the SARFAESI Act, and reads as under: -

> "37. Application of other laws not barred.–The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

41. This Court in Madras Petrochem Ltd. & Anr. v. Board for Industrial and Financial Reconstruction & Ors. reported in (2016) 4 SCC 1, recapitulated the object behind the enactment of the SARFAESI Act and in that context examined the purpose of Sections 13, 35 and 37 respectively

of the SARFAESI Act with the following observations given as under: -

> "16. It is important at this stage to refer to the genesis of these three legislations. Each of them deals with different aspects of recovery of debts due to banks and financial institutions. Two of them refer to creditors' interests and how best to deal with recovery of outstanding loans and advances made by them on the one hand, whereas the Sick Industrial Companies (Special Provisions) Act, 1985, on the other hand, deals with certain debtors which are sick industrial companies [i.e. companies running industries named in the Schedule to the Industries (Development and Regulation) Act, 1951] and whether such "debtors" having become "sick", are to be rehabilitated. The question, therefore, is whether the public interest in recovering debts due to banks and financial institutions is to give way to the public interest in rehabilitation of sick industrial companies, regard being had to the present economic scenario in the country, as reflected in parliamentary legislation.
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> 19. While this Act had worked for a period of about 7 years, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was brought into force, pursuant to various committee reports. The Statement of Objects and Reasons for this Act reads as follows:
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> "Statement of Objects and Reasons of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993
>
> 1. Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time.

The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30-9-1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs 5622 crores in dues of public sector banks and about Rs 391 crores of

dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country.

2. The Bill seeks to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. Notes on clauses explain in detail the provisions of the Bill."

20. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 took away the jurisdiction of the courts and vested this jurisdiction in tribunals established by the Act so as to ensure speedy recovery of debts due to the banks and financial institutions mentioned therein. This Act also included one appeal to the Appellate Tribunal, and transfer of all suits or other proceedings pending before any court to tribunals set up under the Act. The Act contained a non obstante clause in Section 34 stating that its provisions will have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. In the year 2000, this Act was amended so as to incorporate a new sub-section (2) in Section 34 together with a saving provision in sub-section (1). It is of some interest to note that this Act was to be in addition to and not in derogation of various Financial Corporation Acts and the Sick Industrial Companies (Special Provisions) Act, 1985. Clearly, therefore, the object of the 2000 Amendment to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was to make the Sick Industrial Companies (Special Provisions) Act, 1985 prevail over it.

21. Regard being had to the poor working of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was brought into force in the year 2002. ..."

22. This 2002 Act was brought into force as a result of two committee reports which opined that recovery of debts due to banks and financial institutions was not moving as speedily as expected, and that, therefore, certain other measures would have to be put in place in order that these banks and financial institutions would better be able to recover debts owing to them.

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24. The "pivotal" provision, namely, Section 13 of the said Act makes it clear that banks and financial institutions would now no longer have to wait for a tribunal judgment under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to be able to recover debts owing to them. They could, by following the procedure laid down in Section 13, take direct action against the debtors by taking possession of secured assets and selling them; they could also take over the management of the business of the borrower. They could also appoint any person to manage the secured assets possession of which has been taken over by them, and could require, at any time by notice in writing to any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due from the borrower, to pay the secured creditor so much of the money as is sufficient to pay the secured debt.

25. In order to further the objects of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Act contains a non obstante clause in Section 35 and also contains various Acts in Section 37 which are to be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Three of these Acts, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992, relate to securities generally, whereas the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 relates to recovery of debts due to banks and financial institutions. Significantly, under Section 41 of this Act, three Acts are, by the Schedule to this Act, amended. We are concerned with the third of such Acts, namely, the Sick Industrial Companies (Special Provisions) Act, 1985, in Section 15(1) of which two provisos have been added. It is the correct interpretation of the second of these provisos on which the fate of these appeals ultimately hangs." (Emphasis supplied) REDEMPTION OF MORTGAGE UNDER SECTION 60 OF THE TRANSFER OF PROPERTY ACT, 1882

42. Section 60 of the Act 1882 provides the general statutory right of the mortgagor to redeem the mortgage and reads as below: -

> "60. Right of mortgagor to redeem.–At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage- deed and all documents relating to the mortgaged property which are in the possession or power of the mortgage, (b) where the mortgage is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgage has been extinguished:
>
> Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court.
>
> The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.
>
> Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgage shall be entitled to reasonable notice before payment or tender of such money.
>
> Redemption of portion of mortgaged property.—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgages than one,

all such mortgages, has or have acquired, in whole or in part, the share of a mortgagor."

43. This Court in Narandas Karsondas (supra), upon examination of Section 60 of the Act 1882, held that the mortgagor's right to redeem will be extinguished only after completion of sale by a registered deed, and made the following relevant observations reproduced below: -

"28. The Rights and Liabilities of Mortgagor are dealt with in Section 60 of the Transfer of Property Act. It is that at any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. There is a proviso that the right conferred by this section has not been extinguished by the act of the parties or by decree of a Court. The right conferred by Section 60 of the Transfer of Property Act is called a right to redeem. Therefore, the said Section 60 provides for a right of redemption provided that the right has not been extinguished by the act of parties.

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33. In India, the word "transfer" is defined with reference to the word "convey". The word "transfer" in English law in its narrower and more usual sense refers to the transfer of an estate in land. Section 205 of the Law of Property Act in England defines:

"Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument. The word "conveys" in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

34. 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. The combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Indian Registration Act is that a contract for sale in respect of immovable property of the value of more than one hundred rupees without registration cannot extinguish the equity of redemption. In India it is 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. The conferment of power to sell without intervention of the Court in a Mortgage Deed by itself will not deprive the mortgagor of his right to redemption. The extinction of

the right of redemption has to be subsequent to the deed conferring such power. The right of redemption is not extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for sale.

35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further Section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption.

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37. In view of the fact that only on execution of conveyance, ownership passes from one party to another it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. The mortgagor has a right to redeem unless the sale of the property was complete by registration in accordance with the provisions of the Registration Act." (Emphasis supplied)

44. A similar view was taken by this Court in L.K. Trust v. EDC Limited and Others reported in (2011) 6 SCC 780 wherein it was observed as follows:

"53. On analysis of arguments advanced at the Bar, this Court finds that the proposition that in India it is only on execution of conveyance and the registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption stands extinguished is well settled. Further it is not the case of the appellant that a registered Sale Deed had been executed between the appellant-trust and the respondent No. 1 pursuant to the Resolution passed by the respondent No. 1 and, therefore, in terms of Section 54 of the Transfer of Property Act 1882 no title relating to the disputed property had passed to the appellant at all.

54. What is ruled in Narandas Karsandas (Supra) is that in India, there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser and in view of the fact that only on execution of conveyance, ownership passes from one party to another, it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. In this case, the respondent Housing Society, the mortgagor, had taken loan from the co-respondent Finance Society and mortgaged the property to it under an English mortgage. On default, the mortgagee exercised its right under the mortgage to sell the property without intervention of Court and after notice, put the property to sale by public auction. The appellant auction purchaser paid the sums due. Before the sale

was completed by registration etc. the mortgagor sought to exercise his right of redemption by tendering the amount due. The appellant had based his case on the plea that in such a situation the mortgagee acts as agent of the mortgagor and hence binds him.

55. Rejecting the appeal, this Court has held 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 or by decree of a court. What is held by this Court is that, in India it is 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 but the conferment of power to sell the mortgaged property without intervention of the Court, in a mortgage deed, in itself, will not deprive the mortgagor of his right of redemption. This Court in the said case further explained that the extinction of the right of redemption has to be subsequent to the deed conferring such power and the right to redemption is not extinguished at the expiry of the period. This Court emphasized in the said decision that the equity of redemption is not extinguished by mere contract for sale." (Emphasis supplied) REDEMPTION OF MORTGAGE UNDER THE SARFAESI ACT

45. Sub-section (8) of Section 13 of the SARFAESI Act, as originally enacted, stated as under: -

"13. Enforcement of security interest.– (8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset."

46. In Mathew Varghese (supra), this Court had the occasion to consider the right of redemption of mortgage under the SARFAESI Act vis-à-vis the Act 1882, wherein, this Court made the following relevant observations, being reproduced below: -

"38. ... 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 [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247] while construing Section 60 of the TP Act. But as rightly contended by Mr Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect

of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the SARFAESI Act, read along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying Section 60 of the TP Act, this Court has envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed. It was also stated that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property.

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

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41. ... even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated.

Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of." (Emphasis supplied)

47. In Dwarika Prasad v. State of Uttar Pradesh reported in (2018) 5 SCC 491, this Court speaking through one of us Dr. D.Y. Chandrachud, CJI., considered the unamended Section 13(8) of the SARFAESI Act, keeping in mind the decision in the case of Mathew Varghese (supra). The Court took the view that the right of redemption of mortgage is not lost until there is a transfer by a registered instrument. The following observations as contained in para 8 of the judgment are reproduced below:

> "8. ... These provisions have fallen for interpretation before this Court in Mathew Varghese. Dwelling on Section 60 of the Transfer of the Property Act, 1882 this Court held that the right of redemption is available to a mortgagor unless it stands extinguished by an act of parties. The right of the mortgagor to redeem the property survives until there has been a transfer of the mortgagor's interest by a registered instrument of sale. ..."

48. In, yet one another decision of this Court in Allokam Peddabbayya & Anr. v. Allahabad Bank & Ors. reported in (2017) 8 SCC 272, a similar view was taken. The relevant observations made therein are as under:

> "23. The aforesaid discussion leads to the conclusion that the plaintiffs lost the right to sue for redemption of the mortgaged property by virtue of the proviso to Section 60 of the Act, no sooner that the mortgaged property was put to auction-sale in a suit for foreclosure and sale certificate was issued in favour of Defendant
>
> 2. There remained no property mortgaged to be redeemed. The right to redemption could not be claimed in the abstract."

49. Thus, prior to the amendment of Section 13(8) of the SARFAESI Act, this Court consistently held, that the borrower shall continue to have a right of redemption of mortgage until the execution of the conveyance of the secured asset by way of a registered instrument. Furthermore, this Court in Mathew Varghese (supra) found no inconsistency between the unamended Section 13(8) of SARFAESI Act and the general right of redemption under Section 60 of the Act 1882.

50. However, later on 1st September, 2016, the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Act, 2016 ("2016 Amendment") was enacted which inter-alia amended sub-section 8 of Section 13 of the SARFAESI Act, and substituted the words "any time before the date fixed for sale or transfer" of the original provision with "at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets". The

amended provision of Section 13 sub-section (8) of the SARFAESI Act, now reads as under: -

> "13. Enforcement of security interest. – (8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—
>
> (i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and
>
> (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

51. The true purport and scope of the amended Section 13(8) of the SARFAESI Act was looked into by the Andhra Pradesh High Court in Sri. Sai Annadhatha Polymers & Anr. v. Canara Bank rep. by its Branch Manager, Mandanapalle reported in 2018 SCC OnLine Hyd 178. The court took the view that in accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. The court went on to say that the amended provisions of Section 13(8) of the SARFAESI Act brought in a radical change inasmuch as the right of the borrower to redeem the secured asset would stand extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. It is pertinent to note that the High Court has referred to and relied upon the decision of this Court in Mathew Varghese (supra). The relevant observations made by the High Court are reproduced hereinbelow:

> "6. In terms of the amended provisions of Section 13(8) of the SARFAESI Act, the right of redemption given to the borrower would expire upon publication of such a notice. However, Rule 8(6) of the Rules of 2002, as interpreted by the Supreme Court in Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610], stipulates that the thirty day notice period mentioned therein is for the purpose of enabling the borrower to redeem his property. Significantly, this provision remains unaltered. Therefore, this statutory notice period of thirty days is sacrosanct and deviation therefrom would curtail the statutory right of redemption available to the borrower. However, in terms of the amended Section 13(8) of the SARFAESI Act, once the notice under Rule 9 of the Rules of 2002 is published, the said right stands extinguished.
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> xxx xxx xxx
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> 20. In the light of the aforestated changes in the statutory scheme, certain crucial aspects may be noted. As per the unamended Section 13(8) of the SARFAESI Act, the

> right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. Case law consistently held to the effect that a sale or transfer is not completed until all the formalities are completed and there is an effective transfer of the asset sold. In consequence, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. The recent judgment of the Supreme Court in ITC LIMITED v. BLUE COAST HOTELS LIMITED also affirmed this legal position.
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> 21. However, the amended provisions of Section 13(8) of the SARFAESI Act bring in a radical change, inasmuch as the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime stands drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till completion of the sale or transfer of the secured asset in favour of the auction purchaser. ... xxx xxx xxx
>
> 23. Therefore, even after the amendment of Section 13(8) of the SARFAESI Act, a secured creditor is bound to afford to the borrower a clear thirty day notice period under Rule 8(6) to enable him to exercise his right of redemption. In consequence, a notice under Rule 9(1) of the Rules of 2002 cannot be published prior to expiry of this thirty day period in the new scenario, post-

amendment of Section 13(8) of the SARFAESI Act, as such right of redemption would stand terminated immediately upon publication of the sale notice under Rule 9(1) of the Rules of 2002. The judgment of the Supreme Court in CANARA BANK v. M. AMARENDER REDDY, which was rendered in the context of the unamended provisions, would therefore have no application to the post-amendment scenario in the light of the change brought about in Section 13(8). To sum up, the post-amendment scenario inevitably requires a clear thirty day notice period being maintained between issuance of the sale notice under Rule 8(6) of the Rules of 2002 and the publication of the sale notice under Rule 9(1) thereof, as the right of redemption available to the borrower in terms of Rule 8(6) of the Rules of 2002, as pointed out in MATHEW VARGHESE, stands extinguished upon publication of the sale notice under Rule 9(1).” (Emphasis supplied)

52. The amended Section 13(8) of the SARFAESI Act was also looked into by the High Court of Telangana in the case of K.V.V. Prasad Rao Gupta v. State Bank of India reported in 2021 SCC OnLine TS 328 and relying on the decision of the Andhra Pradesh High Court in the case of Sri. Sai Annadhatha Polymers (supra), the court observed in para 21 as under:

> “21. Thus from the above judgments it is clear that under Rule 8(6) of the Rules of 2002, the petitioners are entitled for a thirty day notice period enabling them to clear the loan and to redeem the property as envisaged under Section 13(8) of the

SARFAESI Act, and that if they fail to repay the amount within the stipulated period, after expiry of said period of 30 days, the secured creditor is entitled to issue publication of sale notice under Rule 9(1), and that on publication of such notice, the right of the borrower to redeem the property stands extinguished." (Emphasis supplied)

53. The Telangana High Court in Concern Readymix (supra), examined the amended Section 13(8) of the SARFAESI Act, & held that the same only restricts the right of the secured creditor and not the borrowers right of redemption, which will continue to exist until the execution of the conveyance. The following relevant observations are reproduced below: -

"10. The first distinction between the unamended and amended sub-section (8) of Section 13 is that before amendment, the facility of repayment of the entire dues along with the costs, charges and expenses, was available to the debtor at any time before the date fixed for the sale or transfer. But after the amendment, the facility is available upto the time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty. The second distinction is that the unamended sub-section (8) did not provide for the contingency when the dues are tendered by the borrower before the date of completion of the sale or lease but after the issue of notice. But the amended sub-section (8) takes care of the contingency where steps have already been taken by the secured creditor for the transfer of the secured asset, before the payment was made. Except these two distinctions, there is no other distinction.

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13. What is important to note both from the amended and unamended provisions of Section 13(8) and Rule 9(1) is that both of them do not speak in express terms, about the equity of redemption available to the mortgagor. The amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610], have come to the conclusion as though Section 13(8) speaks about the right of redemption. The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in Mathew Varghese that the Supreme Court took note of Section 60 of the Transfer of Property Act and

> the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice. Therefore, we should first understand that the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.
>
> 14. Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002.

Rule 3(5) inserted by way of amendment with effect from 04-11- 2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time available to the borrower to redeem the secured assets. Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned." (Emphasis supplied)

54. We are conscious of the fact, that the aforesaid decision of Concern Readymix (supra) was carried upto and challenged before this Court by way of Special Leave Petition (C) No. 20500 of 2019, which came to be dismissed by this Court in limine, being as follows: -

> "ORDER Delay condoned.
>
> The Special Leave Petition is dismissed"

55. In Shakeena (supra), while primarily dealing with the unamended provision of Section 13(8) of the SARFAESI Act, this Court also made certain pertinent observations in respect of the amended provision of Section 13(8), which are being reproduced hereunder: -

> "15. Be it noted that on 1-9-2016 amendment to Section 13(8) of the 2002 Act came into force as a result of which the dues of the secured creditor together with all costs, charges and expenses incurred by him are required to be tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets.
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> xxx xxx xxx
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> 30. A fortiorari, it must follow that the appellants have failed to exercise their right of redemption in the manner known to law, much less until the registration of the sale certificate on 18-9-

