

**BEFORE THE DEBTS RECOVERY TRIBUNAL, CUTTACK  
PRESENT:- SHRI JITENDRA PRASAD SINGH  
PRESIDING OFFICER.**

**S.A. No.146 OF 2023**

**DATE OF DELIVERY OF ORDER:22.06.2026**

1. Mr. K. Govinda Raju,  
S/o K. Ram Babu  
At-Amla Kutir, Koraput,  
PO/Dist.-Koraput, PIN-764020
2. K. Bharathi, D/o Mr. D. Annama Naidu,  
At-Amla Kutir, Koraput,  
PO/Dist.-Koraput, PIN-764020
3. D. Tarun Kumar, S/o late D. Gopi Naidu,  
At-Amla Kutir, Koraput,  
PO/Dist.-Koraput, PIN-764020  
Being minor represented through  
its mother guardian Mrs. D. Bharathi @Bhabana

**... Applicants**

**-VERSUS-**

1. The Authorized Officer,  
Union Bank of India  
Regional Office, 1<sup>st</sup> Floor  
Sri Vinayak House, Near M. I. Division,  
New Colony, At/PO/PS—Raygada,  
Dist.-Raygada, PIN-765001
2. The Branch Manager,  
Union Bank of India  
(Erstwhile Andhra Bank)  
Koraput Branch-II, At-Plot No.94,  
Main Road, Koraput,  
Dist.-Koraput-764020
3. Collector-Cum-District Magistrate,  
Koraput, At/PO/Dist.-Koraput  
PIN-764020
4. Sri Gudla Satish  
S/o Gudla Laxman Rao  
At-Puchila Street, Koraput Town,  
Dist.-Koraput, PIN-764020

**... Respondents**

Counsel for the Applicant:-	Shri B. N. Udgata Das
Counsel for the Respondents No.1 & 2:-	Shri M. K. Mishra
Counsel for the Respondent No.3:-	None
Counsel for the Respondent No.4:-	Shri Raja D. K. Dash

JUDGEMENT

1. This is an Application under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, filed by the applicants for quashing the sale notice dated 25.06.2023 under Annexure-7 and quash the entire SARFAESI Action and for other reliefs.
2. The brief facts of the applicant case is that the applicant No.1 and Applicant no.2 are husband and wife and the Applicant No.3 is the minor son of one D.Gopi Naidu who has expired in the mean time (minor son of the brother of Applicant no.2). The applicant who is a young entrepreneur, in order to run a bangle shop in the name and style of M/s. Mahalaxmi Ladies Corner at Amal Kuti, Koraput in the State of Orissa, applied to the defendant bank for cash credit facility/limit in the year 2018. The defendant bank/defendant No.2 (erstwhile Andhra Bank) after due consideration of the proposal of the applicant and viability of the unit of the applicant No.1, was pleased to sanction cash credit limit of Rs.15,00,000.00.

Further case of the applicants is that one Smt. D. Annapurna, W/o-one D. Anama Naidu, mortgaged her property under Dist.-Koraput, Tahasil/SRO/P.S:Koraput, Mouza-Koraput Nagar, Khata No.1, Plot No. 218/1172, area Ac. 0.14 dec. (614 Sqft). Bounded by North-G. Papa Rao, South: Aman Bibi, East: drain then NAC Shop and Bus Stand and West- Private land then A. K.Road which stands in the name of D. Annapurna and as such there is no road access to the mortgage land. The defendant Bank after execution of necessary loan documents, allowed the Applicant no.1 to avail the loan and the

Applicant availed the loan and utilized the same in his purpose and go on paying the loan/installments as per the norms of the bank and maintain the account regularly by mortgaging the above plots/property.

While the matter stood thus and the applicant No.1 was running its shop/unit smoothly, the applicant no.1, lost his mother in law/D. Annapurna, the mortgager/guarantor on 4<sup>th</sup> April 2019. The said D. Annapurna died leaving behind her husband namely D. Anama Naidu, son D. Gopi Naidu and D. Ravi Kumar, daughters namely K. Bharathi, D. Kavetha. On 25.11.2019, the son of D. Annapurna namely D. Gopi Naidu expired leaving behind his widow D. Bhabana @ D. Bharathi and sons namely D. Ramakrishna and D. Tarun Kumar (the daughter in law and grand sons of D. Annapurna).

