

IN THE DEBTS RECOVERY TRIBUNAL
VISAKHAPATNAM

Present :- SHRI KRISHNA GOPAL DWIVEDI,
PRESIDING OFFICER

Dated 23rd June, 2026

S.A. No. 254 of 2018

Between

1. M/s. Sri Sai Bhargavi Cotton Trading Company, Represented by its Proprietrix Smt Munnangi Saraswathi, W/o. Brahma Reddy, D.No. 2-14-143/b,1/2, Syamala Nagar, Guntur

2. Sri Munnangi Brahma Reddy, S/o. Linga Reddy, D.No. 2-14-143/b,1/2, Syamala Nagar, Guntur

3. Smt. Tiyyagura Sri Devi, W/o. Veera Reddy, D.No. 2-14-143/b,1/2, Syamala Nagar, Guntur

.....Petitioners/ Applicants

And

1. The Authorized Officer, State Bank of India, Guntur Branch, Kannavarithota, 26-1-52, Guntur- 522 004

2. SadiqAhamed Jilani Syed, S/o. Mr. SJA Jeelani, D.No. 6-13-70, Arundalpet, 13/2, Guntur- 522004

3. Dukkamallujapamma, W/o. Sri Sunilkumar, D.No. 5-269, CR Nagar, Chilakaluripet, Guntur District- 522616

..... Respondents

Present:

Ld. Counsel for the Applicants : Shri M.V. Ramana

Ld. Counsel for the Respondent Bank : Shri K.S. Shankar

Ld. Counsel for 2nd Respondent : Shri V. Satish

ORDER

1. The applicants have filed the present appeal under Section 17(1) of SARFAESI Act 2002 on 25.06.2018.

2. The above SA 254/2018 was dismissed by this Tribunal vide order dt. 31.08.2018 and against that order, the applicants filed appeal in DRAT Kolkata,

appeal No. 38/2020 and the Hon'ble Chairperson DRAT in appeal No. 38/2020 passed order as follows:

"Appeal is allowed. Impugned order and judgment dated 31.08.2018 passed by Ld. DRT Visakhapatnam is set. The matter is remanded back to the Ld. DRT Visakhapatnam to decide afresh after affording an opportunity of hearing to the parties in accordance with law keeping in view the observations made in the body of the judgment. Ld. DRT shall give an opportunity to the SARFAESI Applicant to implead the auction purchaser as a party in the SARFAESI Application. It is expected that the Ld. DRT shall decide the matter afresh expeditiously".

In the above order in para 6, 7,8 and 9 the Hon'ble Chairperson passed order as follows:

6. Prima facie, it would appear that Ld. DRT has passed a very sketchy, unreasoned order which could not be sustained. It is settled legal proposition that an order should be a reasoned order. An order bereft of reasons is nothing but an arbitrary exercise of jurisdiction vested in the DRT. I am constrained to observe that the Ld. Presiding Officer has not looked into the pleadings of the parties and not recorded any categorical findings on the issue involved.

7. A specific plea is taken regarding non compliance of Rule 8(6), 9(1), 8(1) and 8(2) of the Security Interest (Enforcement) Rules 2002. Ld. DRT in generalized manner recorded in the findings that all the proposition of laws and Rules are followed by the Bank. When specific plea is taken which was not specifically denied, rather a general statement is made by the Bank that a notice under Rule 8 (6) was issued which was served upon the borrower. There is no description as to when the notice was issued, when it was served. All these facts should have been looked into by the Ld. DRT which is not done.

8. A further plea is taken by the Learned Counsel for the Appellant in the Appeal regarding non compliance of Rule 9(4) of the Security Interest (Enforcement) Rules 2002 stating that an interim order for not confirming the sale was passed by the Ld. DRT on 4th July, 2018. Ultimately SARFAESI Application was decided and dismissed on 31.08.2018. As per the Respondent, copy of the judgement was received on 4th September, 2018 and the Learned Counsel for the Bank informed the Bank on 15th September, 2018. Thereafter, a fresh notice was issued to the purchaser i.e. Respondent No. 2 on 17.09.2018 asking to deposit the amount within 15 days. The sale certificate was Issued on 01.10.2018 in favour of Respondent No. 2. This plea is taken in the Appeal which can also be looked into by the Ld. DRT. However, the SARFAESI Applicant would

be at liberty to add the plea by moving an amendment application before the Ld. DRT.

9. In view of the discussion made above, I am of the view that the judgment and order passed by the Ld. DRT could not sustain and is liable to be set aside. The matter to be remanded back to the Ld. DRT to dispose of afresh in accordance with law after giving an opportunity of hearing to the parties keeping in view the observations made in the body of the judgment.