2007. In that view of the matter no relief can be granted to the appellants, assuming that the appellants are right in contending that as per the applicable provision at the relevant time [unamended Section 13(8) of the 2002 Act], they could have exercised their right of redemption until the registration of the sale certificate — which, indisputably, has already happened on 18-9-2007. Therefore, it is not possible to countenance the plea of the appellants to reopen the entire auction process. This is more so because, the narrative of the appellants that they had made a valid tender towards the subject loan accounts before registration of the sale certificate, has been found to be tenuous. Thus understood, their right of redemption in any case stood obliterated on 18-9- 2007. Further, the amended Section 13(8) of the 2002 Act which has come into force w.e.f. 1-9-2016, will now stare at the face of the appellants. As per the amended provision, stringent condition has been stipulated that the tender of dues to the secured creditor together with all costs, charges and expenses incurred by him shall be at any time before the "date of publication of notice" for public auction or inviting quotations or tender from public or private deed for transfer by way of lease assessment or sale of the secured assets. ...” (Emphasis supplied)

56. The Punjab & Haryana High Court while rendering its decision in Pal Alloys (supra), looked into the Report of the Joint Committee on the 2016 Amendment and the decision in Concern Readymix (supra), & concluded that under the amended Section 13(8) of the SARFAESI Act, the right of redemption of mortgage would continue till the execution of conveyance or issuance of sale certificate. It further observed that the decision in Shakeena (supra) was not applicable inasmuch as it did not deal with the right of redemption under the Act 1882. The observations made in it are given below:

> “78. It is interesting to note that para 24 of the Report of the Joint Committee referred to above deals with the proposed amendment to Section 13(8) of the SARFAESI Act and gives a heading “Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions-Amendment to Section 13(8) of the SARFAESI Act.”
>
> 79. Thus the amendment was proposed w.r.t. when to stop the secured creditor from selling/transferring the secured asset. The words ‘when to stop the exercise of right of redemption by the borrower/mortgagor’ were not used.
>
> 80. In the said Report, at pg.12, Clause 11(ii) of the Bill which proposed to amend Section 13(8) of the SARFAESI Act is noted.

After extracting the existing Section 13(8) of the Act which stands as under: — “If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.”

81. The proposed modification to Section 13(8) is set out also at pg.12 as under:— “(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him

are tendered to the secured creditor at any time before the date fixed for lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be leased, assigned or sold by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for lease or assignment or sale of such secured assets."

82. Strangely, on the next page at page 13, the following is stated:-

> "The Committee after examining the proposed amendment and the existing Rules in this regard decide to modify proposed Clause 11(ii) [section 13(8) of the principal Act] as under:
>
> "(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-
>
> (i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and
>
> (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

83. Nothing is mentioned as to why the proposal indicated in Page- 12 was changed on page-13 differently.

84. Admittedly, what is stated in page-13 was passed in the Lok Sabha and the Rajya Sabha and then it became the Act 44 of 2016 and came into effect on 01.09.2016.

85. But the important thing to note is that this Report does not indicate that the Committee had even considered Section 60 of the Transfer of Property Act, 1882, which provides the general law of right to redeem a mortgaged asset of a mortgager vis-a-vis the provisions of the SARFAESI Act.

86. It no where says that there was an intention to bring about a change with regard to the time before which a mortgagor can exercise his right to redeem the mortgage.

87. Even the heading of Para 24 of the Report which says "Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions - Amendment to Section 13(8) of the SARFAESI

Act" seems to suggest that the focus of the Committee was on the date when the secured creditor's right to lease or assignment or sale would stop.

88. In our considered opinion, it is clear that the legislature did not have any intention to deal with the right of mortgagor to redeem the mortgage when they amended Sec.13(8) or to modify it in any manner; and amendment cannot be said to have intended to modify the existing law which continued even when the un- amended Section 13(8) of the SARFAESI Act was in force. The amended Sec.13(8) was intended to only deal with the date when the secured creditor's right to transfer the secured asset should stop and nothing more.

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93. The view taken by the High Court for the State of Telangana and Andhra Pradesh in M/s. Concern Ready Mix [(2019) 3 ALD 384 : Law Finder Doc Id # 1380151] commends itself to us and we accept and approve the same.

94. We shall now consider the judgment of Supreme Court in Shakeena [(2019) 5 RCR (Civil) 689 (SC)]cited by the counsel for 1st respondent. In that case, sale certificate had been issued in favour of the auction purchasers on 06.01.2006 and a Writ Petition was filed on 19.01.2006 challenging the auction and it was registered on 18.9.2007. The Court held that the appellants had failed to make a valid tender of amounts due or exercise their right of redemption in a manner known to law until the registration of the sale certificate on 18.09.2007 and that the right of redemption stood obliterated on 18.09.2007. The statement therein in para 29 that as per the amended provision stringent conditions have been stipulated that the tender of dues to the secured creditor shall be at any time before the date of publication of notice for public auction does not, in our opinion, lead to an expression of opinion by the Supreme Court that the law of redemption as per Section 60 of the Transfer of Property Act would not apply in view of amendment to Section 13(8). We do not find any discussion in the decision in Shakeena [(2019) 5 RCR (Civil) 689 (SC)] about the decisions of the apex court dealing with the right of redemption under Sec.60 of the Transfer of Property Act, 1872. So reliance on the said decision does not help the 1st respondent.

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96. Keeping in mind (i) the Report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 discussed above, (ii) the law laid down by the Supreme Court in Mathew Varghese [(2014) 5 SCC 610] and (iii) the decision in M/s. Concern Readymix [(2019) 3 ALD 384 : Law Finder Doc Id # 1380151] of the Telangana and Andhra Pradesh High Court, with which we respectfully agree, we hold that the amended Section 13(8) of the SARFAESI Act merely prohibits a secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale; a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor; the payment of the amount mentioned in Section 13(8) of the SARFAESI Act ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Act; that redemption comes later; extinction of the right of redemption comes much later

than the sale notice; and the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted. We also hold that such a right would continue till the execution of a conveyance i.e. issuance of sale certificate in favour of the mortgagee. ...

97. It would, therefore, certainly be available to the petitioners herein before the issuance of sale certificate in favour of respondents No. 2 and 3. Point (a) is answered accordingly in favor of the petitioners and against the respondents." (Emphasis supplied)

57. In S. Karthik (supra) a three-Judge Bench of this Court, made the following relevant observations given below: -

> "53. It could thus be seen that this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 :
>
> (2014) 3 SCC (Civ) 254] 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.

54. This Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] 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 Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247] 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.

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115. Even if viewed from another angle, the claim of the appellants is not sustainable. The two-Judge Bench of this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254], has heavily relied on the judgment of the three-Judge Bench of this Court in Narandas Karsondas . It has been held by this Court in Narandas Karsondas [Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247], 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.

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118. It is further relevant to note that this Court in Dwarika Prasad [Dwarika Prasad v. State of U.P., (2018) 5 SCC 491] and in Shakeena [Shakeena v. Bank of India, (2021) 12 SCC 761] held that the right to redemption stands extinguished on the sale certificate getting registered." (Emphasis supplied)

58. Concern Readymix (supra) was referred to and relied upon later in another decision by the Telangana High Court titled Amme Srisailam (supra), wherein the following relevant observations were made:

> "38. After referring to the amendments brought to the Security Interest (Enforcement) Rules, 2002, this Court took the view that amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale if the dues are paid before issuance of notice for public auction. Thereafter it has been held that a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. Payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the SARFAESI Act. Redemption comes later. It has been held as follows:
>
> The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not.
>
> 39. Thus this Court emphasised that the right of redemption is not lost immediately upon the highest bid made by the purchaser in an auction is accepted.
>
> 40. A three-Judge Bench of the Supreme Court in S.Karthik (supra) held that the right of redemption which is embodied in Section 60 of the Transfer of Property Act, 1882 is available to the mortgagor unless it has been extinguished by the act of the parties. Only on execution of the conveyance and registration of transfer of mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. Referring to the previous decisions of the Supreme Court, it has been held that the right to redemption stands extinguished only on the sale certificate getting registered.

41. This position has been explained by the Punjab & Haryana High Court in Pal Alloys & Metal India Private Limited (supra), wherein it has been clarified that the amended Section 13(8) of the SARFAESI Act merely prohibits the secured creditor from proceeding further with the transfer of the secured asset by way of lease, assignment or sale if the dues are paid before issuance of sale notice for public auction. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor.

42. Let us now examine the decision of the Supreme Court in Shakeena (supra) relied upon by the petitioner. As opposed to S.Karthik (supra) which was rendered by a three-Judge Bench, Shakeena (supra) was delivered by a two-Judge Bench of the Supreme Court. That was a case which dealt with Section 13(8) of the SARFAESI Act prior to amendment. In this case, the appellants failed to exercise their right of redemption until registration of the sale certificate; therefore, relief was declined. While coming to the above conclusion, the Division Bench of the Supreme Court adverted to the amended Section 13(8) of the SARFAESI Act observing by way of obiter that tender of dues to the secured creditor with all costs, charges and expenses incurred by him shall be at any time before the date of publication of notice for public auction etc.

