Exh 67

IN THE DEBTS RECOVERY TRIBUNAL-II AT AHMEDABAD

Present:Pankaj Kumar Upadhyay, Presiding Officer, DRT-II.

Securitization Application No. 431 of 2025

Date of Filing : 30-06-2025

Date of Judgement : 12-06-2026

1. Smt. Krishnaben Kanubhai Chavda
Auction Purchaser in RC No: 67/2021 in
OA No: 1420/2019 & Third Party
Residing at:
Vasangi Krupa, Rajaram Society,
Street No. 5, Sant Kabir Road,
Rajkot – 360003.

.....Applicant

Versus

1. BAJAJ HOUSING FINANCE LTD.
Through it Authorised Officer,
Under SARFAESI Act 2002.

......Respondents

Registered Office at :-
Mumbai-Pune Road, Akurdi, Pune
411035.
Corporate Office At:
4th Floor, Bajaj FinServ Corporate Office,
Off Pune Ahmednagar Road,
Viman Nagar,
Pune-411035.

Branch Office at:
5th Floor, Tower- B, Imperial Heights,
150ft ring road, Rajkot, Gujarat - 360005,
Through its Authorised Officer.
Appellant (Third Party Objector)

2. STATE BANK OF INDIA
Central Office:
Madam Cama Road,
Narimam Point, Mumbai
Local Head Office
At Lal Darwaja, Ahmedabad and

Branch Office:
Stressed Assets Recovery Branch (SARB)
1st Floor, SBI Gymkhana Road Branch,
Jawahar Road, Rajkot - 360001.

3. M/s Rangoli Spices Pvt. Ltd
(C.D NO. 1 IN R.P. NO. 67/2021, BEFORE Ld. RO DRT-II, AHMEDABAD)
[U15400GJ2015PTC083099]
Office address at:-
Rudra Transport Nagar, Survey no. 112/3, Plot no. 1, Nr. Berger Paint Godown, N.H. 8/B, Anandpur (Navagam), Rajkot-360003.

4. Mr. Vallabhbhai Laxmanbhai Pipaliya
(C.D NO. 2 IN R.P. NO. 67/2021, BEFORE LD. RO DRT-II, AHMEDABAD),
Office address at:-
Rudra Transport Nagar, Suvery no. 112/3, Plot no. 1, Nr. Berger Paint Godown, N.H. 8/B, Anandpur (Navagam), Rajkot-360003.

5. Mrs. Geetaben Vallabhbhai Pipaliya
(C.D NO. 3 IN R.P. NO. 67/2021, BEFORE LD. RO DRT-II, AHMEDABAD).
Office address at:-
Rudra Transport Nagar, Suvery no. 112/3, Plot no. 1, Nr. Berger Paint Godown, N.H. 8/B, Anandpur (Navagam), Rajkot-360003.

Present :

Ld. Counsel for the Applicant	:	Mr. Haresh Metaliya
Ld. Counsel for Respondent No: 1	:	Ms. Smitha Nair
Ld. Counsel for Respondent No: 2	:	Mr. Abhijit Joshi

JUDGMENT

1. The Applicant has filed the above Securitization Application (hereinafter referred as SA) against the Respondent on 30-06-2025 challenging the SARFAESI measures initiated by the Respondent (BHFL) against an immovable residential house Property, **Tenement no.4/1506/0871/000-13/13638/000/000, A/25, "Shri Ram Park" Street No. 1, Plot no. 4 to 9/6, (uttar). Morbi Road, Rajkot-360003** which had already been sold in a public e-auction conducted by

the Ld. Recovery Officer, DRT-II, Ahmedabad in Recovery Proceedings No. 67 of 2021 arising out of O.A. No. 1420 of 2019.

2. The brief facts of this case are that the Applicant participated in the auction held on **31.05.2023**, was declared the highest bidder, paid the entire sale consideration of **₹23,50,000/-**, and the sale was subsequently confirmed by the Ld. Recovery Officer on **18.07.2023**. A Sale Certificate was issued in her favour and physical possession was handed over on **16.03.2024**. The Sale Certificate and Sale Deed were thereafter registered on **11.06.2024**.

