IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 659/2023

Indian Bank (erstwhile Allahabad Bank), Branch at 55A, Navyug Market, Ghaziabad, U.P.-201001 through it's Authorized Officer and also at Zonal office at D-211/2, Sector-61, Noida-201307.

.....Appellants

Versus

1. M/s Aloki Hospital Pvt. Ltd., Office at NH-B, G-Block, Sector-11, Pratap Vihar, Ghaziabad-201009, through one of its Director Shri Narendra Sharma.
2. Narendra Kumar Sharma, S/o Shri Sohan Lal Sharma, R/o House No. 47/12, New Ajanta Colony, Garh Road, Meerut-250004.
3. Smt. Kiran Sharma, W/o Shri Narendra Sharma, R/o House No. 47/22, New Ajanta Colony, Garh Road, Meerut-250004.
4. Deepak Tank, S/o Mr. Mahesh Chand, R/o 41, Rajendra Nagar, Meerut City, Gandhi Ashram, Meerut-250002.
5. Vineet Kumar Singhal, S/o Late Anil Kumar Singhal, R/o 124, Chopla, Delhi Gate, Ghaziabad, U.P.-201001.

.....Respondents

Appeal Dy. No. 665/2023

Vineet Kumar Singhal, S/o Late Anil Kumar Singhal, R/o 124, Chopla, Delhi Gate, Ghaziabad, U.P.-201001.

.....Appellant

Versus

1. Indian Bank erstwhile Allahabad Bank, Branch at Navyug Market, Ghaziabad-201001, Zonal office at D-211/2, Sector-61, Noida.
2. M/s Aloki Hospital Pvt. Ltd., Office at NH-B, G-Block, Sector-11, Pratap Vihar, Ghaziabad-201009, through one of its Director Shri Narendra Sharma.
3. Narendra Kumar Sharma, S/o Shri Sohan Lal Sharma, R/o House No. 47/12, New Ajanta Colony, Garh Road, Meerut-250004.
4. Smt. Kiran Sharma, W/o Shri Narendra Sharma, R/o House No. 47/22, New Aanta Colony, Garh Road, Meerut-250004.
5. Deepak Tank, S/o Mr. Mahesh Chand, R/o 41, Rajendra Nagar, Meerut City, Gandhi Ashram, Meerut-250002.

.....Respondents

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Advocates, who appeared in this case:

For the Bank	Shri Ashish Kumar Srivastava, Advoate
For the borrower	Shri V. K. Shukla, Advocate along with Shri Sahil Srivastava, Advocate
For the respondent no. 4-Auction Purchaser	None
For the Auction Purchaser	Shri K. Kartikeya, Advocate

JUDGMENT
Date of Pronouncement: 13.05.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the judgment dated 28.04.2023, whereby the Securitization Application No. 531/2022 filed by the respondents no. 1 to 3 has been allowed.

2. Brief facts of the matter are that the respondent no. 1 was granted certain credit facilities by the appellant-Bank, to which respondent no. 1 to 3 stood as mortgagors. Since the respondents-borrowers failed to adhere to the terms of the loan agreement, therefore, the accounts were classified as NPA on 19.10.2019 and a demand notice dated 01.12.2021 u/s 13(2) of the SARFAESI Act was issued for a sum of Rs.4,64,43,990/-. Since the borrowers did not pay any heed to the said demand, therefore, symbolic possession of the property in question was taken by the Bank taking recourse to section 13(4) of the SARFAESI Act and the possession notice under the said section was issued by the Bank on 23.03.2022, which was served, affixed and published in the newspapers. Thereafter, the appellant-Bank issued sale notice dated 06.06.2022, which was published in the

newspapers on 11.06.2022 scheduling the auction of the properties in question on 30.06.2022.

3. The respondents-borrowers challenged the entire proceedings of the appellant-Bank by filing S.A. No. 531/2022 before the Tribunal below along with application for condonation of delay.

