

IN THE DEBT RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 21st Day of April, 2026

**PRESENT: HON'BLE MR. JUSTICE G. Chandrasekharan
CHAIRPERSON**

RA(SA) 25/2020

&

MA(SA) 10/2020

(Arising out of TSA 10/2016 and IA 179/2016 on the file DRT-II, Ernakulam)

I. RA(SA) 25/2020

Between

1. R. Dhanalakshmi, Proprietrix,
M/s Seemati Textiles,
Represented by POA Holder
R. Ananth Kumar, Dhanams,
Curzon Road, Kollam.

Now, at House No.49/762,
Arayacham Veedu, Kottamukku,
Cutcherry P.O., Kollam 691 013.

2. Ramachandra Reddiar (Died)
Dhanams, Curzon Road,
Kollam.

3. R. Veeresh Kumar, Dhanams,
Curzon Road, Kollam

Now, at House No.49/762,
Arayacham Veedu, Kottamukku,
Cutcherry P.O., Kollam 691 013.

4. R. Ananthakumar, Dhanams,
Curzon Road, Kollam.

Now, at House No.49/762,
Arayacham Veedu, Kottamukku,
Cutcherry P.O., Kollam 691 013.

.....Appellants

And

1. Senior Manager, Union Bank of India,
Kollam Branch, Fatima Building,
P.B. No.182, Beach Road,
Kollam 691 001.
2. The Authorised Officer,
Union Bank of India,
Regional Office, Union bank Bhawan,
Post Box No.307, M.G. Road Statue,
Thiruvananthapuram 695 001.
3. Dr. Mumthas, Chandralayam,
M.C.R.A.-77, Nellimukku, Kollam-12,
Represented by POA Holder,
M. Shahid Ahmed, Advocate,
Chandralayam, M.C.R.A. – 77, Kollam -12.

Also at: House at No.99, Curzon Nagar,
Curzon Road, Kollam 13.

4. Mr. Shahid Ahmed, Chandralayam,
Nellimukku, Kollam 12.

Also at: House at No.99, Curzon Nagar,
Curzon Road, Kollam 13.

5. Rajammal, Chandralayam,
Nellimukku, Kollam 12

...Respondents

Counsel for Appellants : Senior Counsel Shri P.B. Krishnan for
Shri V.K. Peer Mohamed Khan
Counsel for R1 and R2 : Shri A.S.P. Kurup & Co.
Counsel for R3 to R5 : Senior Counsel Shri Anil Xaviour for
M/s Prem Rajakumari & Co.

II. MA (SA) 10/2020

Between

1. R. Dhanalakshmi, Proprietrix,
M/s Seemati Textiles,
Represented by POA Holder
R. Ananth Kumar, Dhanams,
Curzon Road, Kollam.

Now, at House No.49/762,
Arayacham Veedu, Kottamukku,
Cutcherry P.O., Kollam 691 013.

2. Ramachandra Reddiar (Died)
Dhanams, Curzon Road,
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Curzon Road, Kollam

Now, at House No.49/762,
Arayacham Veedu, Kottamukku,
Cutcherry P.O., Kollam 691 013.

4. R. Ananthakumar, Dhanams,
Curzon Road, Kollam.

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...Respondents

Counsel for Appellants : Senior Counsel Shri P.B. Krishnan for
Shri V.K. Peer Mohamed Khan
Counsel for R1 and R2 : Shri A.S.P. Kurup & Co.
Counsel for R3 to R5 : Senior Counsel Shri Anil Xaviour for
M/s Prem Rajakumari & Co.

COMMON ORDER

1. This case has a checkered history of travelling 20 years from 2006 till now through various Forums. Parties, mainly, appellants had approached Hon'ble High Court of Kerala four times and this Tribunal three times before being disposed today by this Tribunal. You may be sure that this is not over yet. The details are, as under:

I. Before the Hon'ble High Court of Kerala.

a) WP No. /2006; WA No.1802/2006

b) WP No.18612/2007

c) OP(DRT) No.120/2016 against the order passed in SA No.66/2006

(TSA No.10/2006) on 2.12.2016 by DRT-II, Ernakulam.

d) OP(DRT) No.122/2018 against the order passed in TSA No.10/2016 on 29.9.2018 by DRT-II, Ernakulam.

II. Before, DRAT, Chennai

a) MA (SA) No.197/2006 against the order passed in IA 1659/2006

b) IN (SA) 597/2007 against the order passed in IA No.1791/2006

c) RA(SA) 25/2020 and MA (SA) 10/2020, present appeals.

2. RA(SA) 25/2020 is filed against the dismissal of TSA No.10/2016 (SA No.66/2006) and MA(SA) No.10/2020 is filed against the order allowing IA No.179/2016 in TSA No.10/2016 by Learned Presiding Officer, DRT-II, Ernakulam on 29.9.2018, under Section 18 of the SARFAESI Act.

3. TSA No.10/2016 (SA No.66/2006) was filed to set aside Annexures P1, P4, P6 and P7 and Annexures I, IV VI and VII; to set aside the entire proceedings in terms of Annexures I, IV, VI and VII and restore things, as it stood prior to the above proceedings; to restrain respondents from proceeding ahead with Annexures I, IV, VI and VII. IA No.179/2016 was filed by the auction

purchasers, viz., respondents 3 to 5 to hear and decide the maintainability of the said SARFAESI Application.

4. Annexure-I is the demand notice dated 31.5.2006. Annexure-IV is the notice dated 14.8.2006 to take possession on 23.8.2006. Annexure – VI is the publication of possession notice in the newspaper Malayala Manorama dated 1.9.2006 and Annexure- VII is the publication of tender notice in the newspaper Malayala Manorama dated 3.9.2006. When the aforesaid SARFAESI application was pending, auction purchasers, viz., respondents 3 to 5 filed IA No.179/2016 to hear and decide the maintainability of the SARFAESI Application. Learned Presiding Officer proceeded to hear both the matters and passed orders on the same date i.e., 29.9.2018. By the said order, IA No.179/2016 was allowed and TSA No.10/2016 was dismissed. Aggrieved against these orders, aforesaid appeals are filed.

5. From the records produced, it can be gathered that first appellant availed credit facilities from the respondent bank viz., Union Bank of India. Appellants 2 to 4 are the guarantors. Second appellant created equitable mortgage in respect of 16.20 Ares in RS No.927/10 and 924/1 of Killikolloor Village and 71.25 cents of land along with residential building having an area of more than

10,000 sq.ft. located at RS No.48/2 of Kollam West village with the first respondent bank. Appellants 3 and 4 created equitable mortgage in respect of 1.40 Ares of land and building in RS No. 113 and 121 of Kollam East village. These mortgages had been executed for the due repayment of loan availed by the first appellant.

6. Appellants had taken grounds, challenging the possession notice and other SARFAESI measures, such as, sufficient opportunities were not given to the appellants to repay the loan due, violation of mandatory provisions of SARFAESI Act, claim of excessive loan amount, under-valuation and sale of secured assets which are high value properties, to the whims and fancies of the bank for a low price. IA 179/2016 was filed by auction purchasers, primarily, on the ground that SA was filed only to challenge the possession notice and the tender notice. Auction was held on 5.10.2006, possession was taken on 31.5.2007. There was no prayer for challenging the sale. After the sale, IA No.1791/2006 was filed to set aside the sale. That application was dismissed by the Learned Presiding Officer on 3.4.2007 stating that the challenge to the sale will be decided in the SA. Thereafter, appellants did not prefer to file a fresh SA, challenging the sale or issuance of sale certificate. Therefore, the SA as filed, is not maintainable and prayed for deciding the

maintainability of the SA. As already stated, this IA was allowed and the TSA was dismissed.

7. Learned Senior Counsel Shri P.B. Krishnan for appellants submitted that,
- a) Section 13(2) Notice ought to have been issued to Smt. Dhanalakshmi, who had availed credit facilities and term loan, referring to three items of immovable properties with full description and one movable item. Annexure-I refers to only one item of property. Guarantors who own three items of properties and created mortgage were not given a valid notice. No notice was given to V. Ramachandra Reddiar and Ananthakumar. Notice intended for Veeresh Kumar was issued to R. Veeriah Kumar.
 - b) Possession Notice was issued to the principal borrower and to all the guarantors. Notice dated 14.8.2006 was dispatched on 23.8.2006 and delivered on 25.8.2006. The delay was deliberate and the possession was to be taken between 10.00 am and 5.00 pm on 23.8.2006.
 - c) Possession notice was issued in respect of four items of property, which were not included in Section 13(2) Notice.

- d) Possession Notice was not issued as per the format described under Section 13(4) read with Rule 8(1) and Rule 8(2) of Security Interest (Enforcement) Rules, 2002 and Appendix IV of the Rules. Boundaries of the properties are not described in the notice.

- e) Possession notice as per Appendix-IV was not served and delivered to the borrowers and guarantors. Therefore, possession notice issued would not satisfy the requirement of serving notice to the borrowers under Rule 8(1) of SIE Rules.

- f) Possession notice published in newspapers on 1.9.2006 is materially different from the one affixed on the property.

- g) Of the 3 modes of service of possession notice, only 2 modes were attempted. Even they were defective and not in sufficient compliance with SIE rules. Failure to serve possession notice by registered post or in person is fatal.

- h) Property is shown as abutting the National High Way on the southern side and lying as rectangular plot. It was valued at Rs.1.80 crores in the year

1999 at the time of sanctioning the loan. Valuation of the land was about Rs.1.18 crores and the building value was about Rs.57.60 lakhs.

- i) Land value was fixed at Rs.78.37 lakhs in 2006 and value of residential building of 1020 sq.meters (More than 10,000 sq.ft) was valued at Rs.37.97 lakhs. Thus, the same property was valued at Rs.1.16 crores in the year 2006. The property was deliberately valued low. In the absence of proper valuation, upset price fixed in the tender notice was very low.
- j) Tender notice dated 29.8.2006 preceded the compliance of 3 modes of serving possession notice, as per Rule 8(6) and 8(7) of SIE Rules. Tender notice was issued on 29.8.2006, even before making publication of possession notice on 1.9.2006. Fabricated record is produced to suggest that service of tender notice on borrowers and guarantors by personal service. This claim is refuted by production of medical records of Appollo Clinic, Bangalore.
- k) Tender Notice was dated 29.8.2006 and the last date for submission of tender was 20.9.2006, that means, less than 30 days notice was given for submission of the tender. Name of the borrower is not stated in the

tender notice. All the three properties were sought to be sold by fixing a meager upset price. Boundaries of the property are not described. Residential building measuring more than 10,000 sq.ft. is not properly described.

l) Tender Notice provides for negotiations, a concept alien to sale by tender provided in the Rules. Time for payment of balance amount was fixed as 30 days instead of 15 days specified under Rule 9(4) of SIE rules. There is no service of notice by 3 modes, viz., personal service, affixture and publication.

m) Sale was confirmed on 5.10.2006 and the balance 75% was paid only on 31.3.2007, which came to the notice of the borrowers/guarantors only when OA 56/2008 was filed on 30.1.2008. Wrong representation was made with regard to payment of balance sale price and that resulted in non-extending the interim order granted in favour of the appellants by the learned Presiding Officer. Since the balance sale consideration was not paid within 15 days of confirmation of sale, sale held is void. There was no extension of time in writing among parties for payment of balance sale consideration. Agreement for extension of time has to be entered into

between the parties i.e., borrowers, bank and the auction purchaser.

However, there was no such agreement in writing for extension of time for paying the balance sale consideration.

- n) Sale was conducted and confirmed on 5.10.2006 in favour of Shahid Ahmed. As per paragraph 2 of the written statement, sale was confirmed in favour of Shahid Ahmed, Smt. B.S. Rajammal and Dr. Mumthaz Yusaf and the tender was submitted by Shahid Ahmed. Sale certificate refers only two persons, but confirmation of sale refers to three persons.
- o) Tender Notice was issued even before the publication of possession notice. It is a clear irregularity, which goes into the root of the matter and vitiates the entire proceedings. Sale Certificate was issued in favour of Smt.B.S.Rajammal and Shahid Ahmed but the property was partitioned into two schedule items. Item No.1 was assigned to Smt. Rajammal and Item No.2 to Shahid Ahmed, describing them, as purchaser of each item.
- p) It is contradictory to the procedure for sale of immovable property. Bank owes judicial duty to secure maximum price in its capacity as Trustee.

However, without doing that, bank had violated all the mandatory provisions of SARFAESI Act by

- i) not properly describing the properties,
 - ii) no proper service of possession notice and tender notice.
 - iii) Issuing the tender notice prior to publication of possession notice,
 - iv) without giving sufficient time to submit tenders, giving extension of time for payment of balance sale consideration against rules,
 - v) partitioning the property in favour of bidders and issuing two different sale certificates to the properties sold as a single unit for a lower price.
- q) Tender notice was issued from the Registered Office of Union Bank of India, Thiruvananthapuram, Possession Notice was issued from the Central Office of Union Bank of India at Kollam and the publication of possession notice was issued from the Regional office at Trivandrum, which is violative of Rule 8(1) of SIE rules.
8. Canvassing on all these grounds, learned senior counsel for the appellants prayed for setting aside the orders of the learned presiding officer and allow both appeals. Learned Senior Counsel for appellants pressed into service the following decisions in support of his submissions.

1. Decision of Hon'ble Supreme Court of India, in re, **Mardia Chemicals Vs. Union of India, reported in AIR 2004 SC 2371** is relied for the proposition that, it is necessary to communicate the reasons for not accepting the objections raised by the borrower in reply to notice under [Section 13\(2\)](#) of the Act and that the authorized officer has to obtain the valuation of immovable property and fix the reserved price. Only thereafter, a notice of 30 days before sale is to be served on the borrower.
2. Decision of Hon'ble Supreme Court of India, in re, **Mathew Varghese Vs. M. Amritha Kumar and others reported in 2014 (5) SCC 610** relied for the proposition that when the secured creditor is given a free hand to resort to the sale of the property without approaching the Court or the Tribunal, mandatory procedures under the SARFAESI Act and the rules made thereunder have to be complied. Thirty days notice should be given prior to the date of sale to the borrower.
3. Decision of the Hon'ble Supreme Court of India, in re, **G.M. Sri Siddeshwara Co-operative Bank Ltd. and another Vs. Ikbal and others reported in 2013 (10) SCC 83** is relied for the proposition that compliance of Rule 9(1) and 9(3) of SIE Rules, 2002 is mandatory with regard to sale and payment of 25% of sale price. As regards, payment of balance purchase price, the said amount has to be paid by the purchaser on or before 15th day of confirmation of sale or such extended period, as may be agreed upon in writing between the parties. Rule 9(4) does not describe any particular form of written agreement except the fact that it must be in writing. The term, 'written agreement' means a mutual understanding or an arrangement about relative rights and duties by the parties. Nothing more than a manifestation of mutual assent in writing. The

word 'parties' for the purposes of Rule 9(4) means the secured creditor, borrower and the auction purchaser.