The applicant No.1, however, informed the above facts of death of the said D. Annapurna and the death of D. Gopi Naidu to the Bank and the bank goes on allowing the applicant No.1 to enjoy the above cash credit limit of Rs.15,00,000.00. While the matter stood thus, due to outcome of Covid-19 there was lockdown and shutdown and the petitioner who had invested huge amount in his business, faced immense difficulties and financial problem and the unit stopped its functioning due to shut down and lock down and there was even no income. The sorrow of the Applicant no.1 was not ended with above and the same was followed with his suffering from Covid-19 and kidney problem and he was admitted at Vishakpatnam for his treatment for which he incurred huge expenses. The applicant accordingly requested vide its letter dt. 02.02.2022 to the Opp. Party-Bank to supply him the details of loan outstanding in order to close the loan account and save his mother -in -laws property as due to financial problem and health condition, he was not a position to run his unit.

It is not out of place to mention here that the Applicant No.1 when did not get any response from the bank/respondent, he submitted another letter on 05.01.2023 with the bank for supply of statement of account in order to know the loan outstanding lies against him for closure of the loan outstanding under OTS and get the property of his mother-in-law/D.Annapurna free from the mortgage. But the bank again did not reply to the same and due to serious condition of the applicant No.1 being affected by kidney problem he was again admitted in a hospital at Visakpatnam and after being partially cured he came to Koraput and met the bank officials in the month of May, 2023 and approached them for supply of the statement of account and again submitted a proposal for OTS on 15.05.2023 with a request to intimate him about the settlement amount so that he can pay the settled amount within the period fixed by the bank or pay the entire loan outstanding by collecting money from his near and dears to get the property free from mortgage and wriggle out from his liability, but again the bank kept mum without replying anything.

The applicant No.1 in the meantime has paid substantial amount i.e. more than 15 lakhs towards his loan outstanding but the bank by suppressing material facts and in order to grab illegal money and the property of the mother-in-law of the petitioner which is situated at the heart of the Koraput Town, kept mum to supply the statement and loan outstanding of the applicant No.1 and in one way or other avoided to supply the same.

The applicants getting no other way out, enquired in the market and could able to get a copy of the e-auction sale notice on much difficulty and found that the defendant bank without issuing or serving any notice either under section 13(2) of the SARFAESI Act or possession notice under section 13(4) of the SARFAESI Act has put the property to auction on 13.07.2023 vide their e-auction sale

notice dt. 23.06.2023 by publishing the same in the Newspaper dt. 25.06.2023 and also could know that no individual notice of sale has been served either on the applicants or on the legal heirs of the said D. Annapurna the original guarantor-cum-mortgager of the property. The applicants also came to know that the Bank mentioned the name of K. Govind Raju the proprietor of the unit, D. Rabi Kumar, K. Bharathi, D. Kavitha, D. Anama Naidu, D. Bhabana and D. Ramakrishna in the said newspaper sale notice leaving the name of applicant no. 3, the minor grandson of original mortgager/guarantor D. Annapurna who has right title and interest over the property and is staying over the said property.

The applicants immediately after collecting the above e-auction sale notice dt. 25.06.2023 on 15.07.2023, came to know that the same has been issued in not following the due procedure of law as laid down under the SARFAESI Act and the bank has not even served any 30 or 15 days clear individual sale notice as envisaged under the Act and rules made there under informing the date of auction and giving scope to the applicants to redeem their property.

In the meantime one D. Kabitha, the daughter of the said D. Annapurna/the mortgager has expired on 21.11.2021 and the bank has published the alleged e-auction sale notice against a dead person namely D.Kavitha who had interest over the property and has left the name of the applicant No.3 namely D. Tarun Kumar who is the minor son of the D. Bhabhana @ D. Bharathi (the grandson of the mortgager/D. Annapurna, the recorded owner of the property) who has right, title and interest over the property and is in possession over the same. The Applicant no.3 being a minor, he is represented through his mother guardian D.Bhabana @ D.Bharathi.