4. During the pendency of the aforesaid S.A., the respondent-Bank filed two applications u/s 14 of the SARFAESI Act before the District Magistrate, Ghaziabad and the District Magistrate, Meerut, which were allowed vide orders dated 17.09.2022 and 27.09.2022, respectively. Pursuant to the said orders, the appellant-Bank has taken physical possession of the properties of the respondent nos. 1 to 3 situated at Meerut and Ghaziabad.

5. The Tribunal below vide order impugned has allowed the S.A. of the respondents-borrowers to the extent of non-compliance of Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 and also quashed the orders dated 17.09.2022 and 27.09.2022 passed by the District Magistrate on the ground of mentioning of wrong date of NPA in the applications filed by the Bank u/s 14 of the SARFAESI Act. Being aggrieved by the said order, the Appeal Dy. No. 659/2023 has been filed by the appellant-Bank and Appeal Dy. No. 665/2023 by the Auction Purchaser.

6. Learned counsel for the appellant-Bank submitted that the Tribunal below has overlooked an important fact that the respondents-borrowers admittedly filed the securitization application alongwith a delay condonation application. It was further contended that in the said application, they themselves admitted the date of

possession of 01.12.2021 and there was delay of 7 months i.e. 272 days (page 81 to 84 of the appeal). It was further submitted that in the said application they have prayed for condonation of delay, but the Tribunal below passed the judgment on merits without deciding the delay condonation application.

7. Learned counsel further submitted that the Tribunal below has set aside the sale of property situated at Ghaziabad, which was purchased by respondent no.5-auction purchaser, but the same has been set aside by the Tribunal below on the ground that the sale was held on 30.6.2022 and 15% of the amount which was required to be deposited on the same day or not later than next working day i.e. on 1.7.2022 could be deposited on 2.7.2022 and due to non-deposit of 75% of the balance amount within 15 days from the date of sale confirmation.

8. Learned counsel further submitted that the Tribunal below has committed manifest error of law and fact both while recording the said finding failing to understand that the sale was held on 30.6.2022, respondent no.5 being the highest bidder deposited 15% of the auction amount on the very next day i.e. 1.7.2022 by transferring the amount from his saving bank account maintained at Punjab National Bank, but due to technical glitch arising out of interrupted internet service, the same could only be transferred on 2.7.2022 in the account of the appellant bank and in this regard, the auction purchaser also produced a letter dated 1.7.2022 addressed to Branch Manager of Punjab National Bank (annexure no.7 of the appeal at page no.265) and has stated that at the bottom of the said letter, an endorsement has been made by the Manager concerned of the Punjab National Bank,

as "due to network connectivity issue we are unable to process any transaction....., we should be able to process RTGS once connectivity is restored".

9. It was further contended that the letter dated 1.7.2022 of the auction purchaser (at page no.265 of the appeal) specifically shows that on 1.7.2022 the auction purchaser tried to transfer the amount and also gave a cheque of the said amount (at page no.267 of the appeal), but due to server breakdown, the amount could not be transferred. It was also contended that from statement of account (page no.272 of the appeal) it is clear that on 2.7.2022 the amount of Rs.53.00 Lakh was transferred, as 02.07.2022 was Saturday.

10. It was further contended that respondents-borrowers have not been able to point out that what substantial prejudice has been caused to them. It was also contended that delay of one day in depositing 15% of the sale amount by the auction-purchaser, which was not under his control, would not vitiate the entire sale. It was further contended that it is not a case that borrowers–respondents had not made any effort to deposit the entire outstanding dues, as they are only trying to take advantage of a situation, which was not under control of the auction purchaser, who made all efforts to deposit 15% of the amount on the very next day of sale i.e. on 1.7.2022. In support of his contention, learned counsel has relied upon a judgment passed by the Hon'ble Supreme Court in case of Varimadugu Obi Reddy Vs B. Sree Niwasulu and Others, 2023(2) SCC 168 and also on a judgment passed by this Hon'ble Appellate Tribunal in Appeal Dy. No.253/2019-Smt. Urmila Jain & Ors Vs A. O. B.O.I. &Ors., decided on 6.11.2025.

