

IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 254/2025

Shri Nitin Saxena, S/o Late Dr. N. K. Saxena, R/o M-8, Green Park Extension, New Delhi-110016.

.....Appellant

Versus

1. Kaila Devi Enterprises through its partner Gautam Rai Rally, S/o Gulshan Rai Rally, office at Sadar Bazar, Morar, Gwalior, M.P.
2. Indian Bank through its Manager, office at Jayendra Ganj Branch, Lashkar, Gwalior, M.P.

.....Respondents

Appeal Dy. No. 363/2025

Indian Bank through its Authorized Officer, Gwalior, M.P. 474001.

.....Appellant

Versus

1. M/s Kaila Devi Enterprises through its proprietor Mrs. Pratibha Rally, R/o Sadar Bazar, Morar, Gwalior, M.P. - 474006.
2. Gautam Rai Rally, S/o Shri Gulshan Rai Rally, R/o Shanti Prakashan, Sadar Bazar, Morar, Gwalior, M.P. -474006.
3. Smt. Priya Rally, W/o Shri Gulshan Rai Rally, R/o Sadar Bazar, Morar, Gwalior, M.P. 474006.
4. Mr. Nitin Saxena (Auction Purchaser), S/o Late N. K. Saxena, R/o M-8, Green Park, New Delhi-110016

.....Respondents

Advocates, who appeared in this case:

For the Bank	Shri P. N. Tripathi, Advocate
For the auction purchaser	Shri Nitin Saxena, Auction Purchaser in person
For the Borrower	Shri S. K. Gupta, Advocate

JUDGMENT

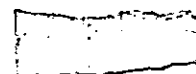
Date of Pronouncement: 28.04.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The above mentioned appeals have been filed under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act")

against the judgment dated 14.02.2025, whereby the Securitization Application No. 223/2024 filed by the borrowers has been allowed, therefore, the same are being decided by this common order.

2. The relevant facts gathered from Appeal Dy. No. 363/2025 are that the respondent no.1 was granted a cash credit facility to the tune of Rs.2.00 crore vide sanction letter dated 23.11.2015, to which the proprietor of respondent no. 1 Ms. Pratibha Raily and respondents no. 2 & 3 stood as guarantors and provided unconditional and continuing guarantee and also executed several loan documents by creating equitable mortgage over the property in question by depositing original title deed with the respondent-Bank. The said loan was also secured by hypothecation on stocks of automobile spare parts vide hypothecation agreement dated 24.11.2015 in favour of the appellant-Bank. Since the borrowers did not adhere to the terms of loan agreement, therefore, the account was classified as NPA on 27.01.2020 and a demand notice dated 09.07.2021 u/s 13(2) of the SARFAESI Act was also issued for a sum of Rs.2.24 crores and odd. Since the borrowers did not pay any heed to the said demand, therefore, the appellant-Bank issued possession notice on 16.06.2022, which was dispatched through registered post and published in the newspapers.
3. It appears that after obtaining the valuation report on 05.08.2023 of the mortgaged property from the approved valuer, the appellant-Bank issued and sent the sale notice dated 20.01.2024 to the borrowers, which was published in newspapers on 24.01.2024 scheduling the auction of the property in question on 28.02.2024. The property was sold in favour of the respondent no. 4.



4. The respondents-borrowers challenged the entire proceedings including the auction sale dated 28.02.2024 before the Tribunal below by filing S.A. No. 223/2024, which has been allowed vide order impugned by quashing entire proceedings of the Bank including the auction sale dated 28.02.2024. Being aggrieved by the said order, the Appeal Dy. No. 363/2025 has been filed by the Bank and Appeal Dy. No. 254/2025 by the Auction Purchaser.
5. Learned counsel for the appellant-Bank submitted that the demand notice dated 09.07.2021 was served upon the borrowers as per the rules, but they failed to challenge the same within the time limit provided under the law. It was further contended that the alleged objection dated 15.07.2021 u/s 13(3-A) of the SARFAESI Act was never received by any officer of the creditor Bank nor the borrowers could specify to whom the same was served.
6. Learned counsel further submitted that the possession notice dated 16.06.2022 was served on the borrowers as per the Act and Rules made thereunder, as the address of the borrowers on the possession notice is correct. It was also contended that the possession notice was also published in two daily newspapers as per the law and it was not challenged till the issuance of the sale notice dated 20.01.2021 and also the challenge to the demand notice dated 09.07.2021 and the possession notice dated 16.06.2022 was highly barred by time, but this aspect of the case was not considered by the Tribunal below.
7. It was lastly contended that the issue framed in the impugned order dated 14.02.2025 is ex-parte and without affording any opportunity to the appellant-Bank to make any averment against it and no issue has been decided by the Tribunal below by any reasoned a

speaking order and there was no illegality as such to set aside the auction sale dated 28.02.2024. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant-bank may be allowed.