The applicant no.3, the minor son of D.Bhabana @ D.Bharathi and the applicant no.1 and 2, immediately sent a letter dt. 15.07.2023 informing the above facts to the defendant bank

being the successor in interest and share holder of the property in question and requested therein to recall the above e-auction sale notice and supply the copy of notice issued under section 13(2), 13(4) of the SARFAESI Act as well as the individual sale notice with proof of service of the same on the legal heirs of D. Annapurna and the applicant No.1, in compliance to the provisions as laid down under the SARFAESI Act and rules made thereunder for putting the property in question to auction but the defendant Bank has not yet replied or supplied anything to the same and on the other hand trying to take physical possession of the said property by creating 3<sup>rd</sup> party interest over the same which is illegal and is liable to be set aside as the auction has been conducted without following due procedure of law as laid down under SARFAESI Act. In spite of receipt of the said letter, the defendant bank has neither withdrawn the above sale notices issued under the SARFAESI Act as aforesaid nor has supplied the loan documents/notice with service proof and the statement of account and trying to illegally grab the valuable property/secured assets of the deceased D. Annapurna and without substituting the deceased D. Kavitha and without giving notice to the legal heirs of D. Annapurna which is illegal and bad under law and the same is liable to be quashed.

It is also well settled law laid down in numerous judgment that any proceeding which is capricious to the provision of the SARFAESI Act, 2002 can not be sustainable in the eyes of law as the Act provide the procedure which has to be followed in strict sense. This settled proposition of law has also been affirmed by the Hon'ble Apex Court of India in case of Swastik Agency Vs. State Bank of India and in the instant case respondent financier failed to exercise power vested in them as per the provisions of the securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 in A slip shod manner that too, to the prejudice and detrimental of Applicants interests.

Taking into consideration the value of the property the respondent bank should not have put the entire property on auction as such the sale notice as has been issued under Annexure-7 under the securitization and Reconstruction of Financial Assets and Enforcement of security Interest Act, 2002 is also void ab-initio according to section 2(f), 2(zb) and 2(zf) of the said Act, 2002.

No mandatory provisions has been followed by the respondent Bank while publishing notice U/s. 13(4) of the Act read with Rule-8 and 9 of the security Interest (enforcement) Rules, 2002. While putting the property to auction as such the sale notice as have been published under Annexure-7 without serving individual sale notice on the applicant no.1 as well as on other legal heirs/successor in interest, of the original guarantor/mortgagor late D.Annapurna and the deceased D. Kavitha and without serving any notice such as demand notice U/s. 13(2) of the SARFAESI Act and possession notice U/s.13(4) of the SARFAESI Act is on the face of it is illegal and against law as such the said sale notice as well as any sale and auction in pursuance to the said sale notice under Annexure-7 is liable to be quashed.

The defendant bank while putting the property to auction has not followed due procedure of law as laid down under the SARFAESI Act and has not even given 30/15 days clear individual notice of sale and even has not made valuation of property properly as it is clear from the reserve price fixed by the bank as because the value of property will be much more than reserve price and the above action of the bank shows that the defendant bank is bent upon to sale the schedule property in a throw away price as such the sale notice as has been issued under Annexure-7 is liable to be quashed.

The Rule-8(6) of the security interest (enforcement) Rules 2002 says that the Authorized Officer shall serve to the borrower which includes the guarantor/mortgager a notice of 30 days for sale of the immovable secured assets under sub-Rule 5. Rule-9 says about time of sale, issue of sale certificate and delivery of possession etc., and sub rule-1 of Rule-9 says that no sale of immovable property under these rule in first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in Newspapers as referred to in the proviso to sub Rule-6 of rule-8 or notice of sale has been served to the borrower provided further that if sale of immovable property by any one of the methods specified by sub Rule-5 of Rule-8 fails and sale is required to be conducted again, the authorized officer shall, serve, affix and publish notice of sale of not less than 15 days to the borrower for any subsequent sale as such the provision laid down under Rule 8 and 9 of the security interest (Enforcement) Rule-2002 is violated in the instant case by not serving any individual notice of sale on the Applicant No.1 and other legal heirs including the Applicant No.3 of original mortgagor namely D. Annapurna and the deceased D. Kavitha who has expired in the meantime, hence the sale notice dt. 25.06.2023 being not sustainable under laws is liable to be quashed as the same has not been made in consonance with the provisions as laid down under SARFAESSI Act and Rule made thereunder.