3. As per SA the applicants are owners of the schedule property having aggrieved by sale notice dt. 21.05.2018 and conducted the auction on 22.06.2018 for schedule property Item No. 1 & 2. As per SA the Respondent bank did not serve Rule 8(6) and 9(1) of Security Interest Rules, 2002 and Respondent bank has not affixed the sale notice on the schedule property under Rule 8(7) of the security Interest Rules. As per SA the 1st applicant firm doing cotton business and the Respondent bank sanctioned loan of Rs 1.75 Corers initially and latter on extended to 2.25 cores. The Respondent bank classified the account of the applicants as NPA. The applicant requested the authorized officer to postpone the auction on 22-6-2018 and paid Rs. 25,00,000/- on 22-6-2018 for postponement of auction, but after receiving the amount the auction was conducted which is illegal and against principal of natural justice. The Respondent making preparing for confirmation of sale and issuance of sale certificate to successful bidders before 05.07.2018. Applicants are trying to clear the outstanding dues by selling the property to the 3rd parties with prior consent with the bank. The applicant paid Rs. 10,00,000/-. As per SA the 2nd applicant died on 14.10.2023 and after that as per petition of the applicant Tribunal ordered to added LRs of 2nd Applicant. The 1st Respondent has sold the applicants properties through E-auction on 22.06.2018. Later on 1st Respondent filed petition under Sec. 14 of the SARFAESI Act before the Hon'ble Chief Judicial Magistrate Court at Guntur in CrI.MP.No. 355/2024 for taking physical possession of the schedule properties and to hand over the same to auction purchaser and Hon'ble Chief Judicial Magistrate Court at Guntur appointed an advocate Commissioner and Ld. Advocate Commissioner has issued a notice dt. 29.07.2024 to the applicants to vacate the premises of SA schedule properties. This notice is not maintainable under law. After the death of 2nd Applicant a memo was filed in this SA and the applicant also informed the

death of 2nd applicant to the 1st Respondent on 14.10.2023 but the 1st Respondent has not taken steps against the legal heirs of the deceased 2nd applicant by giving fresh notice under Sec.13(2) of SARFAESI Act. The 1st respondent did not give any notice to the deceased applicant No.2.

The applicants obtained a certified copy of the alleged sale deed and sale certificate. The 1st respondent registered the item No.2 property in favour of the 3rd respondent and issued sale certificate for the item No.1 property to the 2nd respondent. While conducting the auction, the 1st respondent has committed several irregularities and proceeded the auction illegally with the collusion of the respondents 2&3. The respondent has published sale notice dated 21.05.2018 for the Item No1 of the property an extent is 280.92 sq. Yards instead of an extent of 350 sq. yards and the 1st respondent intentionally left the near about 70 sq. yards and the 2nd respondent has not taken entire property proper valuation before sale of the said property. The applicant has further submitted that in sale notice/publication dated 21.05. 2018 in the paper publication that the wrong survey No.70/81/c but as per the sale deed it is 70/B/1C and Respondent bank has not mentioned proper address in the sale notice. The 2nd Respondent who is the auction purchaser paid 25% amount of Rs. 23,50,000/- on the date of auction i.e on 22.06.2018 and the remaining balance to be paid by the auction purchaser within 15 days or such extended period as may be agreed upon in writing between the purchaser and the secured creditor in case of not exceeding three months. The 2nd Respondent paid remaining balance amount of Rs. 69,54,407/- on 16.10.2018 after lapse of 115 days which is against the Act and Rules made thereunder.

The 2nd Respondent has total amount Rs.93,04,407/- whereas in the sale certificate mentioned the total amount paid by the 2nd respondent is Rs. 94 lakhs. The 1st respondent issued sale certificate to the 2nd respondent on 01-10-2018 prior to payment of the sale consideration which is illegal and it is established that the 1st respondent and 2nd respondent colluded themselves and brought the alleged sale certificate in to existence and the same liable to be set-aside the 1st respondent has not mentioned the payment details in the sale certificate and the 1st respondent has not taken proper value of the from the valuer. As per SA the 3rd Respondent participated in the auction on 22-06-2018 and became success full bidder and 3rd respondent paid 25% of amount of Rs. 10,16,600/- 25% on the

date of auction and the remaining balance amount of 75% to be paid within 15 days but the 3rd respondent failed to pay the remaining sale consideration amount to the 1st respondent till the date and the 1st respondent has not mentioned the payment details in the sale certificate.

As per statement of account of the 1st applicant the 3rd respondent paid Rs.30,49,800/- on 24-03-2021 after lapse of mandatory period since the date of auction i.e. 22-06-2018. The 3rd respondent paid 25% of amount of Rs. 10,16,600/- + 30,49,800/-. The 1st respondent has debited account on 24-03-2021. Hence the 3rd respondent has not deposited in the account of the 1st applicant. 1st respondent issued sale certificate and the same is registered on 24-3-03-2021 by the 1st respondent in favor of the 3rd respondent without payment of balance sale amount of the 3rd respondent is illegal and the same is liable to be set-aside in the interest of the justice. As per SA the valuer has not taken the Reserve price as per wealth Tax Act.