3. It is further submitted that after completion of the auction process and transfer of possession, Respondent No. 1 (BHFL) raised objections claiming a mortgage and charge over the property. The Applicant has submitted that the Respondent (BHFL) did not challenge the attachment, auction proceedings, confirmation of sale, or appropriation of sale proceeds before completion of the auction process. The Respondent (BHFL) has subsequently initiated proceedings under the SARFAESI Act despite being aware that the property had already been auctioned by the Ld. Recovery Officer, possession had been handed over to the Applicant and a registered sale deed existed in favour of the Applicant.

4. It is further submitted that the Respondent (BHFL) filed an application under Section 14 of the SARFAESI Act before the Ld. Chief Judicial Magistrate, Rajkot on **25.02.2025**, seeking possession of the same property and on **20.03.2025**, the Ld. CJM, Rajkot passed an order under Section 14, pursuant to which physical possession was taken from the Applicant on **24.05.2025** through a Court Commissioner and handed over to the Respondent (BHFL).

5. The Applicant has alleged that the Respondent (BHFL) despite being aware of the auction sale and transfer of possession, initiated proceedings under Section 14 of the SARFAESI Act and obtained an order from the Ld. CJM, Rajkot by suppressing

material facts and misleading the Court. She has also contended that the Respondent (BHFL) had no valid registered mortgage or enforceable security interest over the property and the Applicant was not served prior notice before dispossession. It is further submitted that the Respondent (BHFL) failed to disclose that the property had already been sold through a DRT auction.

6. The Applicant has relied upon the Ld. Recovery Officer's order dated **16.06.2025**, whereby BHFL's objections were dismissed and according to the Applicant the Ld. Recovery Officer observed that BHFL failed to establish a valid mortgage over the property and the Ld. Recovery Officer found no procedural irregularity in the auction process. Reliance was placed upon Supreme Court decisions holding that a confirmed public auction sale cannot ordinarily be set aside except in cases of fraud, collusion, or substantial illegality.

7. The Applicant's main legal contentions are as under :

- She is a bona fide Auction Purchaser and lawful owner of the property.
- Once the auction sale was confirmed, possession delivered, and the sale deed registered, her rights became vested and enforceable against the world at large.
- BHFL is not a secured creditor within the meaning of the SARFAESI Act because no valid and registered mortgage exists.
- The Section 14 proceedings before the Ld. CJM, Rajkot were obtained by suppression of material facts and misrepresentation.
- The Ld. CJM, Rajkot failed to independently verify the factual correctness of BHFL's affidavit before passing the order under Section 14.
- The SARFAESI measures initiated by BHFL, including Demand Notice under Section 13(2), Possession Notice under Section 13(4), Section 14 application and Ld. CJM's possession order are illegal, void, arbitrary, and liable to be quashed.

8. In view of the above, the Applicant has prayed for quashing of all SARFAESI measures initiated by BHFL, restoration of physical possession of the property to the Applicant, permanent injunction restraining BHFL from taking further coercive action against the property, compensation of **₹1,17,500/- (5% of sale consideration)** together with **18% interest** for the hardship caused exemplary costs against the Respondents and alternatively, if the auction is ultimately found invalid, a direction to State bank of India to refund the sale consideration with interest.

9. Per contra, Ld. Counsel for Respondent No: 1 BHFL has opposed the Securitisation Application on the ground that the Applicant, being an Auction Purchaser and neither a borrower nor a guarantor, has no locus standi to challenge the SARFAESI proceedings initiated by BHFL.

10. It is further submitted that the borrowers Mr. Vallabhbhai I. Pipaliya & Mrs. Geetaben Vallabhbhai Pipaliya had availed a Home Loan and Top-up Loan for Rs.19,19,000/- and Rs.10,85,000/- on 30-12-2017 and created an equitable mortgage over the subject property by depositing the original title deeds. The mortgage was duly registered with CERSAI on 08.02.2018, thereby creating an equitable mortgage under Section 58(f) of the Transfer of Property Act.