A bare perusal of the sale notice dt. 25.06.2023 under Anenxure-7 says that the same have been issued against a dead person namely D. Kavitha, the successor in interest of the mortgager/guarantor/D.Annapurna who has expired since 21.11.2021 and above all the said sale notice has not been issued against the Applicant no.3/grandson of the original mortgagor D.Annapurna on whose name the ROR/Patta stands as such the SARFAESI Action initiated against a dead person and the sale notice

not being issued to all the legal heirs of deceased recorded tenant pertaining to the property in question, is null and void under law, hence the sale notice dt. 25.06.2023 issued against a dead person and non inclusion of all the successor in interest of the deceased recorded tenant who have right over the property being illegal and not sustainable, is liable to be quashed under law.

The Respondent Bank being vindictive on the applicant threatening the applicants and other legal heirs of the deceased D. Annapurna to dispose of the alleged mortgage properties in a throw away price to their near and dears though the valuation of the property is much more than the reserve price which may fetch more than Rs.50 Lakhs.

The act specifically says the mode of sale of immovable secured assets "where the secured asset is an immovable property the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

It is also settled position of laws that there must be application of mind by the authority concerned while approving/accepting the report of the approved valuer and fixing the reserve price, as the failure to do so may cause substantially injury to the borrower/guarantor and that would amount to material irregularity and ultimately vitiate the subsequent proceedings.

In the case of Navalkha and sons Vrs Sri Ramanaya Das and others the Hon'ble Apex Court while dealing with the confirmation of sale by Court held that there must be a proper valuation report, which should be communicated to the judgment debtor and he should file his own valuation report and the sale

should be conducted in accordance with law. As such law can be summarized that authority is under a legal obligation to be satisfied itself that price fetched is reasonable and sale has been conducted giving strict adherence to the procedure prescribed by the statute and if the sale is confirmed without considering the issue the confirmation stands vitiated or material irregularity in conduct of the sale would vitiate the proceeding and therefore the auction sale can be set aside even after confirmation of sale.

The respondent Bank has claimed that it has taken symbolic possession of the property in question but the same is in arbitrary and illegal manner as well as against the provisions of Securitization and Reconstruction of financial Assets and Enforcement of security Interest Act, 2002 without serving any notice under section 13(2) and 13(4) of the SARFAESI Act and without giving any individual sale notice on the applicants or the person having interest to the property giving scope of right of redemption.

The respondent financier initiated the recovery proceedings against the property of Applicants without having any security interest according to rule 2(2b) and (2f) of security interest enforcement rule, 2002 of securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 as such the proceeding initiated under section 13(4) of the Act is illegal and liable to be quashed.

The applicant was not aware of the episode till he came across the sale notice dt. 25.06.2023 on 15.07.2023 as no individual sale notice or notice U/s. 13(2) and 13(4) of the SARFAESI Act has been served on them.

The Authorized Officer of the defendant bank in an illegal and arbitrary manner having some personal grudge against the applicants and the legal heirs of D. Annapurna and with some

malafide intention and oblique motive in order to gain something in a very unfair manner by selling the property in a throw away price to one of his favourable person as has published the e-auction sale notice on 25.06.2023 which is illegal and is liable to be dismissed.

The e-auction sale notice under Annexure-7 is published on 25.06.2023 fixing the date of auction to 13.07.2023 under Rule 9 of the Rule, 2002 which clearly says that no sale of immovable property under the rule shall be taken place before the expiry of 30/15 days from the date on which the public notice of sale is published in the newspaper as referred to, in the proviso to sub-rule (6) of Rule 8 and individual notice of sale has been served on the borrower but in this case no individual sale notice has been served on the Applicants or the legal heirs of D. Annapurna or deceased D.Kavitha including on the Applicants' and it has not been published in two leading newspaper both in Oriya Daily and English Daily which violated the provisions as laid down under the SARFAESI Act as such the sale notice under Annexure-7 is liable to be quashed.