11. Learned counsel also submitted that the Authorized Officer of the Bank issued sale confirmation letter on 4.7.2022 (Monday) (page no.274 of the appeal) and within 15 days from the date of sale confirmation i.e. on 18.7.2022, the balance 75% of the sale amount has been deposited by the auction purchaser, which is due compliance of Rule 9(4) of the Security Interest (Enforcement) Rules 2002, hence the finding of Tribunal below setting aside sale is erroneous and liable to be quashed. In support of his contention, the learned counsel has placed his reliance on a judgment passed by Hon'ble Supreme Court in the matter of Rakesh Birani (Dead) through legal heir representative Vs Prem Narain Sehgal and another, as reported in (2018)5 SCO page 543.

12. It was lastly canvassed that the Tribunal below has committed manifest error setting aside the orders dated 17.9.2022 and 27.9.2022 passed by D.M., Ghaziabad and D.M., Meerut u/s 14 of the Act due to incorrect date of NPA mentioned in the applications u/sec.14 of the Act. It was further contended that the correct date of NPA, which was mentioned in the demand notice, was 19.10.2019, but it was wrongly mentioned as 1.10.2019 in the application u/sec.14 of the Act. It was thus contended that the said petty typographical error would not vitiate the orders passed by District Magistrate, Ghaziabad and Meerut u/sec.14 of the Act, as it has not caused any substantial pre-judice to the borrowers. In support of his contention, the learned counsel has placed reliance upon a judgment passed by the Hon'ble Supreme Court in case of M/s L&T Housing Finance Limited Vs Trishul Developers and Another, reported in (2020)10 Supreme Court Cases 659. It was, therefore, prayed that

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the order impugned may be set aside and the appeal filed by the appellant-Bank may be allowed.

13. Learned counsel for the respondent-Auction Purchaser has adopted the arguments as advanced by the learned counsel for the appellant-Bank adding further that he is bonafide purchaser of the property in question and has deposited the entire sale proceeds with the Bank in accordance with the Act and rules made thereunder. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the Auction Purchaser may also be allowed.

14. Learned counsel for the respondents-borrowers submitted that the impugned order dated 28.04.2023 has been passed by the Tribunal below on the ground that the Auction Purchaser has defaulted in following the Rule 9(4) of the SARFAES Rules, 2002, as the property in question was sold on 30.06.2022, but the auction purchaser tried to deposit 15% of the auction amount on 01.07.2022, which was failed due to connectivity issue, thus the said amount was deposited with the bank on 04.07.2022, which is after a gap of 3 days from the date of confirmation of sale and thereafter, the remaining 75% of the auction amount was to be deposited by the auction purchaser on or before 15.07.2022, but the same could not be deposited and as such, the Tribunal below has rightly held that there was non-compliance of Rule 9(4) of the Rules, 2002.

15. Learned counsel further submitted that the auction purchaser has deposit a Cheque to the tune of Rs. 53.00 Lakhs in favor of the Indian Bank in form of the 15% amount (Page no. 267 of the appeal), which was presented to the Appellant bank and was not cleared on the same day and was cleared on 04.07.2022 due to

lengthy clearance procedure of the Banking system. It was further contended that the Terms and Condition of the appellant-Bank (Page no. 19 of the Reply) clearly states that the Bank shall only accept EMD and the remaining 15% by way of banker's Cheque/Demand Draft/ Account Transfer. It was further contended that in the present case, the personalized cheque was presented, which should not have been accepted by the Bank by way of the acceptance of the personalized cheque, the bank has violated it's own terms and condition, which is not admissible as per the principal of natural justice. It was further contended that the said acceptance of the personalized cheque is in violation of the Banking Rules, and the auction purchaser due to the said illegality failed to comply with the Rule 9(4) of the Rules, 2002 on 01.07.2022.

16. It was also contended that the bid was received on 30.06.2022, sale confirmation was sent on 01.07.2022, after which the auction purchaser was liable to deposit the remaining 15% of the amount, thus the 15 day's time period shall be counted from 01.07.2022 and not from 04.07.2022, which clearly violates Rule 9(4) of the Rules, 2002.