11. It is further submitted that the auction sale conducted by the Ld. Recovery Officer in SBI's recovery proceedings is void and without jurisdiction because the property was already mortgaged to BHFL and did not belong to the certificate debtor against whom the recovery proceedings were initiated. It is further submitted that the Ld. Recovery Officer had no jurisdiction to attach or auction a property that was neither owned by the Certificate Debtor nor free from encumbrances. It is further contended that the Applicant purchased the property on an "As Is Where Is, As Is What Is and As Is Whatever" basis and failed to undertake proper due diligence despite the mortgage being publicly available through CERSAI records.

12. It is further submitted that after the borrowers defaulted in repayment, it validly initiated SARFAESI proceedings by issuing a demand notice under Section 13(2), taking symbolic possession under Section 13(4), and obtaining an order under Section 14 from the Ld. Chief Judicial Magistrate, Rajkot. It argues that its mortgage enjoys statutory priority under Sections 26E and 35 of the SARFAESI Act and cannot be defeated by subsequent recovery proceedings.

13. It is further submitted that upon default by the borrowers from February 2024 onwards, a demand notice under Section 13(2) of the SARFAESI Act was issued on 20.06.2024. Thereafter, symbolic possession under Section 13(4) was taken on 08.01.2025. Subsequently, an order under Section 14 of the SARFAESI Act was obtained from the Ld. Chief Judicial Magistrate, Rajkot on 20.03.2025 after fulfilling all statutory requirements. It is submitted that the Applicant, being a third party purchaser, was not entitled to any prior notice before actions under Sections 13(4) or 14. It is further submitted that BHFL's mortgage enjoys statutory priority under Sections 26E and 35 of the SARFAESI Act.

14. It has further relied upon the Supreme Court judgment in **A.B. Govardhan v. P. Ragothaman (2024) INSC 640** contending that an equitable mortgage by deposit of title deeds is valid and enforceable without registration of a mortgage deed.

15. It is further submitted that the Ld. Recovery Officer attached and sold a property that did not belong to the Certificate Debtor and was already subject to a prior mortgage in favour of BHFL. It has further stated that it was never served with any attachment notice, sale proclamation or auction notice during the recovery proceedings.

16. It is further submitted that it came to know about the auction and transfer of possession only after the borrowers defaulted in March-2024 and informed that the property had already been sold through DRT proceedings. Upon verification, they filed objections before the Ld. Recovery Officer by way of I.A. No. 135 of 2024, challenging the attachment and auction proceedings but the application was allegedly dismissed

without proper consideration of the mortgage documents and CERSAI registration. It is further submitted that any delay in asserting its rights occurred solely because it was not notified of the recovery proceedings.

17. Relying upon **TRO V/s Gangadhar Vishwanath Ranade (1998) 6 SCC 658,** BHFL has stated that the Ld. Recovery Officer was required to ascertain the existence and extent of BHFL's interest in the property as on the date of attachment. It is further stated that since BHFL held a prior mortgage interest, it contends that the attachment and auction could not extinguish or override its superior charge.

18. It has further denied allegations of suppression of material facts and submitted that all mortgage documents, title deeds, loan agreements, and CERSAI records were fully disclosed before the Ld. Chief Judicial Magistrate, Rajkot while seeking assistance under Section 14 of the SARFAESI Act.

19. It is further contended that the Applicant cannot claim protection as a bonafide purchaser because no adequate title verification was conducted and the property was purchased subject to all encumbrances and moreover public records disclosed BHFL's mortgage.

20. It is further relied upon the Supreme Court decision in **K.S. Manjunath v. Moorasavirappa (2025),** wherein it was held that a subsequent purchaser who fails to make reasonable inquiries regarding existing interests in the property is deemed to have notice of such interests. It is therefore argued that the Applicant cannot claim ignorance of the mortgage or seek protection against enforcement of BHFL's security interest.

21. On the above grounds, it is prayed that the SA may be dismissed as being devoid of merits, misconceived and not maintainable.