43. The decision in Shakeena (supra) was rendered by a two-Judge Bench of the Supreme Court on 20.08.2019. On the other hand, the decision in S.Karthik (supra) was rendered by a three-Judge Bench of the Supreme Court much later i.e., on 23.09.2021. The decision in S.Karthik (supra) being a later judgment and by a larger bench therefore will be binding on us and this decision says that the right of redemption stands extinguished only on the sale certificate getting registered.

44. Before we revert back to the facts of the present case, we may also refer to Sections 35 and 37 of the SARFAESI Act.

While Section 35 says that the provisions of the SARFAESI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, Section 37 clarifies that provisions of the SARFAESI Act or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force.

45. This brings us to Section 60 of the Transfer of Property Act, 1882. Section 60 says that at any time after the principal amount has become due, the mortgagor has a right, on payment or tender, of the mortgage money, to require the mortgagee (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof back to the mortgagor, and (c) at the cost of the mortgagor either to re- transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. As per the proviso, the right conferred under the aforesaid

provision shall not be extinguished by any act of the parties or by decree of a Court.

46. Therefore, on a careful application of Sections 35 and 37 of the SARFAESI Act, it is evident that the situation contemplated under Section 13(8) of the SARFAESI Act does not exclude application of Section 60 of the Transfer of Property Act, 1882. As explained by this Court in Concern Readymix (supra), a restriction on the right of the mortgagee to deal with the property post issuance of notice for public auction is not the same as the right of redemption available to the mortgagor." (Emphasis supplied)

59. Thus, from the aforesaid, it is evident that the Telangana High Court in the Amme Srisailam (supra) has not referred to or looked into its earlier decision in the case of K.V.V. Prasad Rao Gupta (supra). The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) was also not been looked into by the Telangana High Court in the case of Amme Srisailam (supra). It appears that the Telangana High Court in Concern Readymix (supra) and Amme Srisailam (supra) as well as the Punjab and Haryana High Court in the case of Pal Alloys (supra) have taken the view that the amended Section 13(8) of the SARFAESI Act does not exclude the application of Section 60 of the Act 1882 in view of Sections 35 and 37 respectively of the SARFAESI Act.

EFFECT OF THE AMENDMENT TO SECTION 13(8) OF THE SARFAESI ACT

60. Before proceeding with the analysis of the provision of Section 13(8) of the SARFAESI Act, it would be appropriate to refer to the said provision as it stood prior to the amendment and as it stands after the amendment, which is given below: -

Pre-amendment Section 13(8)	Post-amendment Section 13(8)
(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or publication of notice for public transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.	(8) Where the amount of dues of the creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date of auction or inviting quotations or the tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,— (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

61. At this juncture, it would be apposite to refer to the decision of this Court in Embassy Hotels Private Ltd. v. Gajraj and Company & Ors. reported in (2015) 14 SCC 316, wherein this Court had held that the expression "by act of the parties" in the Proviso to Section 60 would include the failure

of the parties to settle the dispute and by their act allowing the mortgaged property to be sold in auction. The relevant observations made in it are reproduced below: -

> "16. Section 60 of the Transfer of Property Act protects the right of redemption available to a mortgagor by providing that the mortgagor can exercise such a right by paying the mortgaged money any time after the principal money has become due. But the proviso clarifies that the right conferred by that section is available only if it has not been extinguished by act of the parties or by decree of the court. The act parties would cover act of the mortgagor and mortgagee, if they are unable to settle the dispute arising out of money claim covered by the mortgage and by their action, allow the mortgaged property to be sold through auction in favour of a third party. Hence, it is not possible to accept the case of the plaintiff-respondent that in spite of sale of suit property becoming final through court auction, for the purpose of grant of specific relief to the plaintiff in the present suit, the first defendant would be deemed to still retain the right to the mortgage and transfer the suit property to the plaintiff regardless of the right, title and possession already legally vested in the auction-purchaser the appellant." (Emphasis supplied)

62. It is equally well settled that the rights created for the benefit of the borrower under the SARFAESI Act, can be waived. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favourable decision. The fact that the other side has acted on it, is sufficient consideration, as observed by this Court in Arce Polymers Pvt. Ltd. v. Alpine Pharmaceuticals Pvt. Ltd. & Ors. reported in (2022) 2 SCC 221, referred as under: -

> "16. Waiver is an intentional relinquishment of a known right. Waiver applies when a party knows the material facts and is cognizant of the legal rights in that matter, and yet for some consideration consciously abandons the existing legal right, advantage, benefit, claim or privilege. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favourable decision. The fact that the other side has acted on it, is sufficient consideration.
>
> 17. It is correct that waiver being an intentional relinquishment is not to be inferred by mere failure to take auction, but the present case is of repeated positive acts post the notices under Sections 13(2) and (4) of the SARFAESI Act. Not only did the borrower not question or object to the auction of the Bank, but it by express and deliberate conduct had asked the Bank to compromise its position and alter the contractual terms. The borrower wrote repeated request letters for restructuring of loans, which prayers were considered by the Bank by giving indulgence, time and opportunities. The borrower, aware and conscious of its rights, chose to abandon the statutory claim and took its chance and even procured favourable decisions. Even if we are to assume that the borrower did not waive the remedy, its conduct had put the Bank in a position where they have lost time, and suffered on account of delay and

> laches, which aspects are material. Auction on the subject property was delayed by more than a year as at the behest of the borrower, the Bank gave them a long rope to regularise the account. To ignore the conduct of the borrower would not be reasonable to the Bank once third-party rights have been created.

In this background, the principle of equitable estoppel as a rule of evidence bars the borrower from complaining of violation." (Emphasis supplied)

63. We are of the view that the failure on the part of the borrower in tendering the entire dues including the charges, interest, costs etc. before the publication of the auction notice as required by Section 13(8) of the SARFAESI Act, would also sufficiently constitute extinguishment of right of redemption of mortgage by the act of parties as per the proviso to Section 60 of the Act 1882. Furthermore, in the case on hand, there was no claim for right of redemption by the borrower either before the publication of the auction notice or even thereafter. The borrowers entered into the fray only after coming to know of the confirmation of auction. Be that as it may, once the Section 13(8) stage was over and auction stood concluded, it could be said that there was an intentional relinquishment of his right of redemption under Section 13(8), whereby the Bank declared the appellant as the successful auction purchaser having offered the highest bid in accordance with the terms of the auction notice.

64. The SARFAESI Act is a special law containing an overriding clause in comparison to any other law in force. Section 60 of the Act 1882, is a general law vis-a-vis the amended Section 13(8) of the SARFAESI Act which is special law. The right of redemption is clearly restricted till the date of publication of the sale notice under the SARFAESI Act, whereas the said right continues under Section 60 of the Act 1882 till the execution of conveyance of the mortgaged property. The legislative history has been covered in the preceding paragraphs of this judgment and how the Parliament desired to have express departure from the general provision of Section 60 of Act 1882. The SARFAESI Act is a special law of recovery with a paradigm shift that permits expeditious recovery for the banks and the financial institutions without intervention of Courts. Similarly, Section 13(8) of the SARFAESI Act is a departure from the general right of redemption under the general law i.e. the Act 1882. Further, the legislature has in the objects and reasons while passing the amending Act specifically stated "to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts….". Thus, while interpreting Section 13(8) vis-à-vis Section 60 of the Act 1882, an interpretation which furthers the said object and reasons should be preferred and adopted. If the general law is allowed to govern in the manner as sought to be argued by the borrowers, it will defeat the very object and purpose as well as the clear language of the amended Section 13(8).

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

66. Even otherwise, we should not lose sight of the fact that in Mathew Varghese (supra) the court held in regard to the right of redemption that both the SARFAESI Act and Act 1882 are complimentary to each other and equally applicable. It had held this because, the words "before the date fixed for transfer" in the unamended Section 13(8), amongst other things also means and connotes the date of conveyance of the secured asset by a registered instrument (which is the ordinary process of extinguishment of right of redemption under Act 1882). Since, this Court observed that the stipulation or expression "date fixed for transfer" could also mean the date of conveyance / transfer of such secured asset and being so, is not much different from the ordinary process of redemption under the Act 1882, it could not be said that there was any material inconsistency between the SARFAESI Act & Act 1882, and thus it found no reason or hesitation to hold that the Act 1882 is inapplicable and thus made an endeavour of harmonizing the two.

67. It appears that while considering the right of redemption of mortgage under the unamended Section 13(8), this Court in Mathew Varghese (supra) only went so far to say that in the absence of any material inconsistency between the SARFAESI Act & Act 1882, there was no good reason to hold that the Act 1882 would not be applicable and as such, held that general right of redemption of mortgage contained in Section 60 Act 1882 would apply even in respect of the SARFAESI Act.