4. Decision of Hon'ble Supreme Court of India, in re, **Ram Kishun and other Vs. State of U.P. and others reported in 2012 (11) SCC 511** is relied for the proposition that, in the matter of sale of property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has the opportunity of making an offer. Essential ingredients of such sale require correct valuation report and fixing reserve price. In case, proper valuation is not done and reserve price fixed on the basis of inaccurate valuation report, the intending buyers may be come forward, treating the property as not worth purchase by them. Moneyed person or a big businessman may not like to involve in small sales/deals. Authority concerned must exercise application of mind in approving/accepting the report of the approved valuer and fixing the reserve price. Failure to do so would result in substantial injury to the borrowers/guarantors and that would ultimately amounts to material irregularity and vitiate subsequent proceedings. Authorities are duty bound to decide as to whether sale of a part of the property would meet the outstanding due. Recovery of public dues must be made strictly in accordance with the procedure prescribed by law. Liability of the surety is co-extensive with that of the principal debtor. In case there are more than one surety, liability is to be divided equally among the sureties for unpaid amount of the loan. Once sale has been confirmed, it cannot be set aside unless fundamental procedural error had occurred or sale certificate had been obtained by misrepresentation or fraud.

5. Decision of Hon'ble High Court of Madras, in re, **M. Rajendran Vs. Authorised officer, Corporation Bank and others**, is relied for the proposition that non compliance of mandatory Rule 8(7) of SIE Rules, would render the sale invalid. Rule 8(7) deals with affixture of sale notice on the conspicuous part of the immovable property. If that is not done, sale would be rendered invalid and is liable to be set aside.

6. Decision of Hon'ble High Court of Kerala in re, **Unnikrishnan K.T. Vs. Authorised Officer, UCO Bank, Ernakulam and others reported in 2018 (1) KLT 990** is relied for the proposition that, secured asset cannot be disposed of in a casual or light hearted manner. Secured creditor is a trustee and he cannot deal with the property in any manner it likes. Wide powers have been conferred on banks and financial institutions under the Act to realize the amounts due to them, including taking possession and sale of the property. Every wide power, the exercise of which, has far-reaching repercussion, has inherent limitation on it also. Such powers can be exercised only to effectuate the purposes of the Statutes concerned. The responsibility is far graver in legislations enacted for general benefit and common good. Test of reasonableness is also strict in such cases. The exercise of such powers have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable is arbitrary. There is power to take possession of the property and transfer the same by sale and the Authority has to act cautiously, honestly, fairly and reasonably. Lack of reasonableness or fairness at either of the two stages renders the take over and transfer invalid. Authority should justify the action assailed o the touchstone of justness, fairness, reasonableness and as a reasonable prudent owner. Right to property is a constitutional right protected under Article 300A of the Constitution. No person shall be deprived of his property except by authority of law. Secured

Creditor is duty bound to ensure maximum best price is received from the secured asset and that no one is taking advantage of vulnerable position in which borrower is placed on account of the proceedings against him.

7. Decision of Hon'ble Kerala High Court **in re, Veena Prabhakumar and another Vs. Dhanlaxmi Bank, Kollam Branch and another reported in 2019 (3) KHC 268** is pressed into service for the proposition that amendment in SARFAESI Application is permissible under law for impugning the subsequent or consequential actions/measures by the bank. Filing of a fresh Securitization Application, challenging the second sale notice or the further action taken by the bank under Section 14 of the SARFAESI Act, would serve only to proliferate litigation and unnecessarily add to docket numbers. While discerning an amendment application, the fundamental reason to be found out is whether the application for amendment alters the cause of action or whether it is supplemental. In the former case, the Courts should be much more circumspect in allowing the proposed amendment. While in the later scenario, Courts will generally be relaxed and liberal in considering the amendment application because any pleadings or circumstances, that are intended to supplement the original pleadings or cause of action, should be welcomed, since that will surely help in determining the real issue between the parties.
8. Decision of the Hon'ble Supreme Court of India in re, **Prithi Pal Singh and another Vs. Amrik Singh and others reported in 2013 KHC 3581** is relied for the proposition that if the amendment application is allowed without any rider or condition, it is reasonable to presume that amendment would relate back to the date of filing of suit.

9. Decision of **Hanumanthappa L.C. Vs. H.B. Shivakumar reported in 2015 KHC 4569** is relied for the proposition that, doctrine of relation back will not be applicable if amendment application was allowed expressly subject to limitation.
10. Decision of DRAT, Chennai in re, **Karnataka Bank Ltd. Vs. Mahadeshwara Bricks and others reported in (2025) ibclaw.in.207-DRAT** is relied for the proposition that valuation of the property taken at the time of granting loan under secured property has to be taken as a crucial factor, while obtaining valuation at the time of bringing the property for sale. .
11. Decision of Hon'ble Punjab and Haryana High Court, in re, **Bhupinder Sing Vs. State Bank of Patiala reported in 2008 (2) D.R.T.C.701 (P&H)** is pressed into service for the proposition that when there was no reason given for difference in the valuation compared to the earlier report and the subsequent report and when the house in question had been sold less than the value given at the time of obtaining loan, sale is liable to be declared as illegal and void.
12. Decision of Hon'ble High Court of Madras, in re, **K. Raamaselvam Vs. Indian Overseas Bank reported in AIR 2010 Madras 93** is relied for the proposition that when the manner of exercising power is laid down, such power is to be exercised in the manner prescribed or not at all as observed in the decision of the Hon'ble Supreme Court in Indian Bank Association s. Dev Kala Consultancy Services.
13. Decision of Hon'ble Himachal Pradesh High Court, in re, **Parwati Devi and another Vs. State Bank of Patiala and others reported in 2018 KHC 4174** is relied for the proposition that when the property sold consists of land and

building, when there was no mention about four-storied structure, sale is liable to be set aside. No doubt, public money should be recovered and such recovery should be effected expeditiously, but it does not mean that the financial institution can be permitted to act like property dealers and dispose of the secured assets in any unreasonable or arbitrary manner.

14. Decision of Hon'ble High Court of Karnataka in re, **Krishnegowda K.R. and another Vs. Chief Manager/Authorised Officer, Kotak Mahindra Bank** is relied for the proposition that compliance of Rule 8(1) and 8(2) of SIE Rules, 2002 is mandatory and any violation or infraction by the bank can be called in question before DRT and DRT has power to restore possession.

15. Decision of Hon'ble Supreme Court of India, in re, **Om Sakthi Sekar Vs. V. Sukumar and others in Civil Appeal No.3362/2026** is relied for the proposition that "there can be no quarrel with the settled proposition that the rights of a bona fide auction purchaser deserve due protection and that confirmed court sale should not be ordinarily be inferred with. It is equally well established that such protection is not absolute. Where credible issues are raised regarding the adequacy of valuation or the fairness of the process leading to the fixation of the reserve price, the supervisory jurisdiction of the Court may be invoked to ensure that the recovery proceedings have been conducted in a manner that secures the best possible value of the property. The objective of recovery proceedings is not merely to complete the sale but to realize the maximum value of the secured asset as to balance the interests of the creditors and the borrower".

16. Decision of the Hon'ble High Court of Madras in **Writ Petition No.32958 and 32016/2022** is relied for the proposition that bank cannot remain silent to

confirm the auction and get the balance sale consideration with delay as it is violative of the decision of Hon'ble Supreme Court of India in re, Mathew Varghese Vs. M. Amritha Kumar and others reported in (2014) 5 SCC 610. It is also observed that balance 75% of the sale consideration was not realized and credit into the loan account within the prescribed period of time limit and there was a huge delay of 15 months, while interest is mulcted in the borrowers account. Ultimately, the sale held in favour of the auction purchaser was declared as invalid. When this decision is taken on appeal before the Hon'ble Supreme Court of India in SLP (C) Nos.8850 and 8851 of 2023, Hon'ble Supreme Court of India, in complete agreement with the Hon'ble High Court dismissed the said SLPs.

9. Learned Counsel for respondents 1 and 2 submitted that,

a) SA was filed raising grounds challenging the possession notice and tender notice. It is not the case of the appellants that possession notice and tender notice had not been served on them. They had produced the possession notice and tender notice before the DRT. Loan transaction and non payment of loan were admitted by the appellants. There is no violation in the conduct of sale. In support of this submission Learned Counsel relied on the following decisions.

Decision in **Rajendran Vs M/s KPK Oils and Proteins India Pvt. Ltd.** reported in 2025 KHC 6814 is produced for the proposition that when the borrower is given notice through any mode of service with sufficient time, he cannot

complain that he was not given requisite time period in another mode of service.

Decision in Sanjay Sharma Vs. Kotak Mahindra Bank Ltd. reported in 2025 KHC 7019 is produced for the proposition that, only when fraud and collusion are established, a concluded sale can be set aside not in other cases of minor violations.

- b) Along with filing of SA, appellants had also parallelly filed WPC No.24839/2006 before Hon'ble High Court of Kerala, seeking payment of amounts due to the bank in instalments. Hon'ble High Court of Kerala on 29.9.2006 granted instalments for payment of the dues to the appellants. Condition was that payment of Rs.10.00 lakhs on or before 30.9.2006, prior to the date of sale and that was not complied with. Under the said circumstances, Writ Appeal filed by the appellants was dismissed.
- c) Initially, DRT, Ernakulam did not grant any interim order. On 10.10.2006, DRT, Ernakulam passed an order directing issuance of sale certificate to be kept in abeyance. Bank entered appearance and filed written statement stating that after the conduct of sale, challenge to

tender notice would no longer survive, therefore, SA was not maintainable.

d) Grounds of challenge and relief sought to set aside the tender notice is totally different from the grounds of challenge and the relief to set aside the sale. In support of this submission Learned Counsel relied on the following decisions.

1. To support his submission that cause of auction for challenging the sale notice and sale are totally different, decision of Hon'ble Supreme Court of India, in re, **Oasis Dealcom Pvt. Ltd.(M/s) Vs. Khazana Dealcom Pvt. Ltd. and others** reported in 2016 KHC 6746 is relied.

In this decision, it is held in paragraph 24, as follows;

“A submission had been made on behalf of the appellant that the second application filed under Section 17 of the Act was not maintainable and therefore , it ought not to have been entertained by the Tribunal. We are not in agreement with the said submission for the reason that when another application was filed under Section 17(1) of the Act, the cause of action was different. At an earlier point of time, the issuance of notice as well as notice for sale of the flat had been challenged, whereas the subsequent application had been filed after the auction had been held. The cause of action in respect of both the applications was not the same and therefore, in our opinion, the second application for a different cause of action was maintainable”

Thus, this decision makes it clear that cause of auction for challenging the sale notice and sale are different and second application for different cause of auction is maintainable.

2. For the same proposition, Decision of Hon'ble Hyderabad High Court in re, **Sudha Lakshmi p. Vs. Bank of India and another** reported in 2018 KHC 4389 is relied.

3. In support of the proposition that there is no provision under the SARFAESI Act authorizing DRT to condone the delay caused beyond 45 days under Section 17 of the SARFAESI Act, decision of Hon'ble Kerala High Court , in re, **Authorised Officer, Indian Bank Circle Office, Vs. K.J. George and others** reported in 2020 KHC 5600 is produced. It is held on paragraph 11 as follows:

“11. The question which arises for consideration in the instant Original Petition is whether the Debts Recovery Tribunal has power to condone delay in filing an application under Section 17 of the SARFAESI Act. Section 13 of the SARFAESI Act deals with enforcement of security interest by issuing demand notice to the borrower in the event of default in repayment of the secured debt. It also provides that if the borrower fails to discharge his liabilities in full within sixty days from the date of such notice of demand, the secured creditor can take recourse to O.P (DRT) No.73 of 2018 18 the measures prescribed in sub section (4) thereof for recovery of his secured debt. Any person aggrieved by any of the measures taken by the secured creditor by resorting to the provisions of sub section (4) of Section 13 can approach the Debts Recovery Tribunal for redressal of his grievance”

4. Decision of Hon'ble High Court of Madras, in re, **Industrial Connections Chennai (M/s), Vs. M/s Encore Asset Reconstruction Company Pvt. Ltd.**

Gurugram reported in 2024 KHC 2385 is produced for the proposition that grounds for challenging the sale notice and sale are different and therefore, subsequent application filed for challenging the same is maintainable. Reliance is placed on the decision of the Apex Court in **Oasis Dealcom Pvt. Ltd. (M/s) Vs. Khazana Dealcom Pvt. Ltd.** and others reported in 201610 SCC 214.

5. Decision of Hon'ble Supreme Court of India in re, **Bank of Baroda and another Vs. M/s Parasaadilal Tursiram Sheetgraph Pvt. Ltd and others** reported in 2022KHC 6792 is produced for the proposition that the reason for providing time limit of 45 days for filing the application under Section 17 of the SARFAESI Act has to be inferred from the purpose and object of enactment.
 6. Decision of Hon'ble Karnataka High Court in re, **Kailasam P. Vs. Karnataka Bank Ltd.** reported in 2025 KHC 3649 is produced for the proposition that DRT is not a conventional Civil court having inherent power to condone delay under Section 5 of the Limitation Act. Therefore, Section 5 of the Limitation Act is not applicable to the provisions of the SARFAESI Act.
- e) In the course of proceedings before the Hon'ble High Court of Kerala in WA No.1250/2007, Hon'ble High Court of Kerala issued direction issuance of sale certificate and handing over of possession of the property to the auction purchasers. Handing over possession and issuance of sale certificate had been done in compliance of the direction

of the Hon'ble High Court of Kerala. Therefore, there is no further scope for adjudication in the SARFAESI Application.

- f) Instead of filing an application for amendment challenging the sale proceedings, seeking to set aside the sale, appellants filed IA 1791/2006 on 30.10.2006 to set aside the sale. DRT dismissed the interlocutory application stating that sale cannot be set aside through an interlocutory application and such relief can be granted only in the main SA. This order is in tune with the proposition that without seeking main relief, no interim relief can be granted in a proceeding, that too, after almost more than three years.
- g) Appellants filed IA 503/2006 to challenge the sale. In the IA No.1411/2010 filed by the appellants on 7.5.2010, no relief was sought for, to set aside the sale. No amendment was sought in the main SARFAESI application and no relief was prayed in the main SARFAESI application for setting aside the sale. Right to challenge the measures for conducting sale and raising grounds post sale was barred by limitation. In support of this submission Learned Counsel relied on the following decisions.

1. Decision of Hon'ble Supreme court of India in re, **National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad and others** reported in 2011 KHC 41811 is relied for the proposition that,

“as a rule, relief not founded on the pleadings should not be granted. Reason is that pleadings are necessary to enable the court to decide the right of the parties. Pleadings are more of help to the Court in narrowing the controversy involved and to inform the parties concerned to the question in the issue so that the parties may deduce appropriate evidence on the said issue. No party shall be permitted to travel outside the pleadings and that all necessary material facts should be treated by the parties in support of the case set by it. When the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon. Without evidence, no amount of evidence can be looked. “

2. Decision of Hon'ble Supreme Court of India in re **Akella Lalitha Vs. Konda Hanumantha Rao and another** reported in 2022 SCC Online SC 928 is relied for the proposition that it is settled law is that relief not found on pleadings should not be granted. If Court considers or grants relief, for which, no prayer or pleading was made, depriving the respondent of an opportunity to oppose or resist such relief and it would lead to miscarriage of justice. Courts cannot grant relief not even prayed for.