4. The applicants have prayed for the following relief in the SA:-

(a) To set aside the all the measures initiated by the respondent in the pursuant to the sale notice dt. 21-05-2018 fixed and conducted auction on 22-06-2018 in respect of Item No. 1 and 2 in the interest of the justice.

"To set aside the all the measure taken by the respondent in pursuant to the section 14 notice by appointing advocate commissioner in Criminal MP 355/2024 for taking physical possession of the SA schedule properties"

"To cancel set-aside the sale certificate issued in favour of the 2nd respondent dated 1-10-2018 by the 1st respondent in respect of the SA schedule property Item No.1.

"To cancel set-aside the sale certificate issued and Registered in favour of the 3rd respondent dated 24-03-2021 by the 1st respondent in respect of the SA schedule property Item No.2

"To Set-aside the 13(2) notice dated 02-06-2017 and set-aside the possession notice dated 30-10-2017"

5. The applicants have filed the following documents with neat copy of SA dt. 14.08.2025

- (a) Sale Notice dt. 21.05.2018
- (b) Death Certificate of the 2nd applicant
- (c) Family Certificate
- (d) Notice of Advocate Commissioner
- (e) DRAT Order in Appeal No. 38/2020

- (f) Sale Certificate of the 2nd Respondent issued by the 1st Respondent
- (g) The sale Deed of the 2nd Applicant of the with translation copy
- (h) Statement of account copy of the 1st applicant's firm
- (i) Sale Certificate of the 3rd Respondent dt. 24.03.2021

6. The applicants have filed the following documents with IA 1593/2026:

- (a) Orders of Hon'ble High Court in W.P.No. 10448/2019 dt. 03.09.2019
- (b) Sale Certificate in favour of the 3rd Respondent/Auction purchaser dt. 20.12.2019
- (c) Statement of Account frm 01.01.2018 to 25.03.2026

7. The applicants have filed the following documents with memo dt. 23.03.2026

- (a) Letter dt. 17.09.2018 issued by SBI to the Auction purchaser.
- (b) Letter dt. 04.07.2018 issued by SBI to the Auction purchaser.

8. The applicants have filed the following documents with written arguments dt. 07.01.2026

- (a) Sale Notice dt. 01.07.2019
- (b) Sale Confirmation Advice dt. 08.08.2019
- (c) Sale Confirmation Advice dt. 08.08.2019

9. The 1st Respondent has filed reply on 04.07.2018. The 1st Respondent has prayed to dismiss the SA with costs. The Respondent bank has denied all the allegations alleged by the applicant.

10. As per reply the applicants availed loan of Rs.2.25 crores and executed necessary documents apart from creating/extending an equitable mortgage over the schedule properties. When the applicants committed default the officials of the respondent bank several times demanded the applicants to pay the same and when they failed to pay the loan, the respondent bank declared the account as NPA on 31-5-2017 and the authorized officer of the Respondent bank issued Demand notice on 2-6-2017 to the applicants calling upon them to pay a sum of Rs.1,98,68,742-00 within 60 days. The said notice was received by the applicants. When there was no response nor any representation from the applicants the Authorized officer of the respondent bank issued possession notice dt.30-10-2017 and took symbolic possession of the secured asset and the notice has been affixed on the outer wall and the possession notice was published in two local papers on 3-11-2017 and

even then there was no response. Thereafter the respondent bank issued intended sale notice under Rule 8(6) of the Rules intimating that they will conduct the sale after 30 days in case if the loan amount is not paid by the applicants. Even then there was no response from the applicants. Therefore the respondent bank's authorized officer issued e-auction sale notice dt.21-5-2018 and got it published on 22-5-2018 in Eenaadu and Hindu daily news papers for conducting sale on 22-6-2018 and as such this respondent followed the procedure meticulously. The Respondent has further submitted that Item No.1 Sri Sadiq Ahamad Jilani Syed s/o S.J.A.Jilani, of Arundalpetta, Guntur participated and offered an amount of Rs.94,00,000/- and paid 25% of the amount on the date of auction and this respondent confirmed the sale in his favour. Similarly this respondent submitted that for Item No.2 Smt.Dakkumalla Japamma w/o Sunil Kumar, of Chilakaluripeta, Guntur District participated and offered an amount of Rs.40,66,000/- and paid 25% of the amount on the date of auction and this respondent confirmed the sale in her favour. As per reply the 3rd party interest is created, the applicants are not entitled to seek redemption.