17. Learned counsel also submitted that the Tribunal below vide order impugned has held that the Demand notice shows the date of NPA as 19.10.2019, whereas the date of NPA shown in the Section 14 Application is 01.10.2019 thus, 2 dates of classification of NPA is not possible and if the date mentioned in the section 14 order is wrong, then the order obtained from the DM, Ghaziabad and DM, Meerut is automatically wrong.

18. It was further contended that if the date mentioned in the application under section 14 i.e. 01.10.2019 is wrong and

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is a typographical error, then the same may be ignored by the Honble Appellate Tribunal under the principal of natural justice, as no prejudice has been caused due to the error in dates, but it cannot be considered to be a typographical error because such mistake had taken place on 4 places, firstly in the application and affidavit filed before the DM, Ghaziabad and Meerut. It was also contended that the account of the answering respondents was active on 01.10.2019 and the bank has classified the account as NPA on 01.10.2019, then severe prejudice has caused to the borrowers, thus the same cannot be held to be a typographical error, and may not be ignored by this Tribunal.

19. It was also contended that it was alleged by the appellant that the SA bearing no. 531/2022 filed by the answering respondents was barred by limitation and the Tribunal below without deciding the delay condonation application Page 81-84) has proceeded to decide the complete S.A. based on merits, but the said contention is not tenable for the reason that the SA bearing no. 531/2022 was filed on 27.07.2022 (Evident From page no. 207 of the appeal) and the answering respondent challenged the auction sale publication dated 11.06.2022, possession notice dated 23.03.2022 and Demand Notice dated 01.12.2021 and the orders dated 17.09.2022 and 27.09.2022 passed under section 14 of the SARFAESI Act, 2002 by way of the amendment application. It was further contended that the delay condonation application was only filed with respect to condone the delay of challenging the possession notice and the Tribunal below in the last 13 lines of para 10 has categorically held that there is infirmity and illegality in the possession notice, but the answering respondent shall not be given any benefit of the said illegality because the same is barred by

limitation. It was thus contended that the order impugned does not call for any interference by this Tribunal and the appeals filed by the Bank and the Auction Purchaser may be dismissed with heavy costs.

20. I have considered the rival contentions of the learned counsels for the parties and perused the material available on record.

21. The contention of the appellant that the Tribunal below has not considered and decided the application for condonation of delay filed by the respondents-borrowers along with the Securitization Application is not tenable, because the said issue has elaborately been discussed by the Tribunal below in para 10 of the order impugned. The relevant portion of the same is as under:-

> *".....Since the applicants have failed to approach the Tribunal within 45 days from the date of possession notice dt. 23.03.2022 and they failed to claim any specific relief against the possession in the S.A. therefore, they are not entitled for any relief against the possession although there is illegality and infirmity in the possession notice dated 01.12.2021."*

22. With regard to the auction sale dated 30.06.2022, it is to be seen that the appellant-Bank had issued and published the auction sale notice dated 10.06.2022 on 11.06.2022 scheduling the auction of two properties situated at Ghaziabad and Meerut on 30.06.2022. Both the properties were sold, one, which is situated at Meerut in favour of the respondent no. 4 and another, which is situated at Ghaziabad in favour of the appellant of Appeal No. 665/2023 (respondent 5 in Appeal Dy. No. 659/2023). The Tribunal below vide order impugned has held the auction sale in respect of the Meerut Property of the borrowers to be valid and in accordance with the provisions of the Act and Rules made thereunder and the

same has not been challenged by the borrowers, therefore, the said finding has attained finality.

23. So far as the setting aside of the auction sale of the Ghaziabad property is concerned, it is to be seen that pursuant to the auction sale notice dated 10.06.2022, the said property was also auctioned on 30.06.2022, but due to non-availability of server, 15% of the bid amount could be remitted by the Auction Purchaser till 02.07.2022 i.e. on Saturday, which is evident from the letter dated 01.07.2022 at page no. 265 of the paper book. The said letter was written by the Auction Purchaser to the Punjab National Bank stating therein that due to non-availability of server, RTGS is not being done. The said averment has been supported by the Punjab National Bank on the letter of the Auction Purchaser itself, which has been considered and accepted by the Tribunal below vide order impugned. Thus the contention of the borrowers that 25% of the bid amount was not deposited in accordance with the Rule 9(3) of the Rules, 2002 is not tenable. If the borrowers were aggrieved from the said finding, they ought to have challenged the same by filing separate appeal, but they did not do so, therefore, the borrowers cannot be permitted to raise the said issue in the appeals filed by the Bank and the Auction Purchaser.