8. The Auction Purchaser in-person submitted that on 27.02.2024, the appellant paid the EMD and on 28.02.2024 the appellant participated in the bid and was declared highest bidder and immediately paid 15% of the auction amount i.e. Rs.75,02,500/- and thereafter, the Respondent no. 2 issued the sale confirmation letter dated 04.03.2024 and pursuant to it, on 03.03.2024 paid full amount i.e. Rs.3,00,10,000/- with the concerned Branch in Account No. 818659668.
9. It was further contended that the appellant-Auction Purchaser was shocked and surprised to receive the officials mail dated 04.04.2024 from the Bank that the aforesaid case is pending before this Tribunal. It was further contended that at the time of e-auction, the Manager of the Bank, Jayendra Ganj Branch, Gwalior said that there is no case pending and title is crystal clear and all proper formalities are completed. It is also submitted that the Tribunal below vide ex-parte stay order dated 27.03.2024 directed not to proceed with the sale registration in favour of highest bidder/applicant and also directed the respondent no. 1 to pay the outstanding dues within 2 months in four equally instalments of Rs.5.00 lacs each, but this amount was not paid in time by the respondent no. 1 and same can be verified from the bank record.
10. The Auction Purchaser in-person further submitted that the entire bid amount was paid by the appellant to the respondent no. 2-Bank and as such the Bank was legally

bound to issue the sale certificate as per the Rule 9(6) of the Rules, 2002, but the respondent no. 2-Bank failed to issue the sale certificate, whereas there was no stay from any competent forum. It was further contended that once the entire bid price was paid and there was no stay of any court of law, the respondent no. 2-Bank was duty bound to issue a valid sale certificate and hand over the physical possession of the secured asset to the Auction Purchaser. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed and the Bank may be directed to issue the sale certificate and hand over the physical possession of the property in question.

11. Learned counsel for the respondents-borrower submitted that the appeal filed by the Bank is not tenable in the eye of law because the order dated 14.02.2025 passed by the Tribunal below is correct, as it was passed after looking at all the facts and circumstances of the case and as such, the Tribunal below has rightly quashed the SARFAESI proceedings against the respondents/borrowers holding that the same has been conducted illegally, without following the procedure as prescribed in the Act and Rules made thereunder.
12. It was further contended that the Bank challenged the order impugned by filing the present appeal without having any ground whatsoever, which is non-est and non tenable in the eye of law.
13. Learned counsel for the respondent-borrower submitted that the appellant-Bank has conducted the auction proceedings without deciding and bye-passing the representation and objection of the respondent-borrower u/s 13(3-A) of the SARFAESI Act, 2002.



14. It was further contended that representation/objection u/s 13(3-A) of the SARFAESI Act, 2002 dated 15.07.2021 was given to the appellant-Bank by the respondent-borrower, Mr. Gautam Rai Rally through hand delivery at around 11 to 11.30 AM and the said objection was received by the official of the appellant-Bank. It was further submitted that Seal of the appellant-Bank has also been put on the copy of objection filed by the respondent-borrower and the same has been duly signed.
15. It was further contended that when respondent-borrower visited the appellant-Bank to submit the representation/objection, he was accompanied by his four staff members namely Manvendra Parihar, Jaswant Sikharwar, Shyam Sundar Tiwari and Vikas Batham and Affidavit of the said persons was submitted before the Tribunal below stating therein that it can be verified from the CCTV camera's footage of the Appellant-Bank that the respondent-borrower had visited the Bank along with his four staff members on 15.07.2021 at around 11 to 11.30 AM.
16. It was further contended that appellant-Bank had received the said objection by putting seal of the Bank on the copy of the said representation and also acknowledged the same and also the Bank has never raised any objection that the appellant has not received the objection.
17. Learned counsel further submitted that appellant-Bank in its reply to the S.A. submitted that notice u/s 13(4) of the SARFAESI Act was issued to the respondent-borrower on 11.05.2022, which was delivered on 17.05.2022. It was further contended that the said notice was also published in one Hindi Newspaper namely Nav Bharat and in one English Newspaper namely Times of India on