11. The Respondent Bank has also filed the following documents with memo dt. 30.07.2018:

- (a) Demand Notice U/s. 13(2) issued by the Applicant bank duly acknowledged by all the applicants dt. 02.06.2017
- (b) Postal Receipts of Demand Notice as proof of service sent to applicants dt. 03.06.2017
- (c) Postal Receipts of Demand Notice as proof of service sent to applicants dt. 20.06.2017
- (d) Possession Notice U/s 13(4) issued by the Respondent Bank dt. 30.10.2017
- (e) Postal Receipts of Possession Notice sent to Applicants dt. 01.11.2017
- (f) Paper publication of possession notice published in Eenadu daily dt. 03.11.2017
- (g) Paper publication of Possession Notice published in Hindu daily dt. 03.11.2017
- (h) 2 Photographs of Panchanama
- (i) Rule 8(6) notice sent to applicants dt. 19.04.2018
- (j) Postal Acknowledgment to the Applicants dt. 21.04.2018
- (k) Letter informing the E-Auction Sale Notice sent to the Applicants dt. 22.05.2018
- (l) E-Auction Sale Notice published in Eenadu dt. 22.05.2018
- (m) E-Auction Sale Notice published in The Hindu dt. 22.05.2018
- (n) Sale Confirmation Advice dt. 22.06.2018
- (o) Valuation Report given by panel valuer Devineni Gopi dt. 27.01.2017
- (p) Valuation Report given by panel Valuer P. Sinngaiah dt. 29.01.2018

12 The 1st Respondent has filed the following document with memo dt. 02.04.2026

(a) Statement of Account

13. The 1st Respondent filed the following documents with memo dt. 23.04.2026.

(a) Advocate Commissioner's Warrant issued by CMM dt. 08.06.2018

14. The 1st Respondent has also filed additional reply on 30.10.2025. In that additional reply also the 1st Respondent has prayed to dismiss the SA with costs. As per additional reply possession notice is time barred. 3rd party interest is created and property was registered in favour of respondents 2 & 3 and they are in possession enjoyment of the said property. The property sold is a house property and the applicant did not canvass before this Tribunal or before the appellate tribunal that the property is sold for a lesser price. The applicant herein filed S.A. 311/2019 which was dismissed on 21-02-2023 challenging the e-auction notice for conducting the auction on 07-08-2019 in respect of Items 2 to 4 in favour of D.Ravi Kumar and others. The applicants has not paid the amount after giving opportunity and applicant has filed Writ Petition No. 34060/2018 & 34513/2018 challenging the order in IA 1119/2018 and SA 254/2018 and same was dismissed by Hon'ble High court granting two weeks time to avail alternative remedy.

15. The 2nd Respondent has filed reply on 20.03.2025. The 2nd Respondent has prayed to dismiss the SA with exemplary costs. The 2nd Respondent has denied all the allegations alleged by the applicant. The 2nd Respondent has supported the reply of the 1st Respondent. As per reply all the notices are duly issued by the 1st Respondent bank and served on the borrowers and guarantors. This Respondent purchased Item No.1 of the schedule property at a sale consideration of Rs.

94,00,000/- and the said sale consideration reflects existing and prevailing market rates in the locality. The 1st Respondent filed petition before Ld. CJM, Guntur for taking physical possession of the property of first and second floors of schedule property in accordance with law. The 1st Respondent conducted auction on 22.06.2018 and after payment of entire sale consideration, a sale certificate was issued to this Respondent by the 1st respondent bank on 01.10.2018 which was registered as Doc. No. 5777/2020 in the office of Joint SRO, Nallapadu, Guntur District.

16. The 2nd Respondent has filed the following documents with written arguments dt. 23.03.2026.

- (a) Sale confirmation letter given by the 1st Respondent bank to the 2nd Respondent/auction purchaser dt. 22.06.2018
- (b) Letter addressed by the 1st respondent bank to the 2nd Respondent/auction purchaser dt. 04.07.2018
- (c) Letter addressed by the 1st Respondent bank to the 2nd Respondent/auction purchaser dt. 17.09.2018
- (d) Confirmation of payment of 75% of the sale price issued by the 1st Respondent dt. 29.09.2018
- (e) Statement of Account showing the credit of 75% of sale price by the 2nd respondent/auction purchaser dt. 28.11.2018.

17. The 2nd Respondent has filed the following documents with memo dt. 23.04.2026.

- (a) Proceedings of the Joint Collector and Competent authority Urban Land Ceiling, Guntur dt. 07.11.2019
- (b) Warrant issued to the Advocate Commissioner under Sec. 14 of the Act along with schedule dt. 08.06.2018
- © Letter addressed by the 2nd Respondent to the 1st respondent bank specifying the details of the payment of balance consideration by the 2nd Respondent/Auction purchaser to the 1st Respondent bank dt. 01.10.2018.