- h) Possession notice and Tender notice were also the subject matter of WPC No.24839/2006 and WA No.1802/2006. Both ended in dismissal. Thereafter, appellants cannot make a parallel and collateral challenge to

the very same proceedings before DRT, especially ,when the challenge to the tender notice before Hon'ble High Court of Kerala ended in failure. Appellants are precluded from agitating the very same issue before DRT on the principles of *res judicata/constructive res judicata*. In support of this submission Learned Counsel relied on the following decision.

Decision of Hon'ble Supreme Court of India in re, **Celir LLP Vs. Sumati Prasad Bafna** reported in 2024 KLT Online 3003 (SC) is relied for the proposition of *res judicata* as explained in the Henderson case, is also applicable to a case where a party approaches the High Court and parallelly the statutory Tribunal an having invoked the forum having superior jurisdiction, the party cannot agitate the very same cause before the lower forum.

With regard to *res judicata* and applicability of principles in Henderson vs. Henderson, in paragraphs 122 to 128, 132 and paragraph 154, it s observed as follows:

122. It would now be apposite to understand what was the nature and scope of challenge before this Court in the Main Appeals, and what was ultimately decided in it. As discussed earlier, the Borrower had preferred a writ petition wherein it had sought to subsume the issue arising out of S.A. No. 46 of 2022 pending before the DRT, particularly the challenge to the actions of the Bank under the SARFAESI Act. The writ petition was not a separate remedy distinct from the securitization application pending before the DRT, as the prayers made therein indicate that it was not merely for seeking redemption of mortgage.

123. We say so, because it is not the case that the remedy for redeeming mortgage could not have been a part of the S.A. No. 46 of 2022 nor can it be said that such a remedy was wholly alien to the provisions of the SARFAESI Act, and could not have been granted by the DRT at all.

124. It is no longer res integra that Section 17 of the SARFAESI Act, is a complete code that confers upon the DRT the jurisdiction to examine all the steps or measures taken by the secured creditor under the Act and provide remedies to any person aggrieved by any of those measures. By virtue of the said provision the DRT is clothed with a wide range of powers, to determine any issue or aspect pertaining to the SARFAESI proceedings initiated by the secured creditor and further a power to interfere with the same where necessary. Section 17 of the SARFAESI Act provides a broad mechanism Page 78 of 149 Contempt Petition (C) Nos. 158-159 of 2024 for an efficacious remedy to “any person” who is aggrieved by any of the “measures” taken or proposed to be taken by the secured creditor under the Act. The omnibus provision of Section 17 sub-section (3) is of a wide import and enables the DRT to grant any relief in respect of any action or proceeding under the Act.

125. In Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir reported in (2022) 5 SCC 345, this Court held that where the Borrower is aggrieved by any proceedings initiated under the SARFAESI Act or any action proposed to be taken by a secured creditor, it has to avail the remedy under the SARFAESI Act and no writ petition would lie or be maintainable. The relevant observations read as under: -

“18. [...] 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. [...]” (Emphasis supplied) .

126. Thus, the remedy for seeking redemption of mortgage was not only available to the Borrower under Section 17 of the SARFAESI Act but was also availed by him, by way of I.A. No. 2339 of 2023 in S.A. No. 46 of 2022. This application for seeking redemption of mortgage was also heard by the DRT for quite some time, and even orders were reserved. However, suddenly, the Page 79 of 149 Contempt Petition (C) Nos. 158-159 of 2024 Borrower decided to move the High Court for seeking the very same relief that it had sought in the securitization application.

127. As there was virtually no difference between either the scope of proceedings or the prayer sought before the DRT and that before the High Court, once the Borrower had chosen to espouse the same matter already sub-judice in one forum before another, in this case the High Court, it was the duty of the Borrower to bring within the fold of its case all issues and grounds in respect

of the 9th auction proceedings in the proceedings arising from the writ petition, by virtue of the Doctrine of Election.

128. Once, the Borrower had elected to move the High Court for the very same cause of action and underlying prayers, the moment the same was entertained by the High Court, which it did, the Borrower was precluded from pursuing its remedies before the DRT by way of S.A. No. 46 of 2024, and was duty bound to now espouse it only in the writ proceedings, as otherwise it would tantamount to having a second bite at the cherry and relegating what it has already litigated.

132. Thus, this Court only went on to determine the Borrower's right to redeem the mortgage and having done so, this Court inter-alia set-aside the impugned order of the High Court and in view of the fact that the Bank had already confirmed the sale in favour of the petitioner, and in the absence of any challenge to the auction process, further directed that the sale certificate of the Secured Asset be issued to the petitioner. The operative portion of the said decision reads as under: -

“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.”

154. In the present case, the very issue of the validity of the measures taken by the Bank under the SARFAESI Act and by it the legality of the 9th auction Page 97 of 149 Contempt Petition (C) Nos. 158-159 of 2024 proceedings was innately and inextricably linked to the proceedings before this Court in the Main Appeals. We say so, because: -

- (i) The very issue of the cut-off date for exercising the right of redemption under Section 13 sub-section (8) of the SARFAESI Act entailed as a natural corollary to it, the issue of validity of the SARFAESI proceedings, at least in respect of the 9th auction notice dated 12.06.2023. When the Main Appeals were being heard

by this Court, the Borrower was well aware that the issue before this Court was whether the right of redemption extinguishes upon the publication of sale notice or upon the transfer of the secured asset, and as such if at all such right were to extinguish upon the publication of the sale notice, it by default involved the issue whether such notice was valid or non est. Being so, the very issue of validity of the 9th auction notice and the proceedings thereto properly belonged to the subject of litigation in the Main Appeals before this Court and ought to have been brought forward as part of the subject in contest.

- (ii) Moreover, since there was virtually no difference between the prayer sought before the DRT and that before the High Court, once the Borrower had chosen to espouse the same matter already sub-judice in DRT before the High Court, it was the duty of the Borrower to bring within the fold of its case all issues and grounds in respect of the 9th auction proceedings in the proceedings arising from the writ petition, Page 98 of 149 Contempt Petition (C) Nos. 158-159 of 2024 by virtue of the Doctrine of Merger and Election. Since the prayers that were sought before the DRT had been merged with the prayers before the High Court, the scope of proceedings of the Main Appeals encompassed the issue of validity of the Bank's actions under the SARFAESI Act and by extension the 9th auction notice dated 12.06.2023 which the Borrower for reasons best known to it, and such now cannot be permitted to raise these issues when they ought to have been raised in the Main Appeals. In this regard we may refer to the decision of this Court in *Vodafone Idea Cellular Ltd. v. Ajay Kumar Agarwal* reported in (2022) 6 SCC 496 which held that as per the Doctrine of Election, once a party has elected to choose remedy under one forum, again the same cause of action cannot be challenged before another forum: -
"25. The above position was reiterated in *IREO Grace Realtech (P) Ltd. v. Abhishek Khanna*¹³ by a three-Judge Bench of this Court, of which one of us (D.Y. Chandrachud, J.) was a part. Indu Malhotra, J., speaking for the Bench invoked the doctrine of election, which provides that when two remedies are available for the same relief, the party at whose disposal such remedies are available, can make the choice to elect either of the remedies as long as the ambit and scope of the two remedies is not essentially different. These observations were made in the context of an allottee of an apartment having the choice of initiating proceedings under the 1986 Act or the RERA." (Emphasis supplied)
- (iii) Furthermore, by virtue of the Doctrine of Election, the Borrower cannot be permitted to pursue two inconsistent remedies, once the Borrower had availed the remedy to redeem its mortgage and pay the dues sought to be recovered by way of the SARFAESI proceedings initiated by the Bank and having failed in doing so, it now cannot be permitted to challenge those very SARFAESI proceedings. A litigant cannot approbate or reprobate at the same time. Election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is

clear intention of the person from whom he derives one that he should not enjoy both. For instance, if in a will, X bequeaths property owned by Y to Z while giving Y a substantial gift. Y must choose to either (i) accept the gift and let Z retain the property or (ii) reject the gift and assert ownership of the property, but can certainly not pursue both the remedies, and as such, the Borrower cannot be permitted to have its cake and eat it as well. In this regard we may refer to the decision of this Court in Joint Action Committee of Air Line Pilots' Assn. of India (ALPAI) & Ors. v. DGCA reported in (2011) 5 SCC 435 wherein it was held as under: -

“12. The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, Page 100 of 149 Contempt Petition (C) Nos. 158-159 of 2024 a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.” (iv) (Emphasis supplied)

- (iv) The premise on which the writ petition came to be filed by the Borrowers before the High Court is also significant. The Borrower in the writ petition contended that they have an apprehension that the DRT may reject their redemption application and the entire matter would become infructuous as the Bank at that point of time had already accepted the entire sale consideration for the auction from the petitioners and as such may likely issue the Sale Certificate to the Secured Asset. Thus, the Borrower's themselves were under the impression and understanding that once the Sale Certificate is issued, the sale to the Secured Asset becomes absolute and would in turn render the entire matter infructuous. In such circumstances, the contention of the Borrower as well as the Subsequent Transferee that the Sale Certificate that was issued in pursuance of the decision in the Main Appeals was always subject to the outcome of the S.A. No. 46 of 2022 pending before the DRT, is nothing but an after-thought which the Borrower now seeks to espouse having lost in the Main Appeals and as such the said contention deserves to be rejected. Page 101 of 149 Contempt Petition (C) Nos. 158-159 of 2024
- (v) Even though the petitioner had specifically prayed for the issuance of the Sale Certificate to the Secured Asset, not once did the Borrower dispute the same or assert that such certificate would be contingent to on the outcome of the DRT proceedings. The Borrower neither in the Main Appeals nor in the review thereto raised the issue of validity of the 9th auction notice or brought to the notice of this court the terms of the auction, more particularly that such auction was subject to the outcome of the S.A. No. 46 of 2022. Having admittedly failed

to do so, the espousal of the aforesaid contention by the Borrower now is nothing but an abuse of process and an attempt to indirectly circumvent the decision of this Court in the Main Appeals and collaterally challenge the determination of rights therein.

(vi) Furthermore, the direction of this Court in the Main Appeals for issuance of Sale Certificate conferred absolute ownership to the petitioner to the Secured Asset, in view of the fact that: -:

a. The impugned order passed by the High Court had been set-aside in toto.

b. It was held that the Borrower could not have redeemed its mortgage upon publication of the 9th auction notice.

c. The Bank was further directed to refund the amount paid by the Borrower towards redemption.

d. It was also held that the Bank after having confirmed the sale under Rule 9(2) of the Rules of 2002 could not have withhold the sale certificate to the Secured Asset.

In view of the above, it is clear as a noon day that this Court never held that the Sale Certificate to be issued to the petitioner was subject to the Page 102 of 149 Contempt Petition (C) Nos. 158-159 of 2024 outcome of the DRT proceedings. As such, once the sale of the Secured Asset under Section 13(4) of the SARFAESI Act ended in issuance of a Sale Certificate as per Rule 9 (7) of the SARFAESI Rules, such sale was complete and absolute.

(vii) Lastly, this court in its decision in the Main Appeals by no means either preserved the right or permitted the Borrower to continue pursuing the proceedings in S.A. No. 46 of 2022 pending before the DRT. This is in view of the maxim Expressio Unius Est Exclusio Alterius i.e., the expression of one thing is the exclusion of another. Where a court consciously and specifically grants certain reliefs but does not advert to other reliefs or rights, the relief so expressly provided necessarily leads to the implied exclusion of the other reliefs and rights. Thus, when this Court directed the issuance of the Sale Certificate it necessarily excluded the right to pursue the DRT proceedings.

(viii) Mere reference to the pendency of the DRT Proceedings in the judgment by no means could lead to the inference that this Court had preserved the rights of the Borrower herein to pursue the same. One cannot assume or infer any right by referring to a stray sentence here and a stray sentence there in the judgment. It is trite that judgments of courts are not to be construed as statutes. Page 103 of 149 Contempt Petition (C) Nos. 158-159 of 2024 ii.

Applicability of Lis Pendens in the absence of any registration as required under the State Amendment to Section 52 of the TPA.

With regard to setting aside the sale, after confirmation of sale, it is held in paragraphs 212 to 219, as follows:

212. In LICA (P) Ltd. v. Official Liquidator reported in (1996) 85 Comp Cas 788 (SC) this Court held that the purpose of an open auction is to get the most remunerative price with the highest possible public participation, and as such the courts shall exercise their discretion to interfere where the auction suffers from any fraud or inadequate pricing or underbidding that too with Page 139 of 149 Contempt Petition (C) Nos. 158-159 of 2024 circumspection, keeping in view the facts of each case. The relevant observations read as under: - “The purpose of an open auction is to get the most remunerative price and it is the duty of the court to keep openness of the auction so that the intending bidders would be free to participate and offer higher value. If that path is cut down or closed the possibility of fraud or to secure inadequate price or underbidding would loom large. The court would, therefore, have to exercise its discretion wisely and with circumspection and keeping in view the facts and circumstances in each case.” (Emphasis supplied)

213. This Court in Valji Khimji (supra) held that once an auction is confirmed the objections to the same should not ordinarily be allowed, except on very limited grounds like fraud as otherwise no auction would ever be complete. The relevant observations read as under: -

“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.

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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 Page 140 of 149 Contempt Petition (C) Nos. 158-159 of 2024 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.” (Emphasis supplied)

214. In *Ram Kishun & Ors. v. State of Uttar Pradesh & Ors.* reported in (2012) 11 SCC 511 this Court although held that where public money is to be recovered such recovery should be done expeditiously, yet the same must be done strictly in accordance with the procedure prescribed by law. However, this Court after examining a plethora of other decisions further held that once the sale has been confirmed it cannot be set aside unless a fundamental procedural error has occurred or sale certificate had been obtained by misrepresentation or fraud. The relevant observations read as under: -

“13. Undoubtedly, public money should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions

xxx xxx xxx

28. In view of the above, the law can be summarised to the effect that the recovery of the public dues must be made strictly in accordance with the procedure prescribed by law. The liability of a surety is coextensive with that of the principal debtor. In case there are more than one surety the liability is to be divided equally among the sureties for unpaid amount of loan. Once the sale has been confirmed it cannot be set aside unless a fundamental procedural error has occurred or sale certificate had been obtained by misrepresentation or fraud.” (Emphasis supplied) Page 141 of 149 Contempt Petition (C) Nos. 158-159 of 2024

215. In *PHR Invent Educational Society v. UCO Bank* reported in (2024) 6 SCC 579 it was again reiterated that an auction-sale which stands confirmed can only be interfered with when there was any fraud or collusion, and entertaining of issues regarding the validity of such auction would amount to reopening issues which have achieved finality. The relevant observations read as under: -

“34. In our view, the High Court ought to have taken into consideration that the confirmed auction-sale could have been interfered with only

when there was a fraud or collusion. The present case was not a case of fraud or collusion. The effect of the order of the High Court would be again reopening the issues which have achieved finality.”