68. However, with the advent of the 2016 Amendment, Section 13(8) of the SARFAESI Act now uses the expression "before the date of publication notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets" which by no stretch of imagination could be said to be in consonance with the general rule under the Act 1882 that the right of redemption is extinguished only after conveyance by registered deed. Thus, in the light of clear inconsistency between Section 13(8) of the SARFAESI Act and Section 60 of the Act 1882 the former special enactment overrides the latter general enactment in light of Section 35 of the SARFAESI Act. Thus, the right of redemption of mortgage is available to the borrower under the SARFAESI Act only till the publication of auction notice and not thereafter, in light of the amended Section 13(8).

69. This aspect of inapplicability of the Act 1882 vis-a-vis the SARFAESI Act can be looked at from one another angle. In Madras Petrochem (supra) this Court made a pertinent observation that the Sections 35 and 37 respectively of the SARFAESI Act form a unique scheme of overriding provisions, however the scope and ambit of Section 37 is restricted only to the securities law. The relevant portion is given as under: -

> "39. This is what then brings us to the doctrine of harmonious construction, which is one of the paramount doctrines that is applied in interpreting all statutes. Since neither Section 35 nor Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is subject to the other, we think it is necessary to interpret the expression "or any other law for the time being in force" in Section 37. If a literal meaning is given to the said expression, Section 35 will become completely otiose as all other laws will then be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Obviously this could not have been

> the parliamentary intendment, after providing in Section 35 that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 will prevail over all other laws that are inconsistent therewith. A middle ground has, therefore, necessarily to be taken. According to us, the two apparently conflicting sections can best be harmonised by giving meaning to both. This can only be done by limiting the scope of the expression "or any other law for the time being in force" contained in Section 37. This expression will, therefore, have to be held to mean other laws having relation to the securities market only, as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is the only other special law, apart from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dealing with recovery of debts due to banks and financial institutions. On this interpretation also, the Sick Industrial Companies (Special Provisions) Act, 1985 will not be included for the obvious reason that its primary objective is to rehabilitate sick industrial companies and not to deal with the securities market." (Emphasis supplied)

70. This Court in M.D. Frozen Foods Exports Private Limited & Ors. v. Hero Fincorp Limited reported in (2017) 16 SCC 741, observed that since as per Section 37 SARFAESI Act, the RDBFI Act which also contemplates arbitration proceedings, is in addition to the SARFAESI Act, it held that both Arbitration & Conciliation Act, 1996 and the SARFAESI Act would go hand in hand. The relevant observations are reproduced below: -

> "27. On the SARFAESI Act being brought into force seeking to recover debts against security interest, a question was raised whether parallel proceedings could go on under the RDDB Act and the SARFAESI Act. This issue was clearly answered in favour of such simultaneous proceedings in Transcore v. Union of India. A later judgment in Mathew Varghese v. M. Amritha Kumar also discussed this issue in the following terms: (Mathew Varghese case, SCC pp. 640-41, paras 45-46) "45. A close reading of Section 37 shows that the provisions of the SARFAESI Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act. Section 35 of the SARFAESI Act states that the provisions of the SARFAESI Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of the RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely, the SARFAESI Act and the RDDB Act, would be complementary to each other. In this context reliance can be placed upon the decision in Transcore v. Union of India. In para 64 it is stated as under after referring to Section 37 of the SARFAESI Act: (SCC p. 162) '64. ... According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p.

119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.'

46. A reading of Section 37 discloses that the application of the SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws is not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; the Securities and Exchange Board of India Act, 1992; the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force." xxx xxx xxx

29. The aforesaid two Acts are, thus, complementary to each other and it is not a case of election of remedy.

30. The only twist in the present case is that, instead of the recovery process under the RDDB Act, we are concerned with an arbitration proceeding. It is trite to say that arbitration is an alternative to the civil proceedings. In fact, when a question was raised as to whether the matters which came within the scope and jurisdiction of the Debt Recovery Tribunal under the RDDB Act, could still be referred to arbitration when both parties have incorporated such a clause, the answer was given in the affirmative. That being the position, the appellants can hardly be permitted to contend that the initiation of arbitration proceedings would, in any manner, prejudice their rights to seek relief under the SARFAESI Act.

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32. The aforesaid is not a case of election of remedies as was sought to be canvassed by the learned Senior Counsel for the appellants, since the alternatives are between a civil court, Arbitral Tribunal or a Debt Recovery Tribunal constituted under the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an Arbitral Tribunal has been elected.

The provisions of the SARFAESI Act are thus, a remedy in addition to the provisions of the Arbitration Act. In Transcore v. Union of India it was clearly observed that the SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been envisaged under the Sarfaesi Act and the two Acts are

cumulative remedies to the secured creditors." (Emphasis supplied)

71. It would be also appropriate to refer to another decision of this Court rendered in Vishal N. Kalsaria v. Bank of India & Ors. reported in (2016) 3 SCC 762 wherein this Court while construing the expression "any other law" occurring in Section 35 of the SARFAESI Act, held the same would mean any other law operating in the same field. The relevant observations made in it are given below: -

> "37. It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested in the tenants under the Rent Control Act. The expression "any other law for the time being in force" as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State Legislatures. It can only extend to the laws operating in the same field." (Emphasis supplied)

72. Thus, it appears from a combined reading of the decisions rendered by this Court in Madras Petrochem (supra) and M.D. Frozen Foods Exports (supra) that this Court has consistently construed that only those laws which have either been enumerated in Section 37 SARFAESI Act or similar to it would be applicable in addition to the SARFAESI Act i.e., laws which deal with securities or occupy the same field as the SARFAESI Act. Thus, even on this aspect, we are of the view that the Act 1882 would not be applicable in addition to the SARFAESI Act. Suffice to say, that in view of the above discussion, the statutory right of redemption under the Act 1882 will not be applicable to the SARFAESI Act at least in view of the amended Section 13(8) and any right of redemption of a borrower must be found within the SARFAESI Act in terms of the amended Section 13(8). WHY THE DECISION OF THE TELANGANA HIGH COURT IN THE CASE OF AMME SRISAILAM (SUPRA) IS NOT A GOOD LAW?

73. The Telangana High Court's judgment is in four parts. It takes the view as under:

> a. That amended Section 13(8) does not take away the right of redemption under Section 60 of the Act 1882 and for this proposition reliance was placed on the decisions in Concern Readymix (supra) and S. Karthik (supra). (Paras 37-40) b. Shakeena (supra) would not apply as it considered a litigation prior to the amendment to Section 13(8) of the SARFAESI Act and as such the observations made in it regarding the amended Section 13(8) were obiter dicta. Furthermore because S. Karthik (supra) is a subsequent decision of a three-Judge Bench, thus, Shakeena (supra) cannot be relied upon. (Paras 42-43) c. It placed reliance on Section 37 of SARFAESI Act which clarifies that the provisions of the SARFAESI Act or the Rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force. Thus, the amended Section 13(8) does not exclude the

application of Section 60 of the Act 1882. (Paras 44 and 46) d. Right to property is a constitutional right and such an interpretation of the amended section 13(8) subserves the said constitutional right. (Para

50)

74. We are of the view that each of the foundation of the judgment is incorrect for the following reasons:

a. The reliance on S. Karthik (supra) is misplaced because:-

(i) Amme Srisailam's case relies on S. Karthik (supra) to overcome Shakeena's case on the ground that the latter deals with the unamended s.