18. The 2nd Respondent has adopted all the additional reply of 1st Respondent vide memo dt. 18.11.2025.

19. Vide order dt. 01.04.2025 R3 is debarred from filing counter and reply.

20. I have heard the Ld. Counsel of both the parties and perused the record. The applicant has filed the present SA on 25.06.2018. Hence on the point of demand notice dt. 02.06.2017, possession notice dt. 30.10.2017, publication of possession notice dt. 03.11.2017 this SA is time barred. More over the applicant has also not demanded any relief on the possession notice.

In the present case the Respondent bank issued Rule 8(6) notice to the applicants on 19.04.2018. Hence on the point of Rule 8(6) notice also this SA is time bared. The Respondent bank has issued E-Auction sale notice dt. 22.05.2018. The Respondent bank has also filed acknowledgment of sale notice. After perusal of the notice, it reveals that E-auction notice is returned to the sender, it is not served on borrowers and guarantors but the sale notice is published in the Newspapers. Hence it will be presumed that sale notice is served on the borrowers and guarantors. The Respondent has not filed copy of affixture of sale notice on the schedule property. The Hon'ble Supreme Court of India passed order in Civil Appeal No. 12174 of 2025 in the Case of M. Rajendran & Ors. Vs. M/s. KPK Oils and Proteins India Pvt Ltd & Ors. at para 169 of the above Judgment Hon'ble Supreme Court of India have laid down the principle as follows:

“169. From the above discussion, we have no hesitation in holding the following:—

(i) Rule(s) 8(6), the Proviso thereto, Rule 8(7) and Rule 9(1) of the SARFAESI Rules respectively do not speak of any separate or distinct notice of sale that is required to be issued by the secured creditor for the transfer of the secured asset by way of lease, assignment or sale in accordance with any of the methods enumerated in Rule 8(5).

(ii) The different manner in which the notice of sale has to be served, caused, published, affixed, uploaded as stipulated in Rule (s) 8(6) and 8(7) of the SARFAESI Rules respectively, do not constitute separate notices of sale by themselves. They are part and parcel of one single composite intended “notice of sale” of the secured asset by the secured creditor, by any of the mode of sale listed in Rule 8(5). All of the aforesaid rules are concerned with a single composite “notice of sale”, and the only distinction between the said rules, is the manner in which the said “notice of sale” has to be given, on the basis of which the relevant rule or rules are applicable, as the case may be.

(iii) Similarly, the stipulation under Rule 9(1) of a thirty-day gap between the date of publication of notice of sale and the date of actual sale does not impute a distinct characteristic to the public notice in the newspaper in contrast to the notice of sale

that is served to the borrower. As is evident from Appendix IV-A to the SARFAESI Rules, the public notice of sale in newspaper as-well the notice of sale served to the borrower are one and the same, for the purpose of Rule 9(1).

(iv) The embargo enshrined under Rule 9(1), that no sale, in the first instance shall take place before the expiry of thirty-days, would be reckoned from the date of issuance of the "notice of sale", which would include both the public notice of sale in the newspaper and the service thereof to the borrower, whichever is later.

(v) The notice of sale both under Rule 8(6) read with Rule 9(1) respectively can be served as-well as published in the newspaper, simultaneously on the same date. All that is required under Rule 9 (1) is that a thirty-day gap is maintained between the date the notice of sale is served, affixed and published, whichever is later, as the case may be, till the date of actual sale."

Hence, I find that as per the principle laid down by the Hon'ble Supreme Court of India. In this case sale notice is not affixed on the schedule property and the Respondent bank has committed illegality in not affixing the sale notice on the schedule property.

21. After perusal of the record I find that before auction on 27.01.2018 the Respondent has taken valuation report filed by the panel valuer. As per the panel valuer the value for the existing RCC roofed Ground, first and second floor residential building D.No. 2-14-143/B_{1/2}, Shyamala Nagar, Guntur Municipal Corporation Limits, Guntur District, Andhra Pradesh. The value of the schedule property is Rs. 1,04,18,000/-, realizable value of the schedule property is Rs. 93,76,000/- and distress value of the schedule property Rs. 83,35,000/-. As per Branch Manager Rs. 93,76,000/- is realizable value of the property. The 2nd property is also a residential building consisting of ground, first floor located at D.No. 70/81/1C, Nallapdu Ward No.2 D. No.2-14-143/B new D.No. 9-1-42, 1st Line, 2nd line cross road, shyamala nagar, Guntur City. As per valuer the fair market value of this property Rs. 1,06,99,000/-, Realizable value Rs 90,94,150/- and Distress sale value Rs. 80,24,250/-.