216. In *V.S. Palanivel v. P. Sriram* reported in 2024 INSC 659 this Court again reiterated unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the domino effect such an order would have. The relevant observations read as under: -

“36.14. This Court must underscore the well settled legal position that once an auction is confirmed, it ought to be interfered with on fairly limited grounds. (Refer: *Valji Khimji and Co. v. Hindustan Nitro Product (Gujarat) Ltd. (Official Liquidator)* MANU/SC/3408/2008 : 2008:INSC:925 : (2008) 9 SCC 299 and *Celir LLP v. Bafna Motors (Mumbai) Private Limited and Ors.* MANU/SC/1042/2023 : 2023:INSC:838 : (2024) 2 SCC 1). Repeated interferences in public auction also results in causing uncertainty and frustrates the very purpose of holding auctions. (Refer : *K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple and Ors.* MANU/SC/0213/2022 : 2022:INSC:207 : (2022) 5 SCC Page 142 of 149 Contempt Petition (C) Nos. 158-159 of 2024 710). Unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the domino effect such an order would have. Given the facts noted above, we shall refrain from cancelling the sale or declaring the Sale Deed as void. Instead, it is deemed appropriate to balance the equities by directing the Auction Purchaser to pay an additional amount in respect of the subject property.” (Emphasis supplied)

217. In the present lis, it is not the case of the Borrower herein that the 9th auction conducted by the Bank was a result of any collusion or fraud either at the behest of the Bank or the Successful Auction Purchaser herein. Aside from the lack of any 15-days gap between the notice of sale and the notice of auction, no other illegality has been imputed to the aforesaid auction proceedings. It is also not the case of the Borrower that due to the absence of the aforesaid statutory period, any prejudice was caused or that it was prevented from effectively exercising its rights due to such procedural infirmity. Despite a total of eight auctions being conducted by the Bank from April, 2022 to June, 2023, not once did the Borrower express its desire to redeem the mortgage. Even when the auction notice came to be issued on 12.06.2023, the Borrower never intimated that it was in process of redeeming the mortgage with the aid of the Subsequent Transferee and that the auction be delayed even though, as per the parties own submissions, they started exploring the possibility of redeeming the mortgage and thereafter transferring in June, 2023 itself. In such circumstances, given the fact that Page 143 of 149 Contempt Petition (C) Nos. 158-159 of 2024 although the S.A. No. 46 of 2022 was still pending, yet

since there was nothing before this Court to doubt the validity of the 9th auction, this Court in the Main Appeals confirmed the sale in favour of the petitioner and brought the auction proceedings to its logical conclusion by directing the issuance of the sale certificate. The Borrower never raised the issue of the validity of the 9th auction notice despite having sufficient opportunities to do so even after the pronouncement of the decision in the Main Appeals, and that such pleas are being raised only after the auction was confirmed in favour of the petitioner, we find no good reason to interfere with the 9th auction conducted by the Bank.

218. Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Mere irregularity or deviation from a rule which does not have any fundamental procedural error does not take away the foundation of authority for such proceeding. In such cases, courts in particular should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity. Page 144 of 149 Contempt Petition (C) Nos. 158-159 of 2024

219. In the present lis, apart from the want of statutory notice period, no other challenge has been laid to the 9th auction proceedings on the ground of it being either collusive, fraudulent or vitiated by inadequate pricing or underbidding, thus, the auction cannot be said to suffer from any fundamental procedural error, and as such does not warrant the interference of this Court, particularly when the plea sought to be raised to challenge the same could have been raised earlier.

i) The Bank produced all relevant documents/material including the valuation report obtained before the sale of the property. Appellants do not have a case that reserve price was less than the valuation done and also that property was sold for a price less than the reserve price. The grounds raised against the valuation is not sustainable. In support of this submission Learned Counsel relied on the following decisions.

1. Decision of Hon'ble Supreme Court of India in re, Anil Kumar Srivastava Vs State of UP and another reported in 2004 SCC Online 929 for understanding the concept of valuation and reserve price.
 2. Decision of Hon'ble Supreme Court of India in re, UCO Bank and another Vs. Dipak Debbarma and others reported in 2016 KHC 6786 for the proposition that once the property is sold above the reserve price, there cannot be any dispute regarding the valuation of sale.
- j) The payment of amounts by the auction purchasers cannot be agitated by the appellants on account of the fact that such a contention had already been foregone by the appellants for want of a relief sought against the sale of the property. Auction purchasers immediately after the auction and within stipulated period made payments through cheque. Any such issue, beyond the tender notice cannot be challenged now, since it is barred by limitation. Amendment barred by limitation is inconsequential.
- k) A concluded sale under the SARFAESI Act can be set aside only in case there is specific averment and allegation of fraud and collusion. In support of this submission, Learned Counsel relied on the following decisions.

1. Decision of Hon'ble Supreme Court of India in re, **Gayatri Devi and others Vs. Shashi Pal Singh** reported in 2005 SCC Online SC 514 is relied for the proposition that "Though the proposition that, fraud played upon the court and fraud unravels everything, is a general right, fraud must necessarily be pleaded and proved. In the absence of pleading and proof of fraud, it cannot be countenanced that fraud had taken place.
2. Decision of Hon'ble Supreme Court of India in re, **Siddagangaiah (dead) through legal representatives Vs. N.K. Giriraja Shetty (dead)** through legal representatives reported in 2018 SCC Online SC 523 is relied for the proposition that unless there is plea regarding fraud or collusion, issue cannot be decided.
3. Decision of Hon'ble Supreme Court of India in re, **Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and others** reported in 2008 SCC Online SC 1226 is relied for the proposition that unless fraud or collusion is established, there is no justification to set aside the confirmation of sale.
4. It is the duty of the court to see that the sanctity of public auction is protected and unscrupulous litigants do not deny the fruits of the auction to the successful auction purchaser. In support of this, the decision of Hon'ble Supreme Court of India in re, **Celir LLP Vs. Bafna Motors (Mumbai)** reported in 2023 (5) KLT 599(SC) is produced. It is observed in paragraph 86 of the decision that,

"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.”

- l) Allegation of mere procedural violation is of no use unless it is demonstrated that substantial prejudice has been caused on account of the procedural violation. In support of this submission Learned Counsel relied on the decision of Hon’ble Supreme Court of India in re, **L& T Housing Finance Limited Vs. Trishul Developers and another reported in 2010 10 SCC 6890** for the proposition that unless substantial prejudice is shown, technical defect or procedural lapse in recovering proceedings cannot be a ground for setting aside the SARFAESI proceedings.
- m. Courts/Tribunals cannot travel beyond the pleadings and relief sought for by the parties.
- n. SARFAESI Act provides a time limit of 45 days to challenge the measures adopted by the bank. Sale being a specific measure taken by the secured creditor, limitation period for challenging the sale is strictly 45 days from the date of sale.

o. Once application is found to be not maintainable on account of limitation or some other reason, there cannot be any further adjudication on the merits of the matter. In support of this submission Learned Counsel relied on the following decisions.

1. Decision of Hon'ble Supreme Court of India in re **Sathyanath and another Vs. Sarojamani** reported in 2022 SCC Online SC 563 is relied for the proposition that

“Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law and try to decide those issues first, and postpone the other issues of facts until other issues of law have been determined.” Preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. No one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants in its journey of discovering the truth.

2. Decision of Hon'ble High Court of Kerala in re, **Devi Vs. Dakshayani** reported in MANU/KE/1123/2013 (2024 2 SCC 347) is relied on for the proposition that when the plaintiffs were being non-suited on an issue as to maintainability as to the nature of litigation, any finding on facts or quality of title as against the defendants ought to have been excluded.

For the same proposition, decision in Hon'ble High Court of Kerala in Crl.Rev.Pet.No.255/2015 in re, **Nobel Mathew Vs. State of Kerala and others** reported in MANU/KE/0279/2015 is relied.

3. Decision of Hon'ble Supreme Court of India, in re, **Nikhila Divyang Mehta Vs. Hitesh P. Sanghvi** reported in 2025 KHC 7257 is relied for the proposition that when the preliminary relief is rejected, other reliefs depending on the preliminary relief, cannot be granted. Thus, when preliminary relief is barred by time, other ancillary relief has to fail.
- p. Ld. Counsel for the respondent bank further submitted that the principle of *Res Judicata* apply not only to two different proceedings but also to different stages of same proceedings as well.
1. In support of this proposition, he relied on the decision of Hon'ble Supreme Court of India in re, **Sulthan Said Ibrahim Vs. V. Prakasan** reported in 2025 KLT Online 2014 (SC). This decision was also relied for the proposition that no one should be made to face same kind of litigation twice over, because, such a process would be contrary to considerations of fair play and justice.
- q. The decision of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another** reported 2022 KHC Online 6882 is quoted with regard to cardinal principles regarding amendment of plaint and reply

statement. Summary of the decision is extracted for ready reference, as below.

Our final conclusions may be summed up thus:

- (i) [Order II Rule 2 CPC](#) operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under [Order II Rule 2 CPC](#) is, thus, misconceived and hence negated.
- (ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of [Order VI Rule 17 of the CPC](#).
- (iii) The prayer for amendment is to be allowed
 - (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
 - (ii) to avoid multiplicity of proceedings, provided
 - (a) the amendment does not result in injustice to the other side,
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).
 - (iv) A prayer for amendment is generally required to be allowed unless
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,
 - (ii) the amendment changes the nature of the suit,
 - (iii) the prayer for amendment is malafide, or
 - (iv) by the amendment, the other side loses a valid defence.
 - (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.
 - (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.
- (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.
- (xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See [Vijay Gupta v. Gagninder Kr. Gandhi & Ors.](#), 2022 SCC OnLine Del 1897)

10. Learned Senior Counsel Shri Anil Xaviour for the auction purchasers i.e., R3 to R5 submitted that challenge in the SARFAESI application was to 13(2) Demand Notice, 13(4) Possession Notice and the Tender Notice. In Writ Petition No.24839/2006 filed, conditional order was passed by the Hon'ble High Court of Kerala towards OTS and that was not complied by the appellants. Writ Appeal No.1802/2006 against the order passed in Writ Petition No.24839/2006 was also dismissed. Only thereafter, SARFAESI application was filed challenging only Section 13(2) Notice and possession notice. Hon'ble

High Court of Kerala passed an order in Writ Petition No.24839/2006 empowering the bank to proceed further without issuing fresh notice, if the conditional order passed by the Hon'ble High Court was not complied. Sale was held on 5.10.2006 and was confirmed in favour of R3 to R5. Against the order passed in IA No.1691/2006, appeal in IN(SA) No.597/2007 was filed by the appellants before this Tribunal and that was dismissed. Before completion of sale on 5.10.2006 and issuance of sale certificate on 11.6.2007, appellants had not taken any steps to pay the loan amount and redeem the property. Appeal filed by the appellants in MA (SA) No.197/2006 before this Tribunal against the order vacating the stay in IA 1659/2006 was dismissed on 13.11.2006. Amendment application was filed after three years and 7 months. On 19.3.2013, amendment petition was allowed and amendment was carried out on 17.9.2015. Technically, there is no valid amendment and the amendment was barred by limitation. On 2.12.2016, DRT dismissed the TSA 10/2016 (SA 66/2006). Hon'ble High Court of Kerala passed an order of remand in OP (DRT) No.120/2016. Thereafter, DRT passed order on the maintainability of the SA and also on the merits of the SA.

11. In support of his submission that amendment is not maintainable, he pressed into service, the following decisions.

1. Decision of Hon'ble High Court of Madras in re, **B. Ashok Kumar and others Vs. the registrar DRAT, Chennai and others** reported in CDJ 2013 MHC 2188 is relied for the proposition that any amendment should be filed within the period of limitation, as prescribed under Section 17 of the SARFAESI Act.

 2. Decision of Hon'ble Supreme Court of India in re, **Rajkumar Gurawara (dead) through Lrs Vs. M/s S.K. Sarwagi & Co. Pvt. Ltd. and another** reported in CDJ 2008 SC 1004 is relied for the proposition that amendment application cannot be considered in the following situations.
 - a) When the nature of it is changed by permitting amendment
 - b) When the amendment would result in introducing new cause of action and intends to prejudice the other party and
 - c) When allowing amendment application defeats the law of limitation.

 3. Decision of Hon'ble Kerala High Court in re, **Joseph A.A. Vs. Hong Kong and Shanghai Banking Corporation Limited** reported in 2025 KHC 785 is relied for the proposition that RT has no power to entertain the application presented beyond the period of 45 days from the date of impugned measures taken.
- 12.Ld. Counsel for the auction purchasers R3 to R5 relied on the decision in re, **Pahwa Buildtech Pvt. Ltd. Vs. Jagmohan Singh Arora and others reported in CDJ 2022 DHC 878** for the proposition that SARFAESI action cannot be held to be bad in law merely on raising trivial objection, which has no legs

to stand unless a person is able to show any substantial prejudice is caused on account of the procedural lapse. This decision is also relied for the proposition that payment by cheque, which is realized subsequently, relates back to the date of receipt of the cheque and, in law, the date of delivery of the cheque is considered as the date of payment. The scope of SARFAESI Act is to allow faster recovery of the debt by the secured creditor without interference of the court. Therefore, sale of the secured asset should not be interfered lightly by any Tribunal or court.

13.I have considered the rival submissions and perused the records.

14.During the course of hearing of this Appeal, it was informed that original application in SA No.66/2006 was missing, therefore, it was reconstructed on the basis of original paper book supplied to the bank. An endorsement to that effect is found at page 11 of Volume I of typed set of papers filed by the appellants.

15.The grounds made in the SARFAESI Application in brief, are that,

- a) Loan was availed in the year 1999 and periodical payments have been made to the loan account. It is not known as to how the amount of Rs.19,95,46,866/- is claimed in the demand notice.

- b) Provisions under which possession notice was issued is not mentioned and that it was posted only 23.8.2006 and served only on 25.8.2006 informing that possession will be taken on 23.8.2006.
- c) Property concerned in this case would fetch a high value but value was shown low and efforts were made to sell it for a paltry amount.
- d) Bank has no jurisdiction to sell the entire property without determining the extent of property required for realization of the amount due.
- e) The basis on which valuation was fixed and the reserve price was fixed is not discernable from the tender notice.
- f) As per the amended securitization application, amendment was sought to be made touching upon,
 - i) Tender Notice is liable to be set aside since it is not in consonance with Rule 8 and 9 of SIE Rules, 2002.
 - ii) Property valued at Rs.1.77 crores in the year 1999 was undervalued at Rs.1.15 crores in the year 2006.
 - iii) Possession notice was not issued in accordance with Appendix IV.
 - iv) Balance sale consideration was not paid within 15 days, but, paid after five months.
 - v) Three cents of property was taken as excessive possession.