The borrower, guarantors and the mortgagors have never received any notice either U/s. 13(2) of the SARFAESI or under section 13(4) of the SARFAESI Act and non-service of the 13((2) notice and 13(4) notice and the sale notice on the borrower and guarantors vitiates the entire proceeding and rendered the same as nullity. Any subsequent action is not only illegal but also the same is non-est in the eye of law and hence same are vitiated and invalid. law is well settled that if foundation is removed then the super structure falls.

The Defendant Bank before publication of the auction notice under Annexure-7 has never issued and served the statutory 30/15 days prior individual notice provided U/R 8(6) and 9(1) and valuation of the property which is mandatorily required and the same is corresponding to the provisions i.e. Rule 53 and 52(2) of the Second

schedule of Income Tax Act, 1961, Form No. ITCP 17 and 13 as well as Rule 66(2) of Order 21 of CPC, Form No. 28 and 29 of Appendix E. In absence of compliance of statutory rules, the auction sale notice under Annexure-7 is not sustainable in the eye of law and is liable to be set aside in view of the settled position of law settled by the Hon'ble Supreme Court in case of Mathew Varghese-Vrs. M. Amritha Kumar and others reported in AIR 2015 SC 50.

3. Notices were issue to the Respondent No.1 and 2 and Respondent No.3 to show cause as to why the relief prayed for by the applicant be not granted. After receiving the notice, the Respondents No.1 and 2 appeared and filed their counter affidavit. Respondent No.3 neither appeared nor filed counter affidavit. Subsequently notice was issued to Respondent No.4 for his appearance and show cause. On receipt of the notice Respondent No.4 appeared and filed counter affidavit.
4. The Respondents No.1 and 2 filed their counter affidavit contending that the applicants have no right to challenge the actions of the bank which has been done in conformity with the provisions of SARFAESI Act. The auction of the property has been done in accordance with the rules and regulations of the bank and as per the provisions of SARFAESI Act. The notices U/s.13(2), 13(4) and e-auction sale notices issued by the bank have been served upon all the applicants including other legal heirs of D. Annapurna. Though the applicants have stated that the publication of E-auction notice has been done without following the due procedure of law as laid down in SARFAESI Act but nothing has been whispered by the applicants in the SA about the manner and in what way the said notices are in contravention of the provisions of SARFAESI Act. similarly, the actions of the bank in publishing the notices, without considering the request of the proposal of OTS and request for exercising their right of redemption on the property are neither illegal, arbitrary, unreasonable, violation of principle of natural justice nor contrary to the guidelines of RBI.

The defendant No. 1 & 2 being the officials of a Nationalized bank will not dare to violate any of the provisions of SARFAESI act as well as the RBI guidelines. When the applicants have not filed any OTS application before the bank, how the applicants re expecting it's disposal.

The applicants have admitted that they have borrowed the amount from the bank and mortgaged the property before the bank. Regarding the death of some of the applicants as averred by the applicants in this para, it is clarified that the bank has no role in the said death and the applicants are duty bound to produce the legal heir certificate as well as the death certificate of the deceased. The applicants have also taken the stand of COVID-19 pandemic and other allied health issues. COVID-19 has already been over since the year 2021 with some partial lockdowns and the health issues will happen to everyone and therefore that does not mean that bank will waive out the loan.