22. As per respondent the schedule property was auctioned on 22.06.2018 and as per sale confirmation advice site 280.92 Sq.yds situated at D.No. 70/81/C of Nallapadu with RCC roof residential building with ground and first floor at D.No. 2-14-143b, ½ Syamalanagar, Guntur and this property is purchased by Sri SadiqAhamed Jilani Syed. The respondent has advised the auction purchaser to pay balance amount of Rs. 70,50,000/- within 15 days from the date of auction. The 3rd Respondent was successful Auction purchaser. This is vacant residential site in an extent of 207.50 Sq,yds. Located at D.No. 143 at Nallapadu, Ward No. 26 side D.No. 26-39-120/21, new side D.No. 92-12-96, 4th Line, Ramireddy Nagar, Guntur to Nallapadu Raod at Agraharam, Guntur. In this case also the Respondent bank advised the Auction purchaser to pay the balance amount of Rs. 30,49,400/- within 15 days from the date of auction.

23. After perusal of the record I find that property was auctioned on 22.06.2018. As per rule bank has to provide 15 days time. Meaning thereby the Auction purchaser may pay the amount till 07.07.2018 but on 04.07.2018 this Tribunal has directed the Respondent Bank not to confirm the sale till 11.07.2018. On 11.07.2018 interim order is extended till 18.07.2018. Again interim order is extended till 02.08.2018. Again interim order is extended till 29.08.2018. Again interim order is extended till 31.08.2018. Vide order dt. 31.08.2018 this SA is dismissed without costs. Hence on 31.08.2018 interim order is also vacated.

24. In the present case after dismissal of SA the Respondent bank has sent letter to Auction purchaser Sir Sadiq Ahamed Jilani Syed on 17.09.2019 to pay the remaining 75% of the bid price in 15 days. After scanning this letter I find that this letter is not as per law. Before stay order granted by this Tribunal and before stay of confirmation of sale notice only 04 days was in hand of the Auction purchaser. This SA was dismissed on 31.08.2018. Hence after 31.08.2018 as per law only 04 days was in the hands of the Auction purchaser to pay the remaining amount. But against law the Respondent bank has issued letter on 17.09.2018 and provided time of 15 days to pay the remaining 75% amount. Hence the Respondent bank has committed illegality in issuance of letter dt. 17.09.2018. As per respondent Sri Sadiq Ahamed Jilani Syed has paid Rs 43,52,662/- of the amount on 28.09.2018 and Rs. 26,97,338/- on 1st October 2018 total Rs. 70,50,000/- . Afte perusal of the record I find that the 3rd Respondent has paid amount on 24.03.2021. After analysing all the facts I find that the Respondent bank has issued letter dt. 17.09.2018 against provision of Security Interest (Enforcement) Act 2002. The 2nd Respondent and 3rd has paid amount against the provision of Security Interest (Enforcement) Act 2002. The Auction purchaser has not filed chit of paper in support of extension of time to pay the remaining amount. The bank has no right to extend the time as per his sweet will. The Respondent bank has issued letter dt. 17.09.2018. It is also surprise that any petition for extension for payment of 75% amount by R3 is not filed to the Respondent bank. In this regard I would like to refer the Judgement of Hon'ble Supreme Court passed in the case **of Mr. Vasumathi Vs. Authorised Officer and Others, 2026 SSC Online SC 1103** in para 2nd Hon'ble Supreme Court have held as follows:

"Appeal questions the legality of the said proceedings, particularly the auction sale held on 11.03.2010, on the ground that the statutory procedure governing such sale was not complied with."

I would like to refer the para 24,25,26,27,28,29,30,31,32,33,34,35 and 36 of the above Judgment.

24. As a prefatory note, it is observed that the validity of an auction conducted under the statutory regime is not to be tested on equitable considerations but strictly on the ground whether the mandate of the statute and the rules has been breached or not. The SARFAESI Rules being subordinate legislation, bind the secured creditor as well as the auction purchaser with equal rigour.

I. COMPLIANCE WITH RULE 9: A STATUTORY SINE QUA NON

25. Rule 9 of the SARFAESI Rules squarely governs the confirmation of sale and the manner of payment of the sale consideration. Sub-Rules 3, 4 and 5 of the unamended SARFAESI Rules¹³ may profitably be noticed thus:

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five % of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised 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.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(emphasis ours)

26. As a sequitur to the aforementioned legal provisions, the auction purchaser is mandated to immediately deposit 25% of the sale price (inclusive of earnest money) on the date of sale; and in default of such deposit, the property shall forthwith be resold. Further, the balance of purchase price is required to be paid within the fifteenth day of confirmation of sale or within such written agreed extended time, failing which the deposit shall stand forfeited. Also, in such a case, the purchaser would forfeit all his claims either to the property or to any part of the sum for which such property may subsequently be sold.