- vi) Excessive interest was charged and the payments made by the appellants were not considered.
- vii) Hypothecated articles worth more than Rs.80.00 lakhs had been handed over to third party without the knowledge and permission of the appellants.
- viii) Property was sold to defendants 3 to 5 as a whole, but sale certificate was issued separating the property, which is not permissible.
- ix) There is collusion between the bank officials and the auction purchasers.

16.Though in the amendment application, there is a plea raised that it is highly necessary that appellant be permitted to amend the SARFAESI application after incorporating the relief for setting aside the sale and also seek to incidental reliefs including compensation, no such prayer was sought to be amended in the SARFAESI application.

17.The grounds are extracted in brief to understand the nature of grounds taken and to highlight that even in the amendment application, there was no prayer sought for setting aside the sale. Therefore, SARFAESI Application remains

without the prayer to set aside the sale on the grounds raised in the original as well as amended SARFAESI application.

18. Now, this Tribunal will consider the grounds raised one after the other.

a) First appellant is the borrower. Deceased second appellant and 3rd and 4th appellants are husband and children of the first appellant and are guarantors.

b) Deceased second appellant executed mortgage in respect of 16.20 Ares in RS No.927/10 and 924/1 of Killikolloor Village and 71.25 cents with residential building in RS No.48/2 in Kollam West village. 3rd and 4th appellants mortgaged 1.40 ares in RS No.113 and 121 in Kollam East village.

19. Demand Notice dated 31.5.2006 issued to Veeresh Kumar demands outstanding due of Rs.1,95,42,886/- together with contractual interest from 1.5.2006. An extent of 1.40 Ares of land and building in RS No. 113 and 121 of Kollam East village is shown as secured asset. Demand Notice dated 31.5.2006 addressed to Dhanalakshmi, Proprietrix, M/s Seemati Textiles, claims the same amount as due. However, in this Notice, three properties are shown as secured assets. They are a) 16.20 Ares in RS No.927/10 and 924/1 of Killikolloor Village b) 1.40 Ares of land and building in RS No. 113 and 121 of Kollam East village and c) 71.25 cents of land along with residential building

having an area of more than 10,000 sq.ft. located at RS No.48/2 of Kollam West village.

20. After receiving this notice, reply was sent by R.Dhanalakshmi. The gist of the reply is, “periodical payments have been made towards the loan account. Under the circumstances, it is not known as to how a sum of Rs.1,95,42,886/- is claimed as due. Details are sought by giving a copy of the up-to-date account statement. It was also further stated that some of the properties were sought to be sold and they are looking for buyers. There have been considerable fall in the business. They are trying to get over the situation, sought permission and time upto 28.2.2007. Requested to give concession in the matter of interest”. This letter is undated and unsigned.

21. Respondent bank sent a reply to the letter dated 29.7.2006 addressed to Ramachandra Reddiar on 7.8.2006. It is said that Ramachandra Reddiar can obtain account statement from the Branch and necessary instructions had been given to issue up-to-date statement. It is further stated that, “Since neither the dues are settled nor submitted any concrete proposal for early settlement, bank was not in a position to postpone further action under the SARFAESI Act”. Letter dated 29.7.2006 purported to have been sent by Ramachandra Reddiar is not made available before this Tribunal.

22. Though there is ground raised with regard to charging of excessive interest and not considering the payments that had been made by the appellants, etc., this plea is not supported by any evidence as to how the excessive interest was calculated and what are the payments made and not considered by providing corroborative evidence of the alleged payments made. Therefore, this Tribunal finds that there is no merit in the claim of the appellants that excessive interest was charged and payments made towards the loan due were not considered.

23. When materials produced establish that Section 13(2) notice dated 31.5.2006 was served on the borrowers and the guarantors and in fact borrowers and guarantors have sent their objections to the demand Notice and their objections were also replied by the bank, the objection raised with regard to demand notice is rejected as untenable.

24. There are three possession notices found at pages 5, 6 and 7 of Volume I of typed set of papers. Possession Notice dated 14.8.2006 addressed to Ms. Dhanalakshmi informs that, "Dhanalakshmi has to hand over possession of aforesaid 3 secured assets on 23.8.2006 between 10.00 AM and 5.00 Pm. This notice was marked to 1) R. Veeresh Kumar 2) Ramachandra Reddiar and 3)

Ananda Kumar. There are two more possession notices dated 23.8.2006 issued in respect of 71.25 cents of land along with residential building having an area of more than 10,000 sq.ft. located at RS No.48/2 of Kollam West village and 1.40 Ares of land and building in RS No. 113 and 121 of Kollam East village, informing that on failure of the borrower to repay the loan amount, Authorised Officer took possession of the property on 23.8.2006 in terms of the power conferred under Section 13(4) read with Rule 8 of SIE Rules. This possession notice was published in English Newspaper on 1.9.2006.

25.It is true that there is no provision mentioned in the possession notice dated 14.8.2006. However, this notice makes it clear that there is an outstanding of Rs.1,95,42,886/- and the demand was made to pay this amount. Despite demand notice and expiry of 60 days, this amount was not paid. Thus, borrowers and guarantors were informed that possession will be taken between 10.00 am and 5.00 pm on 23.8.2006. Possession notice dated 23.8.2006 was, in fact, a notice intimating about taking possession of the secured asset on 23.8.2006. this notice dated 23.8.2006 was published in the English Newspaper, 'The Hindu'. This Tribunal finds that in typed set of papers produced by both parties, proof of service of possession notice dated

14.8.2006 like acknowledgement card, proof of affixture of possession notice on the secured asset and proof of publication of possession notice in vernacular language are not produced. It is pertinent to mention here that Learned Presiding Officer, DRT-II, Ernakulam on 6.8.2016 directed the respondent bank to produce Section 13(4) Notice, its postal receipts, acknowledgment, newspaper publication, copy of tender notice intimation, its receipts and acknowledgment. It appears that respondent bank had not produced these documents.

26. However, appellants admitted in the SARFAESI application about the receipt of possession notice dated 14.8.2006. There is no specific pleading in the SARFAESI application as to non affixture of possession notice and failure to publish possession notice in vernacular language. Thus, it can be concluded that bank has substantially complied with service of possession notice to the borrowers/guarantors.

27. Tender notice dated 29.8.2006 shows that all the aforesaid three properties were sought to be sold by inviting sealed tenders. Upset price and EMD for each property was given. Last date of receipt of tender notice was fixed on 20.9.2006 before 5.00 PM and date of sale was on 5.10.2006 in the presence

of tenderers at 11.00 AM. Interested parties were required to send their consolidated tenders along with EMD by Demand Draft/Pay Order. Successful bidder has to remit 25% of the bid amount on the auction date and the balance amount has to be remitted within one month from the date of the auction.

28. Learned Counsel for the appellants raised two issues on this Tender Notice.

a) That there is no 30 days period given between the last date of submission of tender and date of sale. As per SIE Rules, maximum timeline given for paying balance sale consideration is 15 days only. But the tender notice gives one month for paying the balance sale consideration and that is against law.

b) Even before possession notice was published in newspapers, tender notice was issued on 29.8.2006. But the possession notice was published only on 1.9.2006. This is in violation of SIE Rules. Publication of tender notice in English newspapers was on 3.9.2006.

29. Ground raised with regard to service of tender notice is that it is not served as required under Rule 8 and 9(1) of SIE Rules, 2002. There is no specific

pleading with regard to non-service of tender notice through post or by other means personally to the borrower and the guarantor. Pleadings mostly centred on undervaluation and excessive sale. Tender Notice dated 29.8.2006 said to have been received by the appellants is produced in the type set. Publication of the tender notice in “The Hindu’ English newspaper and in vernacular language is also produced. However, there is no proof of affixture of tender notice on the secured asset is produced.

30. Respondent bank submitted that tender notice had been served to the appellants when they approached the bank on 1.9.2006 after seeing the publication of the possession notice (pleaded in the additional written statement). A copy of the tender notice with signature of the appellants, R. Dhanalakshmi and her deceased husband Ramachandra Reddiar, in proof of receipt of tender notice is produced by the respondent bank. This document is disputed by the appellants claiming that on the date of alleged personal service of the tender notice when appellants *said to have visited the bank on 1.9.2006*, they were in Bangalore and not in Kerala. In support of this claim, appellants produced the prescription given by Dr. Sachitha Abraham, Bangalore on 1.9.2006 in favour of appellant Ramachandra Reddiar and the prescription given by Dr. R.A. Vijayavardhan dated

1.9.2006 to the appellant R Dhanalakshmi. He also produced cash bill dated 3.9.2006 to show that blood test was done in Bangalore and lab report dated 3.9.2006. These prescriptions, receipt and lab result issued by Microbiology Laboratory will not conclusively establish that appellants were in Bangalore on 1.9.2006. Bangalore can be reached from Kerala in time to get the blood test done on 3.9.2006. Any willing Doctor can give such prescriptions. If the appellants claim that they had not received tender notice in person from the bank, it must have been pleaded in the amended application. However, no such pleading is made. Appellants had not taken steps to send the disputed signature to the hand writing Expert's opinion. Therefore, this Tribunal is of the view that tender notice was personally served on the appellants R. Dhanalakshmi and Ramachandra Reddiar. As already stated, proof of affixture of tender notice on the secured asset is not produced, through personal service and publication in newspapers is proved.

31. Appellants filed IA No.1659/2006 for stay of further proceedings in pursuance of Annexures A-VI and A-VII until disposal of the SARFAESI application. The Order of Learned Presiding Officer dated 10.10.2006 reads

that, “ issuance of sale certificate, if not issued, will be kept in abeyance by respondent bank till 18.10.2006.”

32.It is the contention of the learned counsel for appellants that on the basis of wrong information given by the respondent bank and in the counter filed in IA 1659/2006 that auction purchasers deposited sale amount of Rs.1,19,15,123/- and sale had been confirmed on 5.10.2006, prayer for extension of interim order was not considered by the Learned Presiding Officer on 17.10.2006. Against the order passed in IA 1659/2006, appellants filed Appeal in MA (SA) 197/2006 before this Tribunal and that was dismissed for non payment of pre-deposit on 13.11.2006.

33. As per the written statement filed by the bank, it was stated that, “ sale was confirmed on 5.10.2006 in favour of Shahid Ahmed in paragraph 1 of the written statement. However, in paragraph 2, it was stated that sale in respect of 71.25 cents in RS No.48/2 of Kollam West village was confirmed in favour of Sahid Ahmed, Smt. B.S. Rajammal and Dr. Mumthaz Yusaf.” There is contradictory statement as to whom the sale was confirmed, whether in favour of Sahid Ahmed or in favour of Sahid Ahmed, Rajammal and Dr. Mumthaz Yusaf. Sale proceedings is not produced in the same to show how

many tenders had been received, what was the offer price quoted by the tenderers, whether the aforesaid persons jointly submitted their tender and whether the price quoted by the aforesaid persons was the highest offer. Production of sale proceedings is necessary to find out whether the sale was held as per the tender notice.

34. Letter dated 16.10.2006, written by Shri Shahid Ahmed, Rajalakshmi and Dr. Mumthaz Yusaf to the Authorised Officer of Union Bank of India shows that, “ on the date of sale itself, they paid 25% of the sale price amount of Rs.29,78,762/- and that they are making payment of balance 75% being Rs.89,36,341/- through cheque No.855350. It was further stated that respondent bank to make every possible effort to end pending litigation and make it possible for the bank to put them in actual physical possession of the property and building at the earliest along with issuance of sale certificate and bank may encash the cheque after bringing the litigation to an end and also with due intimation to them”.

35. In the counter filed in IA 1792/2006, an application filed to call for the entire records from the bank with regard to alleged sale of 71.25 cents in RS No.48/2 in Kollam west village and also to furnish all details with regard to payment of

auction amount of Rs.1,19,15,123/- by the successful bidder, bank stated that “since the sale was confirmed in favour of the highest bidder, the highest bidder deposited a sum of Rs.29,78,782/- being 25% of the sale amount on the same date. Thereafter, bank gave the bidder 30 days time for paying the balance amount through a letter. Meanwhile, appellants approached the Hon’ble High Court of Kerala as well as Tribunal and the matter was pending for consideration by the Tribunal. Purchasers requested some more time to pay the balance sale price, but, the bank had not given any final reply since the matter was pending before the Tribunal. Purchasers assured the bank that they would pay the balance amount as soon the proceeding is over and bank is in a position to put them in vacant possession of the property. Official Receiver attached to the Sub-Court, Kollam gave notice to the bank stating that a portion of the property sold by the bank comes within his possession as a receiver. The dispute regarding that has to be resolved. Since bank was not in a position to put the purchaser in possession of the property, bank had not called upon the purchaser to deposit the balance amount due from them.” This counter was filed on 11.12.2006. Therefore, it is clear from the counter that till 11.12.2006, even after completion of one month from the date of sale, bank had not received the balance sale consideration. In the counter filed in IA 1281/2008, bank admitted that balance sale consideration of 75%

was transferred to the account of the bank only on 31.3.2007. Sale was held on 5.10.2006. Thus, it is established that on the basis of false information submitted by the bank that the auction purchaser deposited the balance sale amount of Rs.1,19,15,123/- and the sale was confirmed on 5.10.2005, the learned Presiding Officer had not extended the interim order.

36.As per Rule 9(4) of SIE Rules, 2002, that was in force in the year 2006, sale price shall be paid by the purchaser to the Authorised Officer on or before 15th day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between parties. As per the decision laid down by the Hon'ble Supreme Court of India, in re, G.M. Sri Siddeshwara Co-operative Bank Ltd. and another Vs. Iqbal and others reported in 2013 (10) SCC 83, the word 'parties' for the purpose of Rule 9(4) would mean secured creditor, borrower and the auction purchaser.

37.In the year 2016, the words "as may be agreed upon in writing between parties" was substituted with words "as may be agreed upon in writing between the purchaser and the secured creditor, in any case, not exceeding 3 months." For proper understanding, the Rule 9(4) that was in force in the year 2006 is extracted hereunder.

“9(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties”

Hence, it is clear that as per Rule 9(4) that was in force when the sale was held in this case, balance sale consideration should be paid within 15 days from the date of confirmation of sale or such extended period as may be agreed upon in writing between parties, i.e., borrower, secured creditor and auction purchaser. Here, in this case, no such written agreement was executed between the borrower, secured creditor and auction purchaser is produced.

38. As per Rule 9(4) of SIE Rules, balance sale consideration should be paid within 15 days from the date of confirmation of sale. Contrary to this, tender notice gives for one month time from the date of action to pay the balance sale price. It is again in violation of the mandatory provision of Rule 9(4) of SIE Rules.