22. State Bank of India Respondent No. 2, the CH Bank in Recovery Proceeding No. 67/2021 arising from OA No. 1420/2019, has filed written submissions supporting the validity of the auction proceedings conducted by the Ld. Recovery Officer, DRT-II, Ahmedabad.

23. It is submitted that pursuant to the Recovery Certificate issued by DRT-II, Ahmedabad and the final order dated 24.02.2021 permitting recovery from other movable and immovable properties of the defendants in case of shortfall, SBI initiated recovery proceedings under Section 25(a) of the RDB Act and after issuance of a show-cause notice and due service upon the Certificate Debtors, the Ld. Recovery Officer attached the subject property through Form No. 52. Necessary service and compliance were duly completed. Thereafter, Form No. 53 was issued and valuation of the property was obtained and upon completion of all statutory requirements, the property was put to e-auction.

24. It is further submitted that the first auction scheduled on 28.03.2023 failed for want of bidders and a fresh auction was conducted on 31.05.2023 after following the prescribed procedure. The auction held on 31.05.2023 was successful and Mrs. Krishnaben Kanubhai Chavda emerged as the highest bidder for Rs. 23,50,000/- and deposited the entire sale consideration within the stipulated time. It is further submitted that as no objections were received within the prescribed period, the Ld. Recovery Officer confirmed the sale on 18.07.2023 and issued a Sale Certificate in favour of the Auction Purchaser. Subsequently, on SBI's application, the Ld. Recovery Officer passed an order dated 30.01.2024 for handing over possession and execution of the sale deed. Accordingly, physical possession was delivered to the Auction Purchaser on 06.04.2024 and a registered sale deed was executed in her favour.

25. It is further submitted that it had no knowledge of the SARFAESI measures allegedly initiated by Bajaj Housing Finance Ltd. and became aware of such proceedings only

upon receipt of the present Securitisation Application. It is further submitted that the objections filed by Bajaj Housing Finance Ltd, before the Ld. Recovery Officer in IA No. 135/2024 were rightly rejected by order dated 16.06.2025. It has supported the Ld. Recovery Officer's order and submitted that the same is well reasoned and lawful.

26. It has further strongly disputed BHFL's claim of any valid mortgage over the subject property and submitted that no legally enforceable equitable mortgage was created in favour of BHFL and the documents produced by BHFL do not constitute evidence of a valid equitable mortgage. It is further submitted that mere registration with CERSAI does not create a valid charge or mortgage and a valid mortgage over immovable property requires compliance with statutory registration requirements.

27. It is further pointed out that the property remained mortgaged with Axis Bank until 08.02.2018. Therefore, BHFL's claim that the property stood mortgaged in its favour from 2017 is factually untenable.

28. It has further emphasized that the dues of SBI had already been adjudicated and crystallized by DRT-II through the judgment dated 24.02.2021 and the Ld. Recovery Officer conducted the attachment and auction proceedings strictly in accordance with the RDB Act and the Second Schedule to the Income Tax Act. Moreover, BHFL never challenged any procedural aspect of the attachment, proclamation, or auction process before confirmation of sale.

29. It is further submitted that once the sale was confirmed and possession delivered, the auction cannot be disturbed in the absence of fraud, collusion, material irregularity, underbidding, or inadequate pricing.

30. It is further submitted that most of the reliefs sought by the Applicant are directed against BHFL and therefore do not concern Respondent No: 2 SBI. It has further

opposed the prayers seeking declaration of the auction sale as illegal, refund of sale consideration with interest and Compensation or exemplary costs against SBI.

31. It is further submitted that the Auction Purchaser has already received physical possession of the property and a registered sale deed has been executed in her favour and SBI has acted strictly in accordance with law and committed no illegality or procedural lapse and hence no claim for refund, compensation, damages, or costs can be sustained against Respondent No: 2 SBI.

32. In view of the above, Respondent No: 2 SBI (CH Bank) has prayed to reject the relief prayed for as above in the interest of justice.