27. The aforesaid legal position finds lucid expression in Sri Siddeshwara Cooperative Bank Ltd. v. Ikbals¹⁴, as follows:

13.3. Sub-rule (3) lays down that on every sale of immovable property, the purchaser shall immediately make the deposit of 25% of the amount of the sale price. In default of such deposit, the property shall forthwith be sold again.

13.4. Sub-rule (4) provides that the balance amount of purchase price payable shall be paid by the purchaser 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.

13.5. Sub-rule (5) makes a provision that if the balance amount of purchase price is not paid as required under sub-rule (4), then the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

13.6. According to sub-rule (6), on confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to the 2002 Rules.

14. A reading of sub-rule (1) of Rule 9 makes it manifest that the provision is mandatory. The plain language of Rule 9(1) suggests this. Similarly, Rule 9(3) which provides that the purchaser shall pay a deposit of 25% of the amount of the sale price on the sale of immovable property also indicates that the said provision is mandatory in nature. As regards balance amount of purchase price, sub-rule (4) provides that the said amount shall be paid by the purchaser on or before the fifteenth day of confirmation of sale of immovable property or such extended period as may be agreed upon in writing between the parties. The period of fifteen days in Rule 9(4) is not that sacrosanct and it is extendable if there is a written agreement between the parties for such extension. What is the meaning of the

expression "written agreement between the parties" in Rule 9(4)? The 2002 Rules do not prescribe any particular form for such agreement except that it must be in writing. The use of the term "written agreement" means a mutual understanding or an arrangement about relative rights and duties by the parties. For the purposes of Rule 9(4), the expression "written agreement" means nothing more than a manifestation of mutual assent in writing. The word "parties" for the purposes of Rule 9(4) we think must mean the secured creditor, borrower and auction-purchaser.

19. There is no doubt that Rule 9(1) is mandatory but this provision is definitely for the benefit of the borrower. Similarly, Rule 9(3) and Rule 9(4) are for the benefit of the secured creditor (or in any case for the benefit of the borrower). It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on the facts of each case and no hard-and-fast rule can be laid down in this regard.

(emphasis ours)

28. Even upon a cursory perusal of Rule 9 of the SARFAESI Rules that existed at the time of the impugned sale, it is clear that these provisions are neither ornamental nor directory; they are couched in mandatory terms and go to the root of the validity of the sale. A conjoint reading of the relevant sub-rules of Rule 9 underscore the mandatory character of these provisions, particularly accentuating the requirement of balance deposit under sub-rule (4), which is integral to the sanctity and credibility of the auction mechanism. Any deviation therefrom, absent legally sustainable justification, would render the process vitiated.

29. The factual position, as is borne out from the extant record, is not in serious dispute - i) auction sale was conducted on 11.03.2010; ii) auction purchaser was declared successful on the said date; iii) 25% of the bid amount was deposited on 10.03.2010/11.03.2010 vide a demand draft of Rs. 9,00,000/-, prepared on 10.03.2010; and iv) two further demand drafts of Rs. 6,80,000/- and Rs. 36,95,125/- were furnished on 11.03.2010.

30. However, the balance 75% of the bid amount was admittedly paid only on 31.03.2010. The lingering issue is as to whether this subsequent deposit satisfies Rule 9(4). The outer time limit of fifteen days expired on 26.03.2010, as reflected in the communication issued by the secured creditor dated 11.03.2010, which may be reproduced here for the convenience of reference:

4. Please note that you have to pay the balance sale price within 15 days of Confirmation of Sale i.e., today. In case of your failure to pay as said above, the entire bid amount paid by you shall be forfeited by the Authorised Officer without any notice and the sale will be cancelled.

31. The payment of the remaining 75%, on 31.03.2010 is, therefore, ex facie beyond the statutory period. In view of the above, the contention of the auction purchaser that the sale stood confirmed only on 11.03.2010 is untenable.

32. The following passage from *IDBI Bank Ltd. v. Ramswaroop Daliya*¹⁵ lends credence to the proposition:

13. Notwithstanding the above, the provisions of sub-Rules (4) and (5) of Rule 9 of the Rules, if read together in conjunction, would reveal that it is only for the default in payment of the balance auction amount within the period mentioned that the property could be resold and that the period of 15 days stipulated therein for the deposit of the balance sale amount may be extended, as may be agreed upon in writing. It means that first there has to be a default on part of the auction purchaser to invite cancellation of the auction and second, that the period of deposit stipulated therein is not absolute rather extendable with the agreement of the parties.

(emphasis ours)

33. Furthermore, the contention advanced on behalf of the secured creditor by its learned counsel that any deviation in the timeline of payment stood regularised by a valid exercise of power of extension or waiver is equally unbacked by any demonstrable material. Nothing is borne out of the record to demonstrate that there was any prayer for extension of time made by the auction purchaser at any time prior to 31.03.2010 or that any written agreement extending the time was entered into by and between the secured creditor and the auction purchaser.