39. In the case on hand, there was no agreement in writing among the borrower, auction purchasers/successful bidders and the bank, permitting the

payment of the balance sale consideration beyond the period of 15 days or 30 days as per tender notice. Successful bidders cannot say that bank can realize the cheque amount after putting them in possession. Payment through cheque, unless it is encashed within timeline, cannot be considered as proper and valid payment. As seen from the account statement, balance sale price was not realized through cheque payment, but was transferred from the account of the successful bidder.

The details of payments are as follows:-

a) 5.10.2006	-	By Cash	-	Rs.29,78,782.00
b) 31.3.2007	-	By Transfer	-	Rs.89,36,341.00

				Rs.1,19,15,123/-

The submission of learned Counsel for the respondents that since the balance sale consideration is paid through cheque within 30 days, it satisfies the requirement of paying balance sale price as per Rule 9(4) of SIE Rules, 2002, cannot be accepted for the reasons that cheque was not at all presented for collection. Balance sale price was transferred through money transfer from the account of successful bidder after 5 months. There is no agreement in writing among the borrower, bank and successful bidder for extension of time for balance payment of sale price. Thus, it is apparent that balance 75% of

sale consideration was not paid in time, as mandated under law and it is violation of Rule 9(4) of SIE Rules, 2002.

40. The sale certificate issued in favour of the successful bidder dated 11.6.2007 shows that property scheduled in the SA and sold to three persons was divided among them in Schedule I and Schedule II. Schedule I was allotted to Rajammal and Schedule II was allotted to Shahid Ahmed. It appears that there was no allocation of property to Dr. Mumtaz Yusaf. A close reading of the sale certificate shows that name of Dr. Mumtaz Yusaf is not mentioned in the sale certificate as a successful bidder. It is just stated that property was sold in favour of one Rajammal and Shahid Ahmed, contrary to the plea taken in the written statement that the property was sold to Rajammal, Shahid Ahmed and Mumtaz Yusaf. It shows that the property said to have been purchased by three persons in a sale through inviting tenders, confirmed in favour of three persons, the sale certificate was issued in favour of two persons by dividing the property into two schedules. Such kind of division and apportioning is not contemplated in the SARFAESI Act and the Rules. How is that sale certificate was issued only in favour of two persons, when sale was confirmed in favour of three persons? There is violation in issuing sale certificate.

41. IA No.1691/2006 filed for issuing Commission to inspect the three items of property and file report regarding location and market value was dismissed by the Learned Presiding Officer on 11.7.2007. Against the dismissal order, appellants filed IN(SA) 597/2007 before this Tribunal and that was dismissed for non compliance of pre-deposit.

42. It is submitted by Learned Counsel for the respondents that IA 1691/2006 filed by the appellants for issue of Commission to inspect the property and file a report regarding the market value and location was dismissed and the appeal filed against that order was also dismissed and therefore appellants cannot agitate the issue of valuation in the SARFAESI proceedings and in this Appeal. He further submitted that the principles of *Res Judicata* would apply at two stages of the same proceedings. In support of this contention, he relied on the decision of Hon'ble Supreme Court of India, in re, Sulthan Said Ibrahim Vs. Prakasan reported in 2025 KLT Online 2014 (SC).

43. There is no dispute with regard to the legal proposition that the principles of *Res Judicata* would apply in two different stages of same proceedings. That does not prevent this Tribunal from considering the issue of valuation from available records that had come into existence prior to filing of IA 1691/2006.

44. One of the main grounds taken in the Securitization Application both in amended/unamended application is that the property sold was grossly undervalued and sold for a low price. Appellants produced a copy of the Sale Certificate issued by Kerala Financial Corporation in connection with the sale of the property measuring 49.173 cents in Kollam West village on 25.11.2006 for a sum of Rs.1,40,10,000/-. There are two valuation reports available, one dated 4.9.1999 probably got at the time of availing loan facility and another report dated 24.8.2006, got prior to sale of the property on the basis of which reserve price was fixed. Both these reports were secured by the bank from an approved valuer.

As per the valuation report dated 4.9.1999, two lands and two buildings were valued at Rs.1,80,00,000/-. Total extent of land was 74 cents. As per the valuation report dated 25.8.2006, 71.25 cents of land and building was valued at Rs.1,16,36,840/- as market value and at Rs.1,15,00,000/- as forced sale value. From 1999 to 2006, certainly value of the land, if not the value of the building, would have increased at least by 20%. However, value of land and building was assessed low in the year 2006. Valuer has said in his 2006 report that value of the land was estimated based on the prevailing trend and recent

sale instances of the land with almost similar characteristics of the subject land. However, there is no indication of details of sale instances that were considered by the valuer, are given in the report.

45.It is not known whether valuer of the report dated 24.8.2006 was informed about the previous valuation dated 4.9.1999. 71.25 cents of land in 1999 was valued at Rs.1.14 crores, with land and building it was valued at Rs.1,71,60,000/-. It is apparent that valuation of the land and building is not scientifically done based on the market value and considering the earlier valuation report when valued in 2006. Thus, there is merit in the contention of the learned counsel for the appellant that property was grossly undervalued.

46.Appellants filed Writ Petition No.18612/2007 on the file of Hon'ble High Court of Kerala to set aside Ex.P3 Valuation Certificate. Hon'ble High Court in its Order dated 26.11.2011 gave liberty to the appellants to agitate this issue before the appropriate Forum. It appears that appellants had not filed any separate application to set aside the Ex.P3-valuation certificate, except raising grounds in the Securitization Application.

47. Appellants have been consistently pleading that property was not properly valued, to get the best price. It was also pleaded that Authorised Officer had not determined the extent of the property required to be sold to realize the debt due. Instead, he proceeded to sell more than the extent of land with building then what is required for realizing the loan due and that too, for a low price. This pleading has been taken in the main SARFAESI application and in the amended SARFAESI application.

48. We have seen that learned Counsel for appellants and respondents produced several decisions on the valuation of the property, fixing reserve price, sale of the property, grounds for challenging the sale and the need to protect the interest of borrower, auction purchaser and the bank. The gist of those decisions are,

I. Appellants:

1. When secured creditor is given a free hand to resort to the sale of the property without approaching the Court or Tribunal, mandatory procedures under the SARFAESI Act and the Rules made thereunder have to be complied (in re, **Mathew Varghese Vs. Amritha Kumar and others reported in 2014 (5) SCC 610**)

2. Payment of balance purchase price has to be paid by the purchaser on or before 15th day of confirmation of sale or such extended period, as may be agreed upon in writing between the parties i.e., the secured creditor, borrower and the auction purchaser (in re, **Siddeswari Co-operative Bank Ltd. and another Vs. Iqbal and others reported in 2013 (10) SCC 83**)

3. In the matter of sale of property, dominant consideration is to secure the best price for the property sold and for that proper valuation has to be done and reserve price fixed, failure to do so would result in substantial injury to the borrower/guarantor and that would ultimately amounts to material irregularity and vitiate subsequent proceeding (in re, **Ram Kishun & Others Vs. State of UP and others reported in (2012) 11 SCC 511**).

4. Non-compliance of mandatory Rule 8(7) of Security Interest (Enforcement) Rules, 2002 i.e., affixture of sale notice on the conspicuous part of the immovable property would render the sale invalid and liable to be set aside. (in re, **M. Rajendran Vs. Authorised Officer, Corporation Bank and others reported in 2012 AIR Mad.21**)

5. Secured asset cannot be disposed in a causal or light-hearted manner.

Secured Creditor is a Trustee and it cannot deal with the property in any manner it likes. Right of the property is a constitutional right. Secured Creditor is duty bound to ensure maximum best price is secured from the secured asset and that no one is taking advantage of the vulnerable position in which the borrower is placed on account of the proceedings against him. (in re, **Unnikrishnan K.T. Vs. Authorised Officer, UCO Bank, Ernakulam and others reported in 2018 (1) KLT 990**).

6. Valuation of the property taken at the time of granting loan has to be taken

as a crucial factor while obtaining valuation at the time of bringing the property for sale (in re, **Karnataka Bank Vs. Mahadeshwara Bricks and others reported in (2025) ibclaw.in.207-DRAT, Chennai**)

7. When the manner of exercising power is laid down, such power is to be

exercised in the manner prescribed or not at all (**in re, K. Raamaselvam Vs. Indian Overseas Bank reported in AIR 2010 Madras 1993**)

8. Financial Institutions cannot be permitted to act like property dealers and

dispose the secured asset in an unreasonable or arbitrary manner (in re,

Parwati Devi and another Vs. State Bank of Patiala and others reported in 2018 KHC 4174)

9. Confirmed Court sale should not be ordinarily be inferred with. Only when credible issues are raised regarding the adequacy of valuation or the fairness of the process leading to the fixation of the reserve price, the supervisory jurisdiction of the Court may be invoked (in re **Om Sakthi sekar Vs. V. Sukumar and others in Civil Appeal No.3362/2026)**)

II. Respondents 1 and 2

- 1) When borrower is given notice through any mode of service with sufficient time, it cannot be complained that he was not given requisite time in another mode of service (in re, **Rajendran Vs. M/s KPK Oils and Proteins Indian Ltd. reported in 2025 KHC 6814)**)
- 2) Sale cannot be set aside for minor violations, unless fraud and collusion are established (in re, **Sanjay Sharma Vs. Kotak Mahindra Ltd. reported in 2025 KHC 7019)**)

- 3) Grounds of challenge and relief sought to set aside the sale notice and ground of challenge and the relief sought to set aside the sale are different from each other (in re , **1. Oasis Dealcom Pvt. Ld.(M/s) Vs. Khazana Dealcom Pvt. Ltd. and others reported in 2016 KHC 6746 ; 2. Sudha Lakshmi p. Vs. Bank of India and another reported in 2018 KHC 4389; 3. Authorised Officer, Indian Bank Circle Office, Vs. K.J. George and others reported in 2020 KHC 5600; 4. Industrial Connections Chennai (M/s), Vs. M/s Encore Asset Reconstruction Company Pvt. Ltd. Gurugram reported in 2024 KHC 2385; 5. Bank of Baroda and another Vs. M/s Parasaadilal Tursiram Sheetgraph Pvt. Ltd and others reported in 2022KHC 6792 and 6) Kailasam P. Vs. Karnataka Bank Ltd. reported in 2025 KHC 3649)**
- 4) When property is sold above the reserve price, there cannot be any dispute regarding the validity of the sale (in re, **UCO Bank and another Vs. Dipak Debbarama and others reported in 2016 KHC 6786)**
- 5) Allegation of mere procedure violation is of no use unless it is demonstrated that substantial prejudice is caused on account of the procedural violation (in re, **L & T Housing finance Limited Vs Trishul Developers and another reported in 2010 10 SCC 6890)**

III Auction Purchasers, R3 to R5.

1. 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 (in re, **Celir LLP Vs. Bafna Motors (Mumbai)** reported in **2023 (5) KLT 599(SC)**)

 2. SARFAESI action cannot be held bad in law on a trivial objection without showing substantial prejudice. Payment by cheque, which is realized subsequently, relates back to the date of receipt of the cheque (in re, **Pahwa Buildtech Pvt. Ltd. Vs. Jagmohan Singh Arora and others** reported in **CDJ 2022 DHC 878**).
49. Decisions of any higher Court would be applied depending upon their applicability to the facts and circumstances of this case. The basic premise is that banks / financial institutions are expected to act as 'Trustees', while dealing with the property of the secured debtor. They should make earnest effort to sell the secured interest for a best price to safeguard the interest of the bank and the borrower. Sale should be held by following

mandatory procedures. If that is not done, there is no doubt that sale is liable to be set aside.

50. We have seen from the valuation report of the bank obtained in the year 1999 and 2006 that value of the property was grossly undervalued in 2006. There is no other outside material is required to the aid of this Tribunal to come to the conclusion that property is grossly undervalued. Thus this Tribunal concludes that secured asset in this case was grossly undervalued when compared to the valuation given by the bank's valuer in the year 1999 and in 2006, depriving the appellants of the best price. In fact, the property was sold for insufficient price.

51. Appellants filed IA No.1791/2006 to set aside the sale held on 5.10.2006 on the ground that sale is vitiated by fraud, collusion and material irregularity. The main grounds taken in the IA are,

- a) On the basis of valuation certificate dated 4.9.1999, bank had sanctioned the loan. In S.No.434/48 in Kollam West Village, extent available was 71.25 cents. There is another 3 cents in S.No.743/A, Kollam East village. Thus, there is no total area of 74.25 cents. There is building measuring 10,000 sq.ft. in 71.25 cents and 3 cents. There is separate two storied buildings.

Value of the land was Rs.1,18,40,000/- and building value is shown as Rs.5,76,000/-. Property is located in the prime location. Value given by the bank prior to sale is deplorably low, compared to the value given in the year 1999.

- b) 74.25 cents of property with two building was sought to be sold by describing 71.25 cents with single building at low price. Sale had been done in violation of relevant rules of SIE Rules and no intimation was given regarding the details of the sale.
- c) Authorised Officer is required to obtain valuation certificate from an approved valuer and fix the reserve price, in consultation with the secured creditor. This procedure was not complied by the Authorised Officer. Everything was done behind the back.
- d) Sale of a portion of 74.25 cents is more than enough to meet the claim of the bank.

On these grounds, IA 1791/2006 was filed for setting aside the sale held on 5.10.2006.

52. Learned Presiding Officer passed a hand-written order in this application on

3.4.2007. The order reads as follows:

“Heard both sides. In view of Section 17(3) of SARFAESI Act, relief prayed for can be granted only in the SA. Hence this IA is dismissed, leaving open the question as to whether the sale is liable to be set aside to be decided in the SA”.

This order makes it clear that Learned Presiding Officer kept open the question regarding the sale and prayer to set aside the sale for the reasons stated in the IA 1791/2006, to be decided in the main SA. It is not the case where the opportunity to challenge the sale was shut once for all. Issue raised in IA 1791/2006 was kept open to be decided in the SA.

53. Appellants filed IA No.1411/2010 for amendment of the SARFAESI Application and the amendments were sought with regard to conduct of sale, violation of provisions of SARFAESI Act and the Rules made thereunder, taking possession, sale and delivery of possession to the auction purchaser, etc. Detailed averments are incorporated in the amendment application. This amendment application was allowed by the Learned Presiding Officer, as per the proceeding dated 19.3.2013 and the appellants were permitted to carry

out amendment. Respondents' case is that the pleadings sought to be included by way an amendment with regard to sale of the property are barred by limitation. Therefore, the amendment allowed had no force and cannot be considered. However, against the order allowing the amendment application, respondents had not filed any appeal. Auction Purchaser filed IA No.1301/2014 for review of the order passed in the amendment application, along with an IA No.1300/2014 to condone delay of more than 348 days in filing the review application. Auction purchaser also filed IA No.1030/2016 to hear the question of limitation to set aside the sale by way of amendment after 3 years and 7 months, as a preliminary issue. No orders have been passed on these applications. Thus, the order passed in the amendment application became final.

54. Precedents have been produced by the Learned Counsel appearing for parties with regard to entertaining the amendment application, especially, for amending the relief, which is time barred. Relevant portions of the decisions had already been extracted, supra. The gist of those decisions are extracted hereunder for easy reference.