- 19.06.2022, which the Bank itself has admitted that they have published the notice in newspaper after the delay of around 35 days.
18. Learned counsel further submitted that the possession notice u/s 13(4) of the SARFAESI Act was never received and a forged copy of the said notice was created by the appellant-Bank, therefore, the same was published in the newspaper after a delay of around 35 days and also the said notice was not affixed on the outer door of the property in question.
 19. It was further submitted that the appellant-Bank did not obtain the valuation of the property in question before effecting the sale of the immovable property, which was mandatory. It was further contended that the SARFAESI proceedings conducted by the appellant-Bank are not as per law. It was, therefore, prayed that the order impugned may be affirmed and the appeals filed by appellant-Bank and the Auction Purchaser may be dismissed with heavy costs.
 20. I have considered the rival contentions of the learned counsels for the parties and perused the material available on record.
 21. The first controversy involved in the present case is, as to whether the objection under section 13(3A) of the SARFAESI Act was received by the official of the appellant-Bank or not?
 22. Admittedly, after declaration of the loan account as NPA, a demand notice dated 09.07.2021 under section 13(2) of the SARFAESI Act was issued by the appellant-Bank, which was received by the borrower. Against the said demand notice, the borrower had submitted a

representation u/s 13(3-A) of the SARFAESI Act before the appellant-Bank vide letter dated 15.07.2021. Copies of the demand notice and representation u/s 13(3-A) of the SARFAESI Act has been placed from page no. 70 to 97 of the paper book. In this regard, the contention of the appellant-Bank is that the said representation was never received by any official of the appellant-Bank, which is not tenable for the following reasons:-

- (i) Firstly, the same is not supported by any evidence/document.
 - (ii) Secondly, the copy of representation and objection u/s 13(3-A) of the SARFAESI Act dated 15.07.2021 itself contains the seal of the Bank and signature of the recipient, which appears to be sufficient to infer that the said representation was received by the official of the Bank.
 - (iii) Thirdly, the borrower had delivered the said representation by hand to the official of the Bank, who had acknowledged the same by putting his signature and seal of the Bank.
 - (iv) Fourthly, the borrower had delivered the said representation to the official of the Bank in the presence of his four staff members, who have also given their affidavit stating therein that the said representation was given to the official of the Bank before them, which could have been verified by the Bank from its CCTV camera's footage, but the Bank did not do so for the reasons best known to the Bank.
23. From the above facts, it is clear that the representation dated 15.07.2021 u/s 13(3-A) of the SARFAESI Act filed by the borrower was received by the official of the Bank,

but in my view, the same could not be produced by the recipient due to inadvertent mistake before the competent authority of the Bank for its disposal, which resulted violation of Section 13(3-A) of the SARFAESI Act. Thus the Tribunal below has rightly held that the appellant-Bank has failed to comply with the provision of Section 13(3-A) of the SARFAESI Act, which is mandatory in nature and quashed demand notice.

24. So far as the possession notice is concerned, the first possession notice was issued on 11.05.2022, which was delivered to the borrowers on 17.05.2022, but due to some defect, the appellant-Bank issued fresh possession notice on 16.06.2022, which was sent to the borrowers through registered post and the same was published in the newspapers. Copy of the said possession notice and its publications are at page no. 169 to 171 of the paper book, but there is nothing on record, which may show the delivery of the said possession notice and its affixation at the conspicuous place of the property in question, which clearly violates Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. As such the possession notice has rightly been quashed by the Tribunal below.
25. It is to be seen that the appellant-Bank issued sale notice on 20.01.2024, which was sent through registered post to the borrowers and the same was published in the newspapers on 24.01.2024 scheduling the auction of the property in question on 28.02.2024 and the property was sold in favour of the Auction Purchaser, who is appellant in Appeal Dy. No. 254/2025, but without getting the property valued from the approved valuer. While going through the record of the case, there is nothing on record, which may show that the appellant-Bank has ever got the property valued from its approved valuer prior to

the auction sale dated 28.02.2024. In this regard, Rule 8(5) of the said Rules says that before effecting sale of the immovable property referred to in sub-rule (1) of Rule 9, the authorized 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. From this, it is clear that before effecting the sale, the valuation of the property is must for the purpose of fixing the reserve price. Thus the reserve price fixed by the Bank was without any basis, which affects the auction sale dated 28.02.2024. Hence the Tribunal below has rightly quashed the auction sale dated 28.02.2024.

26. In view of the discussions as held above, there is no infirmity or irregularity in the order impugned and the appeals filed by the appellant-Bank and the auction purchaser are set aside with no order as to costs.
27. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.


CHAIRPERSON

VN GIRI,PS