IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 1444/2023

IDFC First Bank Ltd. having registered office at KRM Towers, 7th Floor, No. 1, Harrington Road, Chetpet, Chennai-600031 and corporate office at Ashar IT Park, Unit No. B3, 3rd Floor, Road No. 16Z, Wagle Industrial Estate, Thane (West), Maharashtra-400604

.....Appellant

Versus

1. M/s Radha Traders through its proprietor Anuradha Bansal, R/o House no. 35, Inder Enclave, Balkeshwar, Near Mahadevi Mandir Road, Agra, Uttar Pradesh-282004.
2. Mr. Shailesh Bansal, S/o Mr. Jagdish Bansal, R/o House no. 35, Inder Enclave, Balkeshwar, Near Mahadevi Mandir Road, Agra, Uttar Pradesh-282004.
3. Smt. Archana Bansal, W/o Mr. Shailesh Bansal, R/o House no. 35, Inder Enclave, Balkeshwar, Near Mahadevi Mandir Road, Agra, Uttar Pradesh-282004.
4. Mr. Vivek Pachauri, S/o Shri Daya Shankar Pachauri, R/o Flat No. 302, 3rd Floor, Tower-C, Ramada Plaza, Buland City, Nagla Arhar, Fatehabad Road, Agra, Uttar Pradesh-283111.

.....Respondents

Appeal Dy. No. 1468/2023

Vivek Pachauri, S/o Shri S/o Shri Daya Shankar Pachauri, R/o Flat No. 302, 3rd Floor, Tower-C, Ramada Plaza, Buland City, Nagla Arhar, Fatehabad Road, Agra, Uttar Pradesh-282001.

.....Appellant

Versus

1. IDFC First Bank Ltd. having corporate office at Ashar IT Park, Unit No. B3, 3rd Floor, Road No. 16Z, Wagle Industrial Estate, Thane (West), Maharashtra-400604 and registered office at KRM Towers, 7th Floor, No. 1, Harrington Road, Chetpet, Chennai-600031
2. Authorized Officer, IDFC First Bank Ltd. having corporate office at Ashar IT Park, Unit No. B3, 3rd Floor, Road No. 16Z, Wagle Industrial Estate, Thane (West), Maharashtra-400604
3. Regional Manager/Authorized Officer, IDFC First Bank Ltd., Region-Agra, Distt.-Agra-282001.
4. M/s Radha Traders through its proprietor Anuradha Bansal, R/o House no. 35, Inder Enclave, Balkeshwar, Near Mahadevi Mandir Road, Agra, Uttar Pradesh-282004.

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5. Shailesh Bansal, S/o Shri Jagdish Bansal, R/o House no. 35, Inder Enclave, Balkeshwar, Near Mahadevi Mandir Road, Agra, Uttar Pradesh-282004.

5. Smt. Archana Bansal, W/o Shri Shailesh Bansal, R/o House no. 35, Inder Enclave, Balkeshwar, Near Mahadevi Mandir Road, Agra, Uttar Pradesh-282004.

.....Respondents

Advocates, who appeared in this case:

For the Bank	Shri Sanjeev Singh, Advocate along with Shri Sahil Srivastava, Advocate
For the borrowers	Shri Sachin Mishra, Advocate holding brief of Shri V. K. Shukla, Advocate
For the auction purchaser	Shri S. K. Gupta, Advocate

JUDGMENT
Date of Pronouncement: 07.05.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The above mentioned appeals have been filed under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the same judgment dated 23.10.2023, whereby the Securitization Application No. 941/2022 filed by the respondents no. 1 to 3-borrowers has been allowed.

2. Brief facts of the matter are that the respondent no. 1 was granted certain credit facilities by the appellant-Bank through its proprietors-Anuradha Bansal and respondent nos. 2 & 3, to which equitable mortgage was created by the borrowers over their property by depositing the original title deed with the Bank. Since the borrowers did not maintain the financial discipline as per the loan agreement, the account was classified as NPA on 02.12.2021 and a demand notice dated 03.02.2022 u/s 13(2) of the SARFAESI Act was issued for a sum of Rs.1,11,26,252.80. Since the borrowers did not pay any heed to the said demand, therefore, the appellant-Bank

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issued possession notice dated 18.07.2022 u/s 13(4) of the said Act. The said notice was affixed at the conspicuous place of the property in question and published in the newspapers namely Business Standard on 21.07.2022, but the said notice was dispatched to the borrower on 22.07.2022. Thereafter, the appellant-Bank issued sale notice dated 10.11.2022, which was published in two newspapers on 13.11.2022 scheduling the auction of the property in question on 29.11.2022.

3. The respondents-borrowers challenged the entire proceedings before the Tribunal below by filing S.A. No. 941/2022. The Tribunal below vide order impugned has allowed the same by setting aside the possession notice dated 18.07.2022 including all subsequent actions undertaken by the Bank on the ground that there is violation of Rule 8(2) of the Security Interest (Enforcement) Rules, 2002. Being aggrieved by the said order, the Appeal Dy. No. 1444/2023 has been filed by the Bank and Appeal Dy. No. 1468/2023 by the Auction Purchaser.