33. Based upon the pleadings, evidences and arguments as placed by Ld. Counsels for all the parties on record of this Tribunal, the following issues arise for complete and effective adjudication of the present SA :

Issues:

(1) Whether the Applicant deserves to be protected against action taken by Respondent No: 1 under SARFAESI Act?

(2) Whether the Applicant is responsible to investigate title of the property in question before purchasing it in public auction conducted by Respondent No: 2?

(3) Whether the dispute involved in the present case is required to be resolved by Respondent Nos: 1 & 2 by way of arbitration as provided u/s 11 of SARFAESI Act?

(4) To what relief, if any, Applicant is entitled?

Issue No: 1 - Whether the Applicant deserves to be protected against action taken by Respondent No: 1 under SARFAESI Act?

34. The Applicant has produced a copy of Registered Sale Certificate dated 11-06-2024 issued by Respondent No: 2 in her favour at Page No: 50 to 67 Annexure-G along

with SA. Respondent No: 2 has stated in reply to SA Exh.R/8 that the Applicant is a successful Auction Purchaser of the property in question which has been purchased by the Applicant under the public auction held by the Respondent No: 2 on 31-05-2023 under the provisions of Securitization Act. It is submitted that upon payment of the sale price by the Applicant, the Respondent No: 2 has also handed over the possession of the property in question and also executed Registered Sale Certificate dated 11-06-2024 in favour of the Applicant which has been produced by the Applicant at Annexure-G of the present SA.

35. In view of the above reply of Respondent No: 2, it becomes evident that the creditor conducted the auction through Ld. Recovery Officer strictly in exercise of powers under the provisions of the RDB Act and relevant Rules under Second Schedule of Income Tax Act. The Applicant – Auction Purchaser participated in the public auction pursuance to a duly published sale notice, deposited the bid amount within the prescribed timelines and a Sale Certificate came to be issued thereafter. The Auction Purchaser, being a bonafide purchaser for value, acquires valuable rights in the secured asset, which cannot be lightly interfered with except upon proof of fraud, collusion or material illegality going to the root of the auction process. The Hon'ble Supreme Court has consistently held that sanctity, certainty and finality of public auctions conducted by Banks and Financial Institutions deserve judicial protection in order to maintain confidence of intending bidders in recovery proceedings.

36. The Hon'ble Apex Court in **Celir LLP V/s. Ms. Sumati Prasad Bafna and others in Contempt Petition (C) Nos.158-159 of 2024 in Civil Appeal Nos.5542-5543 of 2023** has held as under:

> "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 and fraudulent. Mere irregularity or deviation from a rule that does not have any fundamental procedural error does not take away

the foundation of authority for such a 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."

37. Thus, the Apex Court observed that the SARFAESI Act is a special legislation intended for expeditious recovery of public money and the rights accrued in favour of a successful auction purchaser deserve protection.

38. It is equally well settled that once an auction sale is confirmed and the sale certificate is issued in favour of the Auction Purchaser, the secured creditor and the borrower cannot subsequently nullify the sale through private arrangements or belated settlements, save and except where the auction itself is vitiated by fraud or patent statutory violation. In **Janak Raj v. Gurdial Singh, AIR 1967 SC 608,** the Hon'ble Supreme Court held that a stranger Auction Purchaser should not suffer on account of disputes between the decree-holder and judgment-debtor after confirmation of sale. Similar principles have been reiterated in **Gurjoginder Singh v. Jaswant Kaur, (1994) 2 SCC 368 and Padanathil Ruqmini Amma v. P.K. Abdulla, (1996) 7 SCC 668,** wherein the Hon'ble Supreme Court emphasized that the rights of an Auction Purchaser attain finality upon confirmation of sale and ought not to be unsettled except for compelling reasons such as fraud or material irregularity causing substantial injury

39. In the present case, no material has been placed on record to establish fraud, collusion, suppression of material facts, or violation of mandatory statutory provisions sufficient to invalidate the auction sale. Mere claim of charge over the property in question by Respondent No.1 on the basis of alleged mortgage cannot defeat the accrued rights of a bona fide Auction Purchaser after completion of the sale process in accordance with law. As discussed hereinabove, the conflicting claim of mortgage by Respondent No.1 with Respondent No.2 cannot be entertained by this Tribunal in

the SA filed by the Auction Purchaser. It is an inter-se dispute between two Financial Institutions, which can be resolved through arbitration as provided u/s 11 of the SARFAESI Act.