34. The aforesaid legal position leads us to the examination of the consequence of non-compliance with the statutorily ordained timeline, in the absence of any record of written agreement between the secured creditor and the auction purchaser in the present factual matrix.

II. CONSEQUENCE OF NON-COMPLIANCE

35. The DRT, the DRAT and the High Court appear to have proceeded on a broader premise of consideration of delay, conduct of the borrower, and the perceived equities in favour of the auction purchaser. Equally, it is true that the record bears out that no concrete steps were ultimately taken by the appellant, who is the daughter of the deceased guarantor, to liquidate the outstanding dues and that earlier attempts at settlement did not come to fruition. However, in our considered opinion, the failure to repay without being informed of an extension being granted to the auction purchaser, by itself, cannot validate proceedings that are otherwise vitiated in law.

36. While it is trite that the rights of an auction purchaser and the sanctity of a confirmed sale ordinarily merit due protection, such protection is by no means absolute. It must yield where the very process engendering the sale is demonstrated to be legally infirm or to be incongruous with the statutory framework. The object of proceedings under the SARFAESI Act is not the mere culmination of a sale in a mechanical manner, but the lawful realisation of the secured asset through a process that is fair, transparent and strictly compliant with the prescribed rules. In the present case, the non-adherence to the timeline that the SARFAESI Rules contemplate constitutes a material irregularity going to the root of the matter. The mere factum that the sale stood confirmed cannot, therefore, foreclose judicial scrutiny.

25. The Ld counsel of the Respondent No. 2 referred the Judgment of Hon'ble Supreme Court of India passed in the case of Valji Khimji & Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd & Ors, 2007 Supreme (SC) 858. In this case at para 31 Hon'ble Supreme court have held as follows:

"In the present case, the auction having been confirmed on 30.07.2023 by the court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by any one in this case."

After perusal of the record, I find that 2nd applicant died on 14.10.2023 leaving behind his son, daughter and wife. They are successor of the deceased applicant No.2. The Ld. Counsel of the applicant filed a memo along with death certificate of 2nd applicant.

26. The Hon'ble Chair person of DRAT, Kolkata allowed the appeal. The 1st Respondent filed petition under Sec. 14 of SARFAESI Act vide CrI.MP.No. 355/2024 for taking physical possession of the SA schedule property to handover the same to the Auction purchaser and Advocate commissioner was appointed by the Ld. Court. At that time 2nd Applicant died. Hence execution of warrant

against the assets of death person is not proper. Sec. 14 SARFAESI petition should be filed after adding the LRs of deceased borrower. Hence Sec. 14 proceedings are also not as per law.

27. After scanning all the facts, evidence and documents I find that the Respondent bank has not affixed the sale notice on the schedule property. The valuation report of vacant land is not given. The 2nd Respondent has not paid remaining 75% amount within 15 days as per rule. Auction purchaser has not filed any petition before authorized officer for extension of time to deposit 75% of remaining amount. SA was dismissed and accordingly stay order was also vacated on 31.08.2018. But the Respondent bank has sent letter to auction purchaser on 17.09.20218 against the law for which the Respondent bank has no authority. The 3rd Respondent has paid the remaining amount of 75% after a long time against the provision of SARFAESI and Security Interest (Enforcement) Rules 2002.

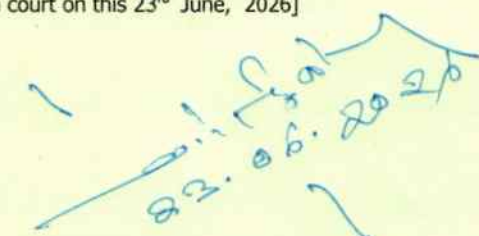
On the basis of above discussion, I find that auction of the schedule property and order of Sec. 14 Act is not as per law. Accordingly auction dt. 22.06.2018 and sale deed is hereby cancelled and set aside and also direct the Respondent bank to hand over the possession of the schedule property to the owner of the schedule property.

On the basis of above discussion this SA is allowed on contest but without costs.

As per rule both parties may compromise the case either under OTS or any other scheme and the borrowers may also pay the loan amount with interests and cost. The Respondent bank may also proceed for fresh auction as per law

to recover its dues in the interest of justice. As per the principle laid down by Hon'ble Supreme Court of India in the above case I direct the respondent bank to return the amount to the auction purchaser with 7% pa interest within six weeks from the date of this order. All connected IAs if any are also closed.

[Dictated to the Steno, transcribed by her, corrected and pronounced by me in the open court on this 23rd June, 2026]

Handwritten signature in blue ink, appearing to be 'S. S. S. S.', with the date '22.06.2026' written below it. There are some scribbles and lines around the signature.

PRESIDING OFFICER
DEBTS RECOVERY TRIBUNAL
VISA KHAPATNAM