13(8). Interestingly the same point also applies to S. Karthik (supra). A careful reading of the facts in S. Karthik (supra) in Para 3-26 clearly indicates that the sale auction notice and the auction in the said case took place in the year 2012. Para 59 of S. Karthik (supra) clinches the issue on the said score as this Court has limited its examination to the validity of the first sale notice dated 21.01.2012 i.e., the auction that took place before amendment of Section 13(8):

> "59. 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 Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] . For that, it will be necessary to refer to various orders passed by the tribunals as well as the High Court." (Emphasis supplied)

(ii) The amendment to Section 13(8) is subsequent in point of time and came into effect from 01.09.2016. Thus, there was no scope for any discussion on the amendment of Section 13(8) in S. Karthik (supra). Strikingly, Shakeena (supra) though arising from an auction prior to amendment in Section 13(8) yet has taken notice of the amendment of Section 13(8). The relevant para of Shakeena (supra) is as under:-

> "30. A fortiorari, it must follow that the appellants have failed to exercise their right of redemption in the manner known to law, much less until the registration of the sale certificate on 18-9- 2007. In that view of the matter no relief can be granted to the appellants, assuming that the appellants are right in contending that as per the

applicable provision at the relevant time [unamended Section 13(8) of the 2002 Act], they could have exercised their right of redemption until the registration of the sale certificate — which, indisputably, has already happened on 18-9- 2007. Therefore, it is not possible to countenance the plea of the appellants to reopen the entire auction process. This is more so because, the narrative of the appellants that they had made a valid tender towards the subject loan accounts before registration of the sale certificate, has been found to be tenuous. Thus understood, their right of redemption in any case stood obliterated on 18-9- 2007. Further, the amended Section 13(8) of the 2002 Act which has come into force w.e.f. 1-9-2016, will now stare at the face of the appellants. As per the amended provision, stringent condition has been stipulated that the tender of dues to the secured creditor together with all costs, charges and expenses incurred by him shall be at any time before the "date of publication of notice" for public auction or inviting quotations or tender from public or private deed for transfer by way of lease assessment or sale of the secured assets. That event happened before the institution of the subject writ petitions by the appellants." (Emphasis supplied)

(iii) S. Karthik (supra) has followed Mathew Varghese's case and hence not elaborated on the provisions, more particularly Section 13(8). Further Mathew Varghese's case was decided prior to the amendment in Section 13(8). [See relevant para of S. Karthik (supra)] "39. This Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] has elaborately considered the provisions of Sections 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 Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254]. ..."

(iv) This Court in S. Karthik (supra) further noted that Section 13(8) supports the right of redemption at any time before the date fixed for sale or transfer. This is clearly in reference to the old Section 13(8) as interpreted by Mathew Varghese (supra) and as rightly made applicable in the said case as the facts therein arose prior to the amendment in Section 13(8). The said Section 13(8) now stands amended and provides a cut-off for the date of publication of the auction notice. Thus, now after the amendment the support of right of redemption is limited till the date of publication of the auction notice. The relevant Para is quoted for reference:

"53. It could thus be seen that this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 :

(2014) 3 SCC (Civ) 254] 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." (Emphasis supplied)

(v) S. Karthik (supra) also noted Shakeena's case but it seems the attention of the court was not drawn to the amendment in Section 13(8) and the observation by this Court in Shakeena on the said amendment. The para 118 of S. Karthik (supra) may be noted as below:-

"118. It is further relevant to note that this Court in Dwarika Prasad [Dwarika Prasad v. State of U.P., (2018) 5 SCC 491] and in Shakeena [Shakeena v. Bank of India, (2021) 12 SCC 761] held that the right to redemption stands extinguished on the sale certificate getting registered." (Emphasis supplied)

(vi) Thus, the verdict of this Court in S. Karthik (supra) is wrongly interpreted & understood in Amme Srisailam (supra) by the High Court.

b. The reliance on Concern Readymix (supra) of the earlier Division Bench judgement of the High Court is misplaced because:

(i) It has failed to consider that the Securitisation Act, 2002 is a special enactment and the Act 1882 is a general enactment.

(ii) It has failed to take note of the overriding clause under Section 35 of the Securitisation Act, 2002.

(iii) Originally Section 13(8) retained the right akin to s. 60 of the Transfer of Property Act, 1882. By amendment there was a conscious departure by the legislature.

(iv) In Mathew Varghese (supra) this Court held that the original Section 13(8) retained the borrowers right to redeem. Thus, it is important to note that till the amendment took place under Section 13(8), there was nothing inconsistent between 13(8) of the SARFAESI Act and the Act 1882. It is only after the amendment of Section 13(8) the inconsistency arose between the two Acts on the said subject, which is clearly covered by Section 35 of the SARFAESI Act whereby now the amended Section 13(8) achieves supremacy over Section 60 of the Act 1882. Thus, leading to upholding of the SARFAESI Act as the special law against the Act 1882 which is a general law. [See Para 53 of S. Karthik (supra) also quoted above.]

> (v) That the secured creditor, borrower as well as the auction purchaser under the SARFAESI Act are equally bound by the provisions of the enactment including Section 13(8). The secured creditor cannot act de hors the Section 13(8). An interpretation that declares secured creditor not bound by Section 13(8) makes it a bull in the china house and it leaves the entire process at the whims and fancies of the secured creditor. The auction purchaser is the most important actor of the enactment and it is on him the success of the enactment resides. Thus, any interpretation which discourages the auction purchaser to participate has a direct bearing on the implementation of the enactment and recovery of public dues and the same has to be avoided.

The only caveat being that after the success of the auction bid the auction purchaser is required to comply with all the rules.

c. The reliance on Section 37 of the SARFAESI Act is misplaced because this Court in Madras Petrochem (supra) has restricted its application to securities law only.

(i) The relevant portion is as under:-

> "39. This is what then brings us to the doctrine of harmonious construction, which is one of the paramount doctrines that is applied in interpreting all statutes. Since neither Section 35 nor Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is subject to the other, we think it is necessary to interpret the expression "or any other law for the time being in force" in Section 37. If a literal meaning is given to the said expression, Section 35 will become completely otiose as all other laws will then be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Obviously this could not have been the parliamentary intendment, after providing in Section 35 that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 will prevail over all other laws that are inconsistent therewith. A middle ground has, therefore, necessarily to be taken. According to us, the two apparently conflicting sections can best be harmonised by giving meaning to both. This can only be done by limiting the scope of the expression "or any other law for the time being in force" contained in Section 37. This expression will, therefore, have to be held to mean other laws having relation to the securities market only, as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is the only other special law, apart from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dealing with recovery of debts due to banks and financial institutions. On this interpretation also, the Sick Industrial Companies (Special Provisions) Act, 1985 will not be included for the obvious reason that its primary objective is to rehabilitate sick industrial companies and not to deal with the securities market." (Emphasis supplied)

(ii) The court applied the Latin Expression “ejusdem generis” which has been held to be a facet of "Noscitur a sociis". The decision hereunder is of relevance:

Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal, (2010) 3 SCC 786:

“27. The Latin expression “ejusdem generis” which means “of the same kind or nature” is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which arises “from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context”. It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication [see Glanville Williams, The Origins and Logical Implications of the Ejusdem Generis Rule, 7 Conv (NS) 119].

28. This ejusdem generis principle is a facet of the principle of noscitur a sociis. The Latin maxim noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word “sociis” means “society”.

Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context. (See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover [1957 AC 436 : (1957) 2 WLR 1 : (1957) 1 All ER 49 (HL)], AC at p. 461.)” d. The argument of Right to property being a constitutional right and the High Court's interpretation subserving the same is irrelevant in light of the following:-

(i) Because once it is established that Section 60 of the Transfer of Property, 1882 has no application under the Securitisation Act, 2002, nothing survives on the said count.

75. It also needs to be stated that, in Amme Srisailam (supra) the High Court did not apply the observations made by this Court in Shakeena (supra) as regards the amended Section 13(8) because it was of the view that the same were only obiter dicta and moreover because a subsequent and larger bench decision of this Court in S. Karthik (supra) had held that right of redemption would be extinguished only upon issuance and registration of the sale certificate.

76. We may however point out that, this Court in S. Karthik (supra) had made no reference as to whether it was considering the unamended or the amended Section 13(8), nor any reference was made to the 2016 Amendment. Thus, in our opinion, the decision in S. Karthik (supra) cannot be said to have considered the amended provision of Section 13(8) especially in view of the fact that, it had placed strong reliance on Mathew Varghese (supra) which as discussed before had dealt with the unamended provision of Section 13(8).

77. We also find that, in Pal Alloys (supra) the reliance on the Joint Committee Report specifically the heading "Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions-Amendment to Section 13(8) of the SARFAESI Act" occurring in it, to construe that the said amendment was only to restrict the secured creditor is misplaced. We say this, because, initially in the Report, the proposed amendment to sub-section (8) of Section 13 stated as under:

> "The proposed modified section 13(8) provides as under:-
>
> "(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for lease, assignment or sale of the secured assets,-
>
> (i) the secured assets shall not be leased, assigned or sold by the secured creditor; and
>
> (ii) in case, any step has been taken by the secured creditor for lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for lease or assignment or sale of such secured assets."" (Emphasis supplied)

78. The amendment as initially proposed specifically used the words "at any time before the date fixed for lease, assignment or sale of the secured assets". The heading it was placed under read as to only restricting the rights of the secured creditor. However, remarkably, the Joint Committee subsequently changed the proposal to as under: -

> "The Committee after examining the proposed amendment and the existing Rules in this regard decide to modify proposed Clause 11(ii) [section 13(8) of the principal Act] as under:
>
> "(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets:-
>
> (i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and
>
> (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."" (Emphasis supplied)

79. Thus, without indicating any reason for the change, the proposal now used the words "before the date of publication of notice for public auction or inviting quotations or tender from public or

private treaty for transfer by way of lease, assignment or sale of the secured assets" and the same came to be incorporated by way of the 2016 Amendment. We feel, in such circumstances, given the abrupt and significant change in the proposal by the Joint Committee, the initial heading had been inadvertently left, and the same in no manner can be relied to construe the said provision as one intended to inhibit only the secured creditor. In any event, it is a well settled canon of law, that the sum and substance of a provision is determined by what is given in the provision and not by its heading or marginal note.