40. The object of the SARFAESI Act would stand frustrated if successful bidders in public auctions are left exposed to uncertainty even after confirmation of sale. Judicial interference in concluded auctions must therefore remain minimal, as repeated reopening of auctions would erode public confidence, reduce bidder participation, and ultimately diminish realization of value for secured assets. The sanctity of Bank auctions is an essential component of the recovery mechanism contemplated under the RDB Act and deserves full protection unless the sale is shown to be fundamentally illegal or fraudulent. Accordingly, this Tribunal finds that the rights of the Auction Purchaser's merit protection and the blatant violation of this auction sale is liable to be rejected. **Accordingly, Issue No.1 is answered in affirmative.**

Issue No: 2 - Whether the Applicant is responsible to investigate title of the property in question before purchasing it in public auction conducted by Respondent No: 2?

41. Both Respondent Nos.1 & 2 have narrated details and chain of title to establish their security interest/right to recover from personal property of borrower over the disputed property, in their Reply to SA vide Exh.R/11 & R/8. Relying on para 5.4 & 5.5 (Pg Nos.6 & 7 of SA) of Sale Certificate issued by Ld. Recovery Officer in favour of the Auction Purchaser, Ld. Counsel for Respondent No.1 stated that the Auction Purchaser's claim of lawful ownership is baseless, as the auction conducted by the Ld. Recovery Officer was void ab initio, the property being a secured asset of Respondent No: 1 since 2017.

42. The contention that the Auction Purchaser ought to have independently conducted an exhaustive inquiry into the title of the secured asset before participating in the auction cannot be accepted in the facts of the present case. A public auction conducted by a

secured creditor under the provisions of the SARFAESI Act carries with it a legitimate representation that the creditor possesses authority to enforce the right to recover and convey the interest available in the disputed asset. An Auction Purchaser participating in such statutory auction proceedings is entitled to proceed on the basis of the disclosures made in the sale notice and the records produced by the creditor/Auction Conducting Authority. The law does not cast an onerous burden upon a bona fide Auction Purchaser to undertake roving and speculative inquiries beyond the material disclosed by the Bank in the auction process.

43. The Hon'ble Supreme Court has repeatedly emphasized that a bona fide auction purchaser in a court sale or statutory sale stands on a different footing from a private purchaser in a negotiated transaction. In **Janak Raj v. Gurdial Singh, AIR 1967 SC 608,** the Supreme Court held that the rights of a stranger Auction Purchaser deserve protection and such purchaser should not suffer because of disputes inter se between the parties to the proceedings. The principle underlying the said judgment is that sanctity and finality of public auctions must be preserved so as to maintain confidence of intending bidders in judicial and statutory sale processes.

44. In **Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd., (2008) 9 SCC 299,** the Hon'ble Supreme Court emphasized that certainty of title and protection to auction purchasers are necessary to ensure participation in public auctions. If auction purchasers are exposed to endless disputes concerning title despite there being no suppression or fraud attributable to them, no prudent bidder would participate in auctions conducted by Banks and Tribunals.

45. The Auction Purchaser in the present matter cannot be imputed with knowledge of alleged defects or disputes concerning title which were neither disclosed in the auction notice nor otherwise apparent from the records made available by the creditor/Auction Conducting Authority. The creditor, having invoked statutory powers for enforcement of Recovery Rights, bears responsibility for disclosure of material particulars relating

to the property on auction. In absence of evidence establishing collusion, fraud, or prior knowledge of alleged defects on the part of the auction purchaser, the sale cannot be invalidated on the ground that the purchaser failed to conduct further investigation regarding title.