I. Appellants:

1. Amendment in SARFAESI Application is permissible under law for impugning the subsequent or consequential actions/measures by the bank (In re, **Veena Prabhakumar and another Vs. Dhanlaxmi Bank, Kollam Branch and another reported in 2019 (3) KHC 268**).
2. If the amendment application is allowed without any rider or condition, it is reasonable to presume that amendment would relate back to the date of filing of suit. (in re, **Prithi Pal Singh and another Vs. Amrik Singh and others reported in 2013 KHC 3581**).

II Auction Purchasers R3 to R5

1. Amendment application should be filed within the period of limitation, as prescribed under Section 17 of the SARFAESI Act. (in re, **B. Ashok Kumar and others Vs. the registrar DRAT, Chennai and others reported in CDJ 2013 MHC 2188**)
2. DRT has no power to entertain the application presented beyond the period of 45 days from the date of impugned measures taken (in re, **Joseph A.A. Vs.**

Hong Kong and Shanghai Banking Corporation Limited reported in 2025 KHC 785)

3. When the amendment changes the nature of the case, cause of action and prohibited by law of limitation, such amendment cannot be permitted (in re, **Rajkumar Gurawara (dead) through Lrs Vs. M/s S.K. Sarwagi & Co. Pvt. Ltd. and another reported in CDJ 2008 SC 1004)**

55.From the decision of Hon'ble Supreme Court of India in Life Insurance Corporation Vs. Sanjeev builders Private Limited and another reported in 2022 KHC Online 6882 relied by Learned Counsel for R1 ad R2 in a case where amendment was allowed after 27 years from the date of institution of the Suit. Hon'ble Supreme Court of India held that "Amendment can be allowed if it is required for effective adjudication of the controversy between the parties. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, prayer can be allowed and the issue of limitation framed separately for decision".

56.In the case before hand, we have seen that appellants filed IA 1791/2006 to set aside the sale. Though that application was dismissed, Learned Presiding

Officer kept open the question relating to the sale and the prayer to set aside the sale to be decided in the main SARFAESI Application. Of course, application in IA 1411/2010 filed challenging the sale measures was filed after a period of three years and seven months after the sale. That application was allowed on 19.9.2013. Respondents had not filed any appeal against the order allowing the amendment application. Auction Purchaser filed IA 1300/2014 to condone the delay of 348 days in filing Review Application in IA 1301/2014 filed to review the order passed in the amendment application. In both the applications, no order was passed. Auction Purchaser filed IA 1030/2016 to hear on the question of limitation of the application filed to set aside the sale by way of amendment after three years and seven months, as a preliminary issue. Even in this application, no order had been passed. Therefore, order allowing the amendment application had become final. The issue of conduct of sale and prayer to set aside the sale was left open to be decided in the main SARFAESI application and when the amendment application filed challenging the sale proceedings and other irregularities was allowed, this Tribunal is of the view that the issue of conduct of the sale and the prayer to set aside the sale, if the grounds to set aside the sale are made out, can be taken for consideration in this appeal.

57. Hon'ble High Court of Kerala had also discussed in OP(DRT) 122/2018 that the obvious reason for not challenging the sale was that if the appellants succeed on the grounds taken in the SARFAESI application against the possession notice and the sale notice, subsequent sale would fail and the other reason is that Tribunal passed an order on 3.4.2007 declaring that the validity of sale will be considered at the time of final disposal of the SARFAESI application.

58. In the original SARFAESI application, apart from challenging the possession notice and the tender notice and to set aside them, there was also a prayer to restrain the respondents 1 and 2 from proceeding ahead with the possession notice and the tender notice.

59. Thus, This Tribunal is of the view that irrespective of the fact that there is obvious omission of a prayer to set aside the sale, if grave irregularities and violation of the mandatory provisions of the SARFAESI Act are made out in the conduct of sale, the plea to set aside the sale can be considered.

60. Appellants also filed WPC No.24839/2006 on the file of Hon'ble High Court of Kerala at Ernakulam, challenging the SARFAESI measures. The pleadings and prayers are identical to the pleadings and prayers made in SA. Hon'ble High

Court disposed this Writ Petition with certain directions. Appellants were directed to pay to the bank a sum of Rs.10.00 lakhs on or before 30.9.2006 and a further sum of Rs.40.00 lakhs in two equal instalments. Appellants were directed to submit suitable application seeking time to pay the balance amount. If the amounts directed to be paid by the appellants are paid by them, bank was directed to consider the representation of the appellants and pass appropriate orders, in accordance with bank's policy and guidelines. Till the orders were passed, proceedings were ordered to be kept in abeyance subject to following the conditions. If appellants did not pay any amount as directed, bank was given free hand to continue with the proceedings now initiated without having to issue any fresh notice. This order shows the ground raised in the writ petition was not decided on merits. There were further directions also issued. Against this order, appellants filed Writ Appeal No.1802/2006 before the Hon'ble High Court of Kerala. Hon'ble High Court of Kerala confirmed the order of the Single Judge and dismissed the Writ Appeal.

61. Union Bank of India filed WPC No.4635/2007 against the District Collector, Kollam, appellants and others for issuance of writ of mandamus to first respondent to evict respondents 2 to 5 and other occupants in respect of 71.25 cents with residential building in RS No.48/2, Kollam West and hand

over physical possession to enable the bank to issue sale certificate to respondents 6 to 8 and put them in possession. In WPC No.4635/2007, taking note of the order passed by the Hon'ble Division Bench in WA No.1802/2006, Hon'ble High Court allowed the WP and directed the first respondent District Collector to proceed with further action in respect of exhibit P3 in accordance with.

62. Against this order, WA No.1250/2007 was filed by the appellant before the Hon'ble High Court of Kerala and Hon'ble High Court passed an order on 1.6.007 and observed that pendency of Writ Appeal will not in any way prevent the respondent bank handing over possession to the auction purchaser and also for issuance of the sale certificate, of course, subject to the result of the Writ Appeal. In the final disposal of Writ Appeal on 7.3.2008, appellants were given liberty to question the action of the bank in alleged taking possession of excess portion of the property other than what was mentioned in the prayer before appropriate Forum.

63. Learned Counsel for the respondents 1 and 2 pressed into service the decisions as aforementioned with regard to *Res Judicata*, especially when WPC No.24839/2006 filed with the same set of pleadings and the prayer as

pleaded in the TSA 10/2006 and was dismissed and the Writ Appeal 1802/2006 filed was also dismissed. It is submitted that the same issue cannot be agitated in the SA and in this appeal, as they are hit by the principles of *Res Judicata*. In the considered view of this Tribunal, this submission is not correct. Reason is that WP(C) 24839/2006 had not considered the grounds raised in the Writ Petition on merits. Only as an interim measure, conditional order was passed giving direction to the appellants to make certain payments and on failure to make payments, option was given to the appellants to approach concerned Forum for appropriate relief, viz. DRT/DRAT, which has jurisdiction to decide the matters arising out of SARFAESI Act. Even in the WP(C) 2635/207, though the order was passed for handing over possession to the auction purchaser, in Writ Appeal No.1250/2007, appellants had been given liberty to question the action of the bank against the alleged taking of excess portion of the secured asset. Therefore, this Tribunal finds that the decisions relief by Learned Counsel for R1 and R2 with regard to application of the principles of *Res Judicata* are not applicable to the facts and circumstances of this case.

64. From the perusal of records, this Tribunal finds that parties have filed several interlocutory applications during the pendency of the SARFAESI Application. As per the list furnished by the appellants, 33 interlocutory applications have been filed. Except in IA Nos. 1659/2006, 1690/2006, 1691/2006, 1791/2006, 1792/2006, 1942/2007, 1411/2010, 179/2016 and 1276/2018, in all other interlocutory applications, no order had been passed. For better appreciation, list of IAs filed in SA No. 66/2006 with remarks (filed by the appellants) is produced.

Sl. No.	IA No.	Filed on	IA filed by	Prayer	Status	Page No. in Compilation of documents filed by Appellants	Remarks
01.	1659/2006	26.09.2006	Applicant	For stay	Dismissed on 17.10.2006	35-37	MA(SARFEASI) No: 197/2006 on the files of DRAT, Chennai and which rejected on 13.11.2006 for non-payment of Pre-deposit (page Nos. 85-87 in compilation of documents)
02.	1690/2006	28.09.2006	Applicant	For impleading Auction Purchaser as Additional respondent R3 in SA 66/2006	Allowed on 17.10.2006	Not produced	
03	1691/2006	28.09.2006	Applicant	Depute Advocate Commissioner to assess the market value of	Dismissed on 11.07.2007	38-41	IN (SA) No: 597/2007 – rejected on 17.04.2009 for noncompliance of interim order in IA No: 1152/2007 for pre-deposit of Rs. 40.00 Lakhs- (Page Nos 194-

				properties etc.			198 in compilation of documents)
04	1791/2006	30.10.2006	Applicant	Set aside sale	Dismissed on 03.04.2007 leaving open the relief to be decided in SA	55-78	No Appeal preferred
05.	1792/2006	02.11.2006	Applicant	Call for records of sale and payment of Rs. 1,19,15,123/- by Auction Purchaser	Dismissed on 21.11.2006 as not pressed	81-84	
06	1793/2006	03.11.2006	Applicant	Stay of dispossession from 71.25 Cents of property	No order	Not produced	
07	1794/2006	03.11.2006	Applicant	Petition to implead Auction purchasers	No order	Not produced	
08	453/2007	16.03.2007	Applicant	Petition to implead Auction purchasers	Allowed on 3.04.2007	Not produced	No appeal preferred
09	890/2007	24.05.2007	Applicant	Stay of dispossession	Dismissed as not pressed on 29.05.2007	Not produced	No appeal preferred
10	952/2007		Applicant	Advance the case	Advanced to 12.6.2007	Not produced	
11	901/2007	09.06.2007	Auction Purchaser	To accept written statement	No order	Not produced	
12	1089/2007	23.6.2007	Applicants	Appointing commissioner with assistance of valuer and recovery of possession of property	No order	154-160	

13	503/2006	15.03.2008	Applicant	Set aside sale	No order	178-180	
14	1942/2007		Auction Purchaser	Petition for set aside ex parte order filed by D4	allowed on 18.03.2008	Not produced	
15	1281/2008	02.08.2008	Applicant	Restoration of Stay order	No order	189-191	
16	1282/2008	05.08.2008	Applicant	Initiating Criminal Prosecution	No order	192-193	
17	1411/2010	04.05.2010	Applicant	Amendment Petition	Allowed on 19.3.2013	213-220	No appeal preferred, But Auction Purchaser filed review petition with petition to condone delay of 348 days in filing review petition
18	1300/2014	02.06.2014	Auction Purchaser	Delay petition in filing Review	No order	245-247	
19	1301/2014	02.06.2014	Auction Purchaser	Review the order in IA 1411/2010	No order	239-244	
20	1306/2014	02.06.2014	Auction Purchaser	Recall order dated 27.5.2024 directing respondents to file written statement to amended SA	No order	Not produced	
21	179/2016	27.06.2016	Auction Purchaser	Petition to hear Maintainability of SA	Allowed on 29.09.2018	269-274	MA(SA) No: 10/2020 filed by the Appellants
22	212/2016	28.06.2016	Applicant	Petition to accept Annexures X & XI	No order	Not produced	
23	1030/2016	04.04.2016	Auction Purchaser	Hear the question of limitation in praying to set	No order	260-264	

				aside sale by way of amendment sought after a period of 3 years and 7 months as a preliminary issue			
24	438/2016	09.08.2016	Bank	Accept Additional written statement	No order	277-279	
25	620/2016	21.09.2016	Applicant	Petition to summon Bank Manager	No order	Not produced	
26	622/2016	01.10.2016	Applicant	Petition to accept documents	No order	Not produced	
27	681/2016	01.10.2016	Applicant	Petition to Accept documents Annexure XIX	No order	336-362	
28	682/2016	01.10.2016	Applicant	Petition to substitute Annexure XIII	No order	362-373	
29	696/2016	06.10.2016	Bank	Petition to amend the additional written statement	No order	374-377	
30	1999/2017	14.11.2017	Applicant	Petition to accept Annexures A19 to A24	No order	453-553	
31	661/2018	17.03.2018	Applicant	Petition to Accept Annexure A 25 to 27	No order	554-581	
32	1241/2018	01.06.2018	Applicant	Petition to reopen the SA	No order	587-592	
33	1276/2018	08.06.2018	Applicant	Petition for urgent hearing of IA 1241/2018	Allowed on 13.06.2018	Not produced	No appeal preferred

65. During the first round of litigation, TSA No.10/2016 (SA No.66/2006) was dismissed by the Learned Presiding Officer, DRT-II, Ernakulam on 2.12.2026.

Relevant portion of the order is extracted herein.

“53. When the matter is examined considering the above observations, this Tribunal is of the view that the Hon’ble High Court has not found any flaw in the conduct of the impugned or the proceedings. In such context, in spite of the Hon’ble High Court permitting the respondent bank to issue sale certificate to the purchasers, having duly considered the submissions put forth by the applicants through their counsel had only reserved liberty to the appellants to pursue their remedy as against the action of the bank in taking portion of the property. Per se, this Tribunal is of the view that the contentions of the applicants as regards the non adherence of the provisions of the Act, cannot be considered as the Hon’ble High Court has already permitted the issuance of sale certificate which cannot be called in question by this inferior tribunal in the instant proceedings. More so, when the applicants have not chosen to challenge the said verdict of the Hon’ble High Court.

54. In view of the preceding analysis, the other issues and questions raised in the IA’s filed by the parties need not be decided. Considering the facts and on perusal of records, I am of the view that the applicants have not made out any case warranting this Tribunal to allow the reliefs as is sought for. With these observations and for the foregoing reasons, I answer the points accordingly and proceed to pass the follows:

ORDER

TSA No.10/2016 (SA 66/2006) stands dismissed. Consequently, all pending IAs also stands dismissed. Interim order, if any, stands vacated. Parties to bar their costs.

Registry is directed to communicate copy of the order to the parties concerned by Register Post with AD. “

66. As per this Order, it is seen that Learned Presiding Officer observed that Hon’ble High Court of Kerala had not found any flaw in the conduct of the sale proceedings. Hon’ble High Court permitted the respondent bank to

issue sale certificate to the purchaser, reserved liberty to the appellants to pursue their remedy as against the action of the bank in taking excess portion of the property. Contentions of the appellants as regards non adherence of the provisions of the Act can not be considered as Hon'ble High Court has already permitted the issuance of sale certificate, which cannot be called in question by this inferior Tribunal in the instance proceedings. Thus, it is held that other issues and questions raised in the IAs filed by the parties need not be decided. Tribunal came to the conclusion that appellants had not made out a case warranting allowing of the reliefs sought for and thus dismissed the SA.