4. Learned counsel for the appellant-Bank submitted that the finding of the Tribunal below that the possession notice published in the English and Hindi edition of Bussiness Standard is one newspaper is erroneous. It was further contended that Rule 8(2) of the Rules, 2002 says that possession notice is required to be published in two leading newspapers, one in vernacular language, but it is not provided that name of both the newspapers should be different from each other. It was thus contended that the finding of the Tribunal below with regard to it is contrary to the said Rule. It was, therefore, prayed that the order impugned to this extent may be set aside and the appeal filed by the Bank may be allowed.

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5. Learned counsel for the Auction Purchaser has adopted the arguments of the learned counsel for the appellant-Bank adding further that the appellant-Auction Purchaser has invested more than Rs.14,89,200/- to develop the property in question, but the Tribunal below has failed to compensate the appellant for the same. It was, therefore, prayed that the order impugned to the extent of setting aside the possession notice may be set aside and the appeal filed by the Auction Purchaser may also be allowed.

6. Learned counsel for the respondents-borrowers submitted that the possession notice dated 18.07.2022 alleged to be issued was published in the newspaper on 21.07.2022 namely "Business Standard" Lucknow edition. It is further submitted that the said notice was sent to the answering respondents after publication on 22.07.2022. It was further contended that the respondent-Bank has issued the sale notice dated 24.08.2022 fixing the date of auction on 30.09.2022 and in the said sale notice, the reserve price was fixed Rs.83,11,600/- as stated in the reply filed by the Auction Purchaser before the Tribunal below. It was further submitted that the respondent-Bank had failed to serve the 30 days' clear notice to the respondents-borrowers, which violates Rule 8(6) of Rules, 2002.

7. Learned counsel further submitted that the auction notice was also published in the newspaper namely "Business Standard" on 30.08.2022, which could not materialize, therefore, the respondent-Bank again issued the sale notice dated 10.11.2022 fixing the date of auction on 29.11.2022. It was further submitted that the said sale notice was not served upon the respondents-borrowers

and was also not pasted at the conspicuous part of the property in question.

8. Learned counsel also submitted that the sale notice dated 10.11.2022 was published in the newspapers namely "Financial Express" & "Jansatta", which are not circulated in the locality, where the property of the borrowers is situated.

9. It was also contended that the respondent-Bank had obtained the valuation report on 20.07.2022, wherein land area was mentioned as 3778 sq.ft. instead the admeasuring 351 sq.mtrs. It was further stated that the final valuation was done for amount of Rs.83,11,600/-.

10. It was further contended that neither the Bank nor the Auction Purchaser has disclosed as to when the auction amount was deposited with the Bank, which is mandatory under Rule 9(3) & 9(4) of the Rules, 2002.

11. Learned counsel further submitted that the respondents-borrowers had filed the valuation report before the Tribunal below, wherein the fair market value of the property in question is Rs. 1,41,90,000/- and the respondent-Bank sold the property for amount of Rs.66,99,280/- and as such, on this ground alone, the auction sale conducted by the Bank is not sustainable.

12. It was lastly contended that respondent-Bank has failed to comply the mandatory provisions of Rule 3, 4, 8(1), 8(2), 8(5), 8(6), 8(7), 9(1), 9(2), 9(3), 9(4), 9(5) and 9(6) of the Rules, 2002. It was, therefore, prayed that the order impugned passed by the Tribunal below may be affirmed and the appeals filed by the Bank and Auction Purchaser may be set aside with heavy costs.

13. Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the entire proceedings including the auction sale were challenged by the respondents-borrowers before the Tribunal below, which were found by the Tribunal below vide order impugned to be in accordance with the provisions of the Act and Rules made thereunder except Rule 8(2) of the Rules, 2002.

14. The main controversy in the present case is, as to whether the possession notice published in the Hindi and English version of the Business Standard is one newspaper or not?

15. It is to be seen that the possession notice was issued on 18.07.2022 and the same was published in Business Standard Newspapers "English and Hindi Editions" on 21.07.2022. The Business Standard is the name of firm. A firm can do its any business from its own name. From the record, it is clear that the Business Standard is doing the business of publication of news in Hindi and English languages separately. The entity of both the newspapers is distinct and separate. If the notices were published in Hindi and English in one edition, the case would have been otherwise, but both the notices were published in Hindi edition and English edition of the Business Standard separately, therefore, it cannot be said that the possession notice were published in one newspaper, because the Business Standard Hindi edition and English edition are two different newspapers. Hence the observation of the Tribunal below that the Business Standard Newspaper Hindi and English editions are one newspaper, appears to be erroneous. Hence the finding of the Tribunal below that the possession notice was published in only one newspaper namely "Business

Standard" in Hindi and English version and not in two leading newspapers is not sustainable. Thus the order impugned to this extent is liable to be set aside.

16. The issues raised by the learned counsel for the respondents-borrowers with regard to service of demand notice, possession notice and auction sale notice cannot be considered and decided by this Tribunal in the appeals filed by the Bank and the Auction Purchaser. If the respondents-borrowers were aggrieved by the finding of the Tribunal below with regard to the said issues, they ought to have filed a separate appeal for their grievances, but they did not do so. Thus the finding of the Tribunal with regard to these issues has attained finality.

17. In view of the discussions as recorded above, the order impugned to the extent of setting aside the possession notice and its subsequent actions is set aside and the rest part of the same shall remain intact. Consequently, the appeals filed by the Bank and the Auction Purchaser are allowed with no order as to costs.

18. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

CHAIRPERSON

VN GIRI,PS