46. It is also a settled principle that a purchaser in an auction conducted under statutory authority acquires such rights as are represented and conveyed through the sale certificate issued by the competent authority. The auction purchaser is not expected to adjudicate competing title claims or investigate historical disputes beyond the scope of the auction proceedings. To impose such obligation would undermine the efficacy of recovery proceedings under the RDB Act and defeat the very object of expeditious realization of Recoverable Dues.

47. This Tribunal therefore holds that the auction purchaser, being a bona fide purchaser for value in a statutory auction conducted by the Ld. Recovery Officer, cannot be non-suited or deprived of rights merely on the allegation that independent title verification was not undertaken by him prior to participation in the auction. In the absence of proof of fraud, collusion, or conscious notice of any fatal defect in title, the rights accrued in favour of the auction purchaser deserve protection in law. **Accordingly, Issue No.2 is answered in negative.**

Issue No: 3 - Whether the dispute involved in the present case is required to be resolved by Respondent Nos: 1 & 2 by way of arbitration as provided u/s 11 of SARFAESI Act?

48. On perusal of pleadings and written submissions filed by Respondent Nos. 1 & 2 vide Exh.R/11 and R/8 respectively, it transpires that both are Financial Institution/Bank and both the Financial Institutions have given details of their chain of title qua the property in question and both of them are claiming security interest/recoverable interest over the property in question. Therefore, there is a conflict with regard to security interest between both Respondent Nos.1 & 2. This Tribunal is not inclined

to dive into details of chain of title to decide security interest of the claimants over the property in question. However, the fact remains that the Applicant herein is a bona fide purchaser for value, without notice and her possession is required to be protected against the action initiated by Respondent No.1 under SARFAESI Act as discussed hereinabove.

49. In view of the conflicting security interest of Respondent Nos.1 & 2, the following observations of the **Hon'ble Supreme Court in Bank of India V/s. Sri Nangli Rice Mills Pvt. Ltd. (Supra) are relevant** and the same are reproduced below:

> "96. However, Section 11 of the SARFAESI Act, apart from stipulating that any dispute between a bank or financial institution or asset reconstruction company or qualified buyer shall be resolved by way of arbitration further uses the expression "as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration", which is of vital significance. The legislature in its wisdom has not only prescribed and mandated the resolution of disputes covered under the said provision by way of arbitration, but by consciously using the aforesaid expression, has gone one step ahead by providing a deeming fiction whereby, an arbitration agreement is presumed to exists between the parties falling under the said provision for the resolution of any 'dispute' between them that is specified thereunder. Thus, Section 11 of the SARFAESI Act, creates a legal fiction as regards the existence of an arbitration agreement notwithstanding whether such agreement exists or not in actuality."

50. Looking to the dispute between two Financial Institution/Bank involved in the present case, this Tribunal is of the opinion that the dispute is required to be resolved between Respondent Nos. 1 & 2 by arbitration and the Applicant herein cannot be allowed to suffer. **Accordingly Issue No.3 is answered in affirmative.**

Issue No: 4 - Relief:

51. In view of aforesaid discussion, the present SA deserves to be allowed with the following final order:

ORDER

- The present SA is allowed, without any order as to cost.
- The order dated 20/03/2025 passed by Ld. CJM, Rajkot u/s 14 is hereby quashed and set aside.
- The action of taking physical possession of the property in question by Respondent No.1 from the Applicant on the strength of the aforesaid order dated 20/03/2025 is also hereby quashed and set aside.
- Respondent No.1 is directed to restore physical possession of the property in question to the Applicant within a period of seven days from today.
- Respondent Nos.1 & 2 shall be at liberty to refer their dispute regarding Recovery Rights/Security Interest over the property in question to arbitration as provided in Section 11 of the SARFAESI Act.
- Let copies be supplied as per rules.
- File be consigned to record.

Pronounced in the Open Tribunal on **12th June 2026.**

(PANKAJ KUMAR UPADHYAY)
PRESIDING OFFICER,
DRT-II, AHMEDABAD.

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