67. Writ Petition referred in the order of the Learned presiding Officer was WP(C) No.4635/2007 filed by the bank to take physical possession of the secured asset. Against the order allowing the said WP, appellants filed Writ Appeal No.1250/2007. In the final disposal of the said Writ Appeal, Hon'ble High Court reserved the liberty to the appellants to question the action of the bank in taking excess portion of the property other than what is mentioned in the prayer portion of the writ petition before appropriate forum. It has to be borne in mind that in Writ Petition No.24839/2006 filed with the same pleadings and prayers as in the SA, Hon'ble High Court

passed conditional order as stated therein. There also, liberty was given to the appellants to raise contentions on merits before appropriate Authorities, if the appellants choose to take further proceedings without complying directions. Though Writ Appeal filed against this order in WA No.1802/2006 was dismissed, liberty given to the appellants to raise the issue on merits was not disturbed by the order in the Writ Appeal. Thereafter, TSA No.10/2016 was filed.

68. Against the order passed in TSA No.10/2016 dated 2.12.2016, appellants filed OP(DRT) No.120/2016 before the Hon'ble High Court of Kerala. Hon'ble High Court after recording the proceedings held thus far, observed Hon'ble Division Bench of the High Court in Writ Appeal No.1250/2007 permitted the appellants to pursue the issue of taking excessive portion of the property by the bank in the SARFAESI application. It was further observed in paragraph 4 of the order, as follows:

“4. As already noted, in Ext.P15 order, the DRT proceeds on the assumption that, as regards the legality of the sale conducted by the respondent bank of the properties mortgaged to it by the petitioners herein, the issue was already concluded through the judgments of this Court in the Writ Petitions and Writ Appeals referred above. It was found by the Tribunal that the contentions of the petitioners as regards

non-adherence to the provisions of the Act, in respect of the sale conducted, and the issuance of sale certificate, could not be considered by the Tribunal in the light of the directions issued by this Court in the Writ Petitions and Writ Appeals referred above. It was thereafter that the Tribunal found that the petitioners had not made any case for granting the reliefs sought for in S.A.No.66/2006, and dismissed the said S.A. together with all the incidental interlocutory applications that were filed by the petitioners. As can be seen from the extracted portion of the Writ Appeal judgment, this Court had not concluded the issue with regard to the legality of the sale proceedings that were initiated by the respondent bank against the properties that were mortgaged with it by the petitioners herein. That issue was left to be decided by the Tribunal in the S.A. that was filed by the petitioners before it. Inasmuch as the Tribunal did not consider the said issue on merits, I am of the view that the Tribunal erred in not exercising its jurisdiction and passing an order on merits on the said issues that were raised by the petitioners in the S.A. filed before the Tribunal.”

69. It is clear that Hon’ble High Court of Kerala in Writ Appeal No.1250/2007 observed that it has not concluded the issue with regard to legality of the sale proceedings and that issue was left open to be decided by the Tribunal in the SA. Thus held, that Tribunal erred in not exercising its jurisdiction and passed order without considering the issues raised.

70. In paragraph 5 of the order, it was observed and held as follows:

“5. On a consideration of the decisions cited across the bar, and in the backdrop of the factual matrix of the case, I am of the view that this is a case, where the Tribunal felt, on an erroneous interpretation of the judgment of this Court in W.A. No.1250/2007, that it was not open to it to consider the issues raised in the S.A. before it, on merits. The Tribunal proceeded on the assumption that the issues raised in the S.A. had already been conclusively decided against the petitioners through the judgment in W.A.No.1250/2007. This, as has already been noted, was factually incorrect, since the extracted portion of the judgment in the Writ Appeal clearly indicates that the Division Bench of this Court had left open the issues raised in the S.A. to be considered on merits by the Tribunal. The non-consideration of the issues raised in the S.A., on merits, vitiates the order of the Tribunal, and , therefore, in my view this would be a case where this Court would be justified in interfering with the final order passed by the Tribunal in these proceedings under Article 227 of the Constitution of India. I must also advert to the contentions of the learned counsel for the auction purchaser that the petitioners have an effective alternate remedy by way of an appeal against the final orders passed by the Tribunal in the S.A. referred above. The remedy by way of an appeal, to be an effective one, has to be under circumstances where the original authority decides the issue raised before it, on merits, and gives reasons for its decision. It is only under the said circumstances that an aggrieved person can effectively avail the remedy of an appeal before the Appellate authority for, in the appeal, he can raise contentions against the reasoning offered by the lower authority on the issues decided against him.

Inasmuch as in the instant case, the lower authority did not go into the issues at all, on an erroneous assumption that it could not go into those issues, I am of the view that the order impugned in this Original petition is vitiated on account of a non-exercise, by the Tribunal of the jurisdiction vested in it, and hence, a jurisdictional error. An appellate remedy would not be an effective one for the petitioner. Thus, for the reasons stated above I set aside Ext. P15 order of the Tribunal, and relegate the matter to the Tribunal, for a fresh consideration on the merits of the case. I make it clear that all issues raised in the S.A. as also the contentions of the respondents herein, with regard to the maintainability of the SA, are left open to be decided by the Tribunal, after hearing the rival contentions. The Tribunal shall endeavour to pass final orders in the matter on or before 31.12.2017.

71. In effect, Hon'ble High Court held that DRT disposed the SA on the wrong assumption that issues raised in the SARFAESI application had already been conclusively decided against the appellants in the judgment in WA No.1250/2007. It is factually incorrect. Thus set aside the order of the DRT passed in the TSA 10/2016 and relegated the matter for a fresh consideration.

72. After remand, borrowers filed IA No.179/2016 to decide on the maintainability of the SARFAESI Application. That application and TSA No.10/2016 were taken and disposed on the same date i.e., on 29.9.2018

by separate orders. While deciding IA 179/2016, Learned Presiding Officer observed as follows:

- a) On scrutiny of records, considering the ratio laid down in the judgments mentioned, Tribunal is of the considered view that present SA was maintainable on the date of filing of SA, which was filed challenging the possession notice and tender sale notification till the auction sale was conducted on 5.10.2006. Any challenge to the sale, which is a subsequent to Annexure VII is a fresh cause of action and same can be challenged by way of a fresh SA.
- b) In the instant case, possession notice and tender notice were under challenge. After the sale of the secured asset, appellants filed IA No.1411/2010 on 18.5.2010 to amend the SARFAESI application for incorporating grounds challenging the sale that took place on 5.10.2006, without any prayer to set aside the sale is barred by limitation.
- c) Sale was conducted on 5.10.2006. Hence, any challenge to the sale should have been only by way of a fresh SARFAESI application within 45 days.
- d) Cause of action for challenging Tender Notice is entirely different from the cause of action for challenging the SA. Appellants cannot harp on the originally filed SA and the relief sought in the amendment application to alter the nature of the SARFAESI application by incorporating additional grounds.

- e) Thus, it is observed that sale should have been challenged by way of a fresh SARFAESI application. Appellants filed an affidavit before the Hon'ble High Court stating that SA is rendered infructuous and cannot now blow hot and cold.
- f) IA No.1411/2010, the amendment application was filed only to circumvent the period of limitation in challenging the sale. This application was filed beyond the period of limitation and allowed in the infructuous SA by giving liberty to incorporate the additional grounds. There is no prayer in the amended SA application to set aside the sale. Therefore, amendment without compliance of legal obligation in an SA which had become infructuous is not maintainable and amended SA would not come into aid the appellants.
- g) SARFAESI application filed after the disposal of WP No.24839/2006 was filed without raising ground challenging the sale.
- h) Finally it was held that SA filed by the appellants stood concluded on the date of sale i.e., 5.10.2006. There was no challenge to the sale on the date of filing of the SA. Grounds raised with regard to fixing reserve price and valuation was elaborately considered in the IA 1791/2006 and dismissed. Thus, SA is not maintainable on the sale of the property held on 5.10.2006 and IA 179/2016 is allowed.
73. TSA No.10/2016 was also dismissed more or less on the same grounds and on the ground that measures initiated by the respondent bank under Section 13(4) are in accordance with law and that there is no legal

infirmity or jurisdictional error in respect of the measures taken to recover the secured debt.

74. Against the order passed in SA No.66/2006, appellants filed OP (DRT) No.122/2018. Hon'ble High Court of Kerala, after recording the previous proceedings, observed that "appellants did not choose to challenge the sale by amendment and sought to bring in certain additional averments and ground in respect of earlier challenge to taking over possession and sale of the secured asset. Obvious reasons are that if appellants win the SA, then, subsequent sale would also fail. Other reason is that DRT passed an order on 3.4.2007 declaring that validity of the sale will be considered at the time of final disposal of the SA. It was observed in paragraph 30 that DRT earlier took a view that it was estopped from considering the merits of the contentions in the SA, because of the judgment in WA No.1250/2007 in Ex.P26 and Ex.P27. The findings are essentially to the effect that the SA itself has become infructuous on account of the sale happened".

75. In Paragraph 32 of the order, it was observed that "there was an application IA 179/2016 before DRT raising the question of maintainability

of the SA at the instance of the auction purchasers. DRT concluded in paragraph 26 of its order that amendments earlier allowed to the SARFAESI application were unnecessary and time barred and that it cannot be looked into it and proceeded to hold that SA itself has become infructuous on account of subsequent sale. Appellants themselves conceded in WA No.1250/2007 that on the happening of the sale, SA has become infructuous.”

76. In paragraph 33, it was observed and held that, “DRT ought to have concluded upon the contentions of the parties on its legal merits, rather than merely on the question of maintainability of the SA. Many of the observations and holdings in Ex.P26 and Ex.P27 orders require further evaluation. But, it still does not guide to the forensic impressin that these orders are without jurisdiction or to be non est or void in law. Therefore, Ex.A26 and P27 ordes are to be tested properly and appellants should be advised to invoke alterative remedy available under the SARFAESI Act, to raise all factual and legal disputations and thus directed the appellants to approach the Appellate Tribunal within a period of two weeks to challenge the Ex.P26 and Ex.P27 orders”. Thus, these appeals are filed.

77. From the consideration of the materials produced and submissions made by Learned Counsel appearing for parties, this Tribunal finds the following violations in observing the mandatory requirements under the SARFAESI Act.

- i) Tender Notice gives 30 days time for paying the balance sale consideration, whereas, Rule 9(4) of SIE Rules, 2002 provides only 15 days.
- ii) Proof of affixture of tender notice on the secured asset is not produced.
- iii) Balance sale consideration of 75% was not paid within 15 days or 30 days, but paid only after 5 months.
- iv) Valuation of the property obtained by the respondent bank in the year 1999 is more than the valuation of the property obtained in the year 2006, prior to sale and on the basis of which, the reserve price was fixed. It is a common knowledge that between 1999 and 2006, value of the property must have been enhanced. It is evident from the sale certificate issued by Kerala Financial Corporation on 25.11.2006.
- v) There is no indication in the Tender Notice that joint bid can be submitted. Assuming that joint tender is permissible, sale certificate ought to have been given in favour of the successful joint bidders, who submitted the highest tender amount. In the case before hand,

respondent bank claimed that sale had been confirmed in favour of the three joint bidders, but, the sale certificate was issued in respect of two bidders, after distinctly partitioning the property sold into two items. This procedure is unknown to the SARFAESSI sale proceedings. Justification offered by the respondents that the successful bidders are members of a same family and therefore sale certificate was issued only in favour of two persons cannot be accepted.

78. These are the violations of the mandatory provisions of SARFAESI Act and the Rules made thereunder and irregularities in the conduct of sale, confirmation of sale, receipt of balance sale consideration and issuance of sale certificate. Merely because there is no specific prayer to set aside the sale and sale certificate, these violations of the bank, in the light of the reasons stated above, cannot be ignored, especially when the prayers to set aside the tender notice can be allowed for the violations pointed out, when tender notice is set aside, sale and issuance of sale certificate have to be set aside as a consequential relief.

79. As seen from the decision of Hon'ble High Court of Kerala in OP(DRT) No.120/2016 and OP(DRT) 122/2018, learned Presiding Officer had disposed the SA only on technical ground, that is, on the ground that once sale is over, SARFAESI application filed challenging the tender notice had become infructuous and other technical grounds, without considering the

issues raised with regard to violation in issuing tender notice, by giving 30 days time for paying balance sale consideration, plea regarding undervaluation of the property and excessive execution.

80. After raising all the pleas, inadvertently there was an omission to include the prayer to set aside the sale. This omission evidently was committed by the learned counsel, who prepared the SARFAESI application, amendment application and the amended Securitization Application. For the fault committed by the learned counsel for the appellants, appellants cannot be penalized.

81. Therefore, this Tribunal is of the view that the order of the Learned Presiding Officer, DRT-II, Ernakulam, dismissing TSA No.10/2016 (SA No.66/2006) and the order allowing IA No.179/2016 in TSA No.10/2016 on 29.8.2018, are liable to be set aside, for the reasons stated above.

82. **In the result**, RA(SA) 25/2020 is allowed by setting aside the dismissal order passed in TSA No.10/2016 (SA No.66/2006) and MA (SA) 10/2020 is allowed by setting aside the order allowing IA 179/2016, on the following terms. Thus, TSA No.10/2016 (SA No.66/2006) is allowed and IA No.179/2016 is dismissed.

- a) This Tribunal finds that demand notice was properly served and service of possession notice was substantially complied. As per the order passed under Section 14 of the SARFAESI act and as per the order of Hon'ble High Court of Kerala in WP(C) 4635/2006, physical possession was taken by the bank and handed over to the auction purchasers.
- b) This Tribunal finds that there is no serious violation of the mandatory procedures, in respect of issuance of demand notice, possession notice and taking physical possession of the secured asset under Section 14 of the SARFAESI Act. Thus, measures taken from issuance of demand notice till taking physical possession of the secured assets are found in order and these measures do not require any interference.
- c) Coming to the issuance of tender notice, conduct of sale, as already stated, this Tribunal found that property was grossly undervalued, tender notice was issued giving 30 days for paying the balance sale consideration, contrary to Rule 9(4) of SIE Rules, 2002, affixture of tender notice on the secured asset is not proved by producing proof of affixture, property was sold for insufficient price, sale certificate was issued in favour of two persons when sale was confirmed in favour of three persons. Therefore, tender notice viz. Annexure VII, sale held in

pursuance of tender notice and issuance of sale certificate are liable to be quashed and set aside and accordingly quashed and set aside.

d) Respondent bank is directed to take physical possession of the secured asset from the Auction Purchasers immediately and liberty is given to the bank to proceed with the sale of the property by initiating fresh sale measures in accordance with law.

e) Respondent Bank is directed to refund the sale consideration to the auction purchasers with interest applicable to Fixed Deposit from the date of deposit made by them till the date of payment and also the stamp duty and the registration charges incurred by them with interest at 6% p.a.(simple) from the date of payment made by them till the date of payment.

83. Parties are directed to bear their own costs.

84. Pending IAs, if any, stand closed.

[Dictated to PS (SN) transcribed by him, corrected, signed and pronounced by me in open court, this 21st April, 2026]

Sd/-

**(JUSTICE G. CHANDRASEKHARAN)
CHAIRPERSON**