80. To read it otherwise in a strict manner as to only stipulating a restriction upon the secured creditor and not on the borrower's right of redemption would lead to a very chilling effect, where no auction conducted under the SARFAESI Act would have any form of sanctity, and in such a situation no person would be willing to come forward and participate in any auction due to the fear and apprehension that despite being declared a successful bidder, the borrower could still at any time come and redeem the mortgage and thereby thwart the very auction process.

81. Such a scenario is all the more worrisome, because the general public who participate in such auctions are often neither aware nor informed by the secured creditors conducting the auctions, that as long as the sale certificate is not issued, they will not have a right in the said asset and that the borrower whose asset is being auctioned could sweep-in and redeem the mortgage any time, and thereby thwart their rights and the very auction process.

82. Thus, it is necessary to interpret the amended Section 13(8) of the SARFAESI Act in such a manner where a legal sanctity is attached to an auction process and a bright line is drawn where a mischievous borrower is told 'no more and no further' and precluded from hastily exercising its right of redemption from nowhere at the very end of the process and thereby set the entire auction process at naught. If permitted to do so then all auctions under the SARFAESI Act would be meaningless and simply rendered otiose and the very object of Section 13 and the overall scheme of the SARFAESI Act of enabling the banks from recovering its dues in a timely manner without intervention of the courts would be simply defeated. SANCTITY OF PUBLIC AUCTION

83. This Court in Valji Khimji (supra) held that once an auction is confirmed the same can be interfered on very limited grounds as otherwise no auction would ever be complete, with the following relevant observations, being reproduced hereunder: -

> "11. It may be noted that the auction-sale was done after adequate publicity in well-known newspapers. Hence, if any one wanted to make a bid in the auction he should have participated in the said auction and made his bid. Moreover, even after the auction the sale was confirmed by the High Court only on 30-7-2003, and any objection to the sale could have been filed prior to that date. However, in our opinion, entertaining objections after the sale is confirmed should not ordinarily be allowed, except on very limited grounds like fraud, otherwise no auction-sale will ever be complete.
>
> xxx xxx xxx

> 29. ... It may be mentioned that auctions are of two types – (1) where the auction is not subject to subsequent confirmation, and (2) where the auction is subject to subsequent confirmation by some authority after the auction is held.
>
> 30. In the first case mentioned above, i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud."

84. In another decision by this Court in K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple & Ors. reported in (2022) 5 SCC 710, it was held that repeated interferences with public auction would frustrate the sanctity and purpose of holding auctions. The relevant observations made in it are given below: -

> "14. Once the appellant was found to be the highest bidder in a public auction in which 45 persons had participated and thereafter when the sale was confirmed in his favour and even the sale deed was executed, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or auction-sale was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of a highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings and did not make any offer.
>
> xxx xxx xxx
>
> 16. It is also required to be noted that the sale was confirmed in favour of the appellant by the Commissioner, Endowments Department after obtaining the report of the Assistant Commissioner. Therefore, we are of the opinion that in the aforesaid facts and circumstances of the case, the High Court ought not to have ordered re-auction of the land in question after a period of 23 years of confirmation of the sale and execution of the sale deed in favour of the auction-purchaser by observing that the value of the property might have been much more, otherwise, the object and purpose of holding the public auction and the sanctity of the public auction will be frustrated. Unless there is concrete material and it is established that there was any fraud and/or collusion or the land in question was sold at a throwaway price, the sale pursuant to the public auction cannot be set aside at the instance of strangers to the auction proceeding.
>
> 17. The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a

throwaway price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducing/holding the public auction. After the public auction is held and the highest bid is received and the property is sold in a public auction in favour of a highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any offer and/or the offer is made only for the sake of making it and without any serious intent. In the present case, as observed hereinabove, though Shri Jagat Kumar immediately after finalising the auction stated that he is ready and willing to pay a higher price, however, subsequently, he backed out. If the auction-sale pursuant to the public auction is set aside on the basis of such frivolous and irresponsible representations made by such persons then the sanctity of a public auction would be frustrated and the rights of a genuine bidder would be adversely affected." (Emphasis supplied)

85. In a recent decision by this Court in Eva Agro Feeds Private Limited v. Punjab National Bank & Anr. reported in 2023 SCC OnLine SC 1138, the following relevant observations were made, being reproduced as under: -

"84. ... mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third party communication and cancel an auction, unless it is found that fraud or collusion had vitiated the auction. The necessary corollary that follows therefrom is that there can be no absolute or unfettered discretion on the part of the Liquidator to cancel an auction which is otherwise valid. As it is in an administrative framework governed by the rule of law there can be no absolute or unfettered discretion of the Liquidator. Further, upon a thorough analysis of all the provisions concerning the Liquidator it is evident that the Liquidator is vested with a host of duties, functions and powers to oversee the liquidation process in which he is not to act in any adversarial manner while ensuring that the auction process is carried out in accordance with law and to the benefit of all the stakeholders. Merely because the Liquidator has the discretion of carrying out multiple auction it does not necessarily imply that he would abandon or cancel a valid auction fetching a reasonable price and opt for another round of auction process with the expectation of a better price. Tribunal had rightly held that there were no objective materials before the Liquidator to cancel the auction process and to opt for another round of auction." (Emphasis supplied)

86. Thus, what is discernible from above is that, it is the duty of the courts to zealously protect the sanctity of any auction conducted. The courts ought to be loath in interfering with auctions, otherwise it would frustrate the very object and purpose behind auctions and deter public confidence and participation in the same.

87. Any other interpretation of the amended Section 13(8) will lead to a situation where multiple redemption offers would be encouraged by a mischievous borrower, the members of the public would be dissuaded and discouraged from in participating in the auction process and the overall sanctity of the auction process would be frustrated thereby defeating the very purpose of the SARFAESI Act. Thus, it is in the larger public interest to maintain the sanctity of the auction process under the SARFAESI Act.

88. In view of the aforesaid discussion, we hold that as per the amended Section 13(8) of the SARFAESI Act, once the borrower fails to tender the entire amount of dues with all cost & charges to the secured creditor before the publication of auction notice, his right of redemption of mortgage shall stand extinguished / waived on the date of publication of the auction notice in the newspaper in accordance with Rule 8 of the Rules of 2002. EXERCISE OF EXTRAORDINARY JURISDICTION BY THE HIGH COURT UNDER ARTICLE 226 OF THE CONSTITUTION IN SARFAESI MATTERS

89. We shall now consider whether in the factual score of the present matter, any interference was warranted by the High Court in exercise of its discretionary powers under Article 226.

90. The undisputed position that emerges is;

(a) the appellant was the successful auction purchaser with a bid of Rs.

105.05 crore;

(b) On 30.06.2023, the Bank confirmed the sale of the secured asset in the appellant's favour;

(c) On 27.07.2023, the appellant had paid the entirety of the bid amount of Rs. 105.05 Crore to the Bank;

(d) Out of this, a sum of Rs. 63,50,45,000/- was appropriated by the Bank against the Borrowers' dues;

(e) The Bank did not issue the sale certificate in the appellant's favour which it ought to have on 27.07.2023;

(f) After having initially invoked the jurisdiction of the DRT-I, Mumbai and invited an order on an application for redemption, the Borrowers invoked the Writ Jurisdiction of the Bombay High Court under Article 226 apprehending that the DRT may disallow their application;

(g) By the Impugned Judgment dated 17.07.2023, the Bombay High Court allowed the Writ Petition on the basis of a consent granted by the Bank to give the Borrowers, time till 31.08.2023 to repay the outstandings and this has been treated as a redemption.

91. The only justification for entertaining the Writ Petition is contained in paragraphs 11 and 14 respectively of the Impugned Judgment. Whilst the High Court has accepted that normally, such a

Writ Petition would not be maintainable, it proceeded to entertain the same because of the "peculiar facts and circumstances of the present case", "it would be in the interest of all concerned if the consensus reached between the Respondent Bank and the Petitioners is taken cognizance of by us." Thereafter, it went on to say that the "arrangement referred to above is in the interest of all, including the Auction Purchaser". A perusal of paragraph 14 would indicate that since the outcome which the High Court considered to be ideal could be achieved, it did not hold the Writ Petition to be an abuse of process.

92. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act. This Court in Satyawati Tondon (supra) made the following observations:

> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
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> 44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-

imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

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

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

93. In Commissioner of Income Tax & Ors. v. Chhabil Dass Agarwal reported in (2014) 1 SCC 603, this Court in para 15 made the following observations:

> "15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419], Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

94. In Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir & Ors. reported in (2022) 5 SCC 345, it was observed as under:

> "18. Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie

> and/or is maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. [Praga Tools Corpn. v. C.A. Imanual, (1969) 1 SCC 585] and Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.
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> 21. Applying the law laid down by this Court in Mathew K.C. [State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-

2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

95. In Varimadugu OBI Reddy (supra), it was held as under:

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

adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the 2002 Act."

96. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon (supra), it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act.

CONDUCT OF THE BANK

97. The genesis of the entire case lies in the illegitimate conduct of the Bank in placing different concerns above the clear provisions of the law. First, there was failure on the part of the Bank to issue sale certificate in favour of the auction purchaser despite the fact that the entire payment of auction bid was made. Secondly, although the right of redemption clearly stood lapsed under Section 13(8) of the SARFAESI Act and auction having taken place wherein full bid amount was received, yet the Bank proceeded to accept the offer of full payment of the Borrower which is clearly impermissible in law. Once the auction notice is published in accordance with Section 13(8) of the SARFAESI Act, then unless and until the auction is held to be bad and illegal in the facts of the case, the right of redemption of mortgage is not available to the borrower.

98. It is an admitted fact that the entire bid amount was paid by the auction purchaser as observed at Para 10 of the Impugned Order. Thus, the Bank was legally bound to issue the sale certificate as per the language of Rule 9(6) of the Rules of 2002. The said provision employs the phrase "shall". Thus, it is an instance of mandatory provision. There is nothing more in the realm of law that the auction purchaser can do once he has made the entire payment to the Bank. The fact that the Respondent Bank failed to issue the sale certificate raises serious concerns, when there was no stay by any competent forum. Even otherwise the general conduct of the Respondent Bank has not been satisfactory. Once the entire bid price is paid and there is no stay granted by any forum known to law, the Bank is duty bound to issue a valid Sale Certificate and hand over the physical possession of the secured asset to the auction purchaser.

99. It is also pertinent to note that the Bank and its officers took absolutely inconsistent stand. Before the DRT, they opposed the offer for redemption of mortgage as recorded by the High Court at para 11, while before the High Court they made a complete 360 degrees turn and accepted the offer. The lame and weak justification assigned for the same was to bring quietus to the matter. This again shows that the decisions of the Bank are not taken as per the provisions of law but according to the whims and fancies of the Bank officers.

100. Bank is duty bound to follow the provisions of the law as any other litigant. It is to be noted that the Bank i.e., the secured creditor acts under the SARFAESI Act through the authorised officer who is appointed under Section 13(2). Thus, the authorised officer and the Bank cannot act in a manner so as to keep the sword hanging on the neck of the auction purchaser. The law treats everyone

equally and that includes the Bank and its officers. The said enactments were enacted for speedy recovery and for benefitting the public at large and does not give any license to the Bank officers to act de hors the scheme of the law or the binding verdicts.

101. The Bank could be said to have acted contrary to two judgments of this Court: (i) Satyawati Tondon (supra) and (ii) the judgment dated 16.11.2022 in Varimadugu OBI Reddy (supra).

102. This Court in National Spot Exchange Ltd. v. Anil Kohli, Resolution Professional for Dunar Foods Ltd. reported in (2022) 11 SCC 761 after referring to a catena of its other judgements, had held that where the law is clear the consequence thereof must follow. The High Court has no option but to implement the law. The relevant observations made in it are being reproduced below: -

> "15.1. In Mishri Lal [BSNL v. Mishri Lal, (2011) 14 SCC 739 :
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> (2014) 1 SCC (L&S) 387], it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it.

15.2. In Raghunath Rai Bareja [Raghunath Rai Bareja v. Punjab National Bank, (2007) 2 SCC 230] , in paras 30 to 37, this Court observed and held as under : (SCC pp. 242-43) "30. Thus, in Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 SC 1633] (vide para 12) this Court observed: (AIR p. 1637) '12. ... [W]hat is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law.'

31. In Council for Indian School Certificate Examination v. Isha Mittal [(2000) 7 SCC 521] (vide para 4) this Court observed:

> (SCC p. 522) '4. ... Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.'

32. Similarly, in P.M. Latha v. State of Kerala [(2003) 3 SCC 541 : 2003 SCC (L&S) 339] (vide para 13) this Court observed:

> (SCC p. 546) '13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law.'
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> 33. In Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413] (vide para 73) this Court observed: (SCC p. 436) '73. It is now well settled that when there is a conflict between law and equity the former shall prevail.'
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> 34. Similarly, in Nasiruddin v. Sita Ram Agarwal [(2003) 2 SCC 577] (vide para 35) this Court observed: (SCC p. 588) '35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only

because of harsh consequences arising therefrom.'

35. Similarly, in E. Palanisamy v. Palanisamy [(2003) 1 SCC 123] (vide para 5) this Court observed: (SCC p. 127) '5. Equitable considerations have no place where the statute contained express provisions.'

36. In India House v. Kishan N. Lalwani [(2003) 9 SCC 393] (vide para 7) this Court held that: (SCC p. 398) '7. ... The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations.'..."

103. This Court in Sadashiv Prasad Singh (supra), made the following observations relevant to the aforesaid discussion, reproduced below: -

"21. A perusal of the impugned order [Harendar Singh v. State of Bihar, LPA No. 844 2010, order dated 17-5-2010 (Pat)] especially paras 8, 12 and 13 extracted hereinabove reveal that the impugned order came to be passed in order to work out the equities between the parties. The entire deliberation at the hands of the High Court were based on offers and counter-offers, inter se between the Allahabad Bank, on the one hand, and the objector, Harender Singh on the other, whereas the rights of Sadashiv Prasad Sinha, the auction-purchaser, were not at all taken into consideration. As a matter of fact, it is Sadashiv Prasad Sinha who was to be deprived of the property which came to be vested in him as far back as on 28-8-2008. It is nobody's case, that at the time of the auction-purchase, the value of the property purchased by Sadashiv Prasad Sinha was in excess of his bid. In fact, the factual position depicted under para 8 of the impugned judgment [Harendar Singh v. State of Bihar, LPA No. 844 2010, order dated 17-5-2010 (Pat)] reveals that the escalation of prices had taken place thereafter, and the value of the property purchased by Sadashiv Prasad Sinha was presently much higher than the bid amount.

22. Since it was nobody's case that Sadashiv Prasad Sinha, the highest bidder at the auction conducted on 28-8-2008, had purchased the property in question at a price lesser than the then prevailing market price, there was no justification whatsoever to set aside the auction-purchase made by him on account of escalation of prices thereafter. The High Court in ignoring the vested right of the appellant in the property in question, after his auction bid was accepted and confirmed, subjected him to grave injustice by depriving him to property which he had genuinely and legitimately purchased at a public auction. In our considered view, not only did the Division Bench of the High Court in the matter ignore the sound, legal and clear principles laid down by this Court in respect of a third-party auction-purchaser, the High Court also clearly overlooked the equitable rights vested in the auction-purchaser during the pendency of a lis. The High Court also clearly overlooked the equitable rights vested in the auction-

purchaser while disposing of the matter." (Emphasis supplied)

104. The proposition of law as discernible from the aforesaid decisions is that equity cannot supplant the law. Equity has to follow law, if the law is clear and unambiguous.

105. We summarise our final conclusion as under:

(i) The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.

(ii) The confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI.

(iii) In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser.

(iv) The Bank after having confirmed the sale under Rule 9(2) of the Rules of 2002 could not have withhold the sale certificate under Rule 9(6) of the Rules of 2002 and enter into a private arrangement with a borrower.

(v) The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act.

(vi) The two decisions of the Telangana High Court in the case of Concern Readymix (supra) and Amme Srisailam (supra) do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in the case of Pal Alloys (supra) also does not lay down the correction position of law.

(vii) The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act.

106. In the result, both the appeals succeed and are hereby allowed.

107. The impugned judgment and order passed by the High Court is hereby set aside.

108. The respondent Bank shall refund the entire amount deposited by the borrowers i.e., an amount of Rs.129 crore paid by them in lieu of the redemption of mortgage of the secured asset at the earliest. The appellant herein shall pay an additional amount of Rs. 23.95 crore to the Bank within a period of one week from today and subject to such deposit, the Bank shall issue the sale certificate in accordance with Rule 9(6) of the Rules of 2002.

109. The pending applications if any shall stand disposed of.

.....CJI.

(Dr. Dhananjaya Y. Chandrachud) .....J. (J.B. Pardiwala) New Delhi;

Date: September 21, 2023.