24. So far as non-compliance of Rule 9(4) of the Rules, 2002 is concerned, the property was sold on 30.06.2022 and the sale was confirmed by the Bank vide letter dated 04.07.2022, copy of which is placed at page no. 274 of the memo of appeal. If 25% of the bid amount was not received on 01.07.2022, then there was no occasion for the Bank to confirm the sale on 01.07.2022, therefore, after receipt of 25% of the bid amount, the sale was confirmed by the Bank vide letter dated 04.07.2022, thus

the finding of the Tribunal below that the sale was confirmed on 01.07.2022 and the period of 15 days expires on 15.07.2022 is incorrect and the period of 15 days expires on 19.07.2022, therefore, the extension was applied and granted on 18.07.2022 was within the period of 15 days. In this regard, Rule 9(4) of the Rules, 2002 says as under:-

> *"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 purchaser and the secured creditor, in any case not exceeding three months."*

25. From the above, it is clear that the remaining 75% of the bid amount has to be deposited from the date of confirmation of sale and not from the date of the sale. In the present case, the auction sale was confirmed by the Bank vide letter dated 04.07.2022. If the period of fifteen days is counted from the date of the confirmation of sale i.e. 04.07.2022, the said period expires on 19.07.2022. The extension was applied and granted on 18.07.2022 by the Bank, which is admitted by the Tribunal below in para 14 of the order impugned. Thus the extension was applied by the Auction Purchaser and granted by the Bank on 18.07.2022 was well within 15 days from the date of confirmation of sale. The law laid down by the Hon'ble Supreme Court in case of Rakesh Birani (Dead) through legal representative Vs Prem Narain Sehgal (Supra) is squarely applicable to the present facts and circumstances of the case. Thus the finding of the Tribunal below with regard to non-compliance of Rule 9(4) of the Rules, 2002 is liable to be quashed.

26. So far as setting aside of the orders dated 17.09.2022 and 27.09.2022 passed by the District Magistrate, Meerut and Ghaziabad is concerned, it is to be seen that the

appellant-Bank had filed two applications u/s 14 of the SARFAESI Act before the District Magistrate, Meerut and Ghaziabad separately and both were allowed vide above orders, but the same have been set aside by the Tribunal below vide order impugned on the ground that the date of NPA was wrongly mentioned in these applications, which is unsustainable for the following reasons:-

a. The date of NPA, which was mentioned in the above applications, appears to be a typographical mistake because the correct date of NPA is 19.10.2019, but it was typed in the application as 1.10.2019, which clearly shows that at the time of typing the application, the number 9 was left to be transcribed.

b. The borrowers were well aware about the correct date of NPA because the demand notice u/s 13(2) of the SARFAESI Act containing the correct date of NPA as 19.10.2019 was already served upon them. Thus the borrower cannot say that such typographical mistake has extended any loss or created any hindrance in achieving their goal.

c. Section 14 of the SARFAESI Act only empowers the District Magistrate to order/direct the police authority in writing for providing assistance in taking the physical possession of the property in question and nothing else, therefore, the correct and incorrect date of NPA of account does not matter before the District Magistrate. Thus the mentioning of wrong date of NPA in the application u/s 14 does not cause any substantial prejudice to the borrowers. Thus I agree with the principle laid down by the Hon'ble Supreme Court in case of M/s L&T Housing Finance Limited Vs Trishul Developers and Another (Supra).

As such the finding of the Tribunal below with regard to setting aside the orders passed by the District Magistrate, Meerut and Ghaziabad is also liable to be quashed.

27. In view of the discussions as recorded above, the order impugned to the extent of setting aside the auction sale of Ghaziabad property and the orders passed by the District Magistrate, Meerut and Ghaziabad are set aside and the appeals filed by the Bank and Auction Purchaser are allowed with no order as to costs.

28. 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