The applicants are deliberately suppressing the fact issuance of Notice U/s.13(2) & 13(4) of the SARFAESI Act on 08.06.2022 & 14.09.2022 respectively and their receipts. All such notices have been sent on the same addresses of the applicants which have been reflected in the SA. It is apt to state here the fact that the applicants were well aware about the said facts. Besides, that also, the applicants are also aware of the fact of publication of E-auction notice and sale notice issued on 31.10.2022. So, absolutely no illegality has been committed by the defendants in acting upon the said notices to the applicants. Regarding non-service of the individual notice of sale on the applicants by the bank as alleged in para-6 & 7 of the SA. It is clarified that the postal receipts as well as the postal tracking report have been annexed by the bank in this counter affidavit showing the service of the individual sale notices upon the applicants. Since the applicants have adopted falsehood tactics before this Hon'ble

Tribunal, so their allegations against the bank in each and every paras of the SA should not be taken into account. The applicants have also raised issue of not mentioning the name of applicant No.3 in the auction sale notice and publishing the auction notice against a dead person. It is submitted that it is the bounden duty of either the borrower of the guarantor to submit the legal heir certificate of the deceased before the bank so that the bank will act upon the same. The applicants have not yet produced the same before the bank. So it is not the fault from the side of the bank rather it is a deliberate laches on the part of the applicants. After local inquiry, the bank had sent such notices to the legal heirs of the deceased. The applicant No.3 is a minor and in the said the mother guardian of the applicant No. 3 has been mentioned in the notice. The applicants have agitated and reiterated the facts and issued again and again in different paragraphs despite receipt of the same.

All the notices issued by the bank have been issued in accordance with the provisions of SARFAESI Act and the prevailing guidelines of the RBI and bank. Issuance of the notices has been done on the legal heirs of some of the deceased applicants as per the information obtained by the bank. The actions of the bank for recovery of the loan from the applicants are valid, legal & in conformity with the provisions of SARFAESI Act which need not to be quashed on the basis of the false assertions of the applicants.

The valuation of the property has been done as per the valuation report of the approved valuer. In the said valuation report, the realizable value of the property was Rs.26,25,000/- and the Government valuation was Rs.11,90,378/-. Therefore the reserve price of the property has been fixed at Rs.27,54,000/-.

Mandatory provisions of the SARFAESI Act has been followed by the bank while putting the property to auction and has given 30/15 days clear cut individual notice of sale and valuation of

property has been done properly. If the applicants are thinking that the value of property will be much more than reserve price then they have got liberty to participate in the auction to purchase the property in low price. The actions of the bank never shows that the defendant-bank is bent upon to sale the schedule property in a throw away price.

The Authorized Officer have served the notice of 30 days for sale of the immovable secured assets to the borrower including the guarantor/mortgagor as provided under sub-Rule-5. Rule-9 says about time of sale, issue of sale certificate and delivery of possession etc., and sub rule-1 of Rule-9 says that no sale of immovable property under these rule in first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in News papers as referred to in the proviso to sub Rule-6 of Rule-8 or notice of sale has been served to the borrower provided further that if sale of immovable property by any one of the methods specified by sub Rule-5 of Rule -8 fails and sale is required to be conducted again, the authorized officer shall, serve, affix and publish notice of sale of not less than 15 days to the borrower for any subsequent sale as such the provision laid down under Rule 8 and 9 of the security interest (enforcement) Rule 2002. These provisions have not been violated as the individual notice of sale on the Applicants and mortgagors have been served upon them as per the postal tracking report under Annexure-A & B Series. So the sale notice is sustainable under law and not liable to be quashed as the same has been issued in consonance with the provisions as laid down under SERFAESI Act and Rule. It is submitted that the applicants are also highlighting the issue issuance of the sale notice dt. 25.06.2023 under Annexure-7 have been done against a dead person namely D. Kavitha, the successor in interest of the mortgager/guarantor/D Annapurna who has expired since 21.11.2021 and the said sale

notice has not been issued against the Applicant no.3/grandson of the original mortgagor D.Annapurna. it is duty of the applicants to submit the death certificate along with legal certificate in case of death of any borrower and mortgagor. Instead of concealing their mistakes, the applicants are now shifting their responsibility towards the bank. The bank has issued all such notices to the legal heirs of the deceased after obtaining the names of the legal heirs on local inquiry. Non-payment of the loan amount and non production of documents are not the faults of the applicants. The issue raised by the applicants regarding non supply of loan documents, the statement of account and settlement of the loan outstanding under OTS have already been clarified in the previous paragraph and the applicants are reiterating the facts again and again. The bank has no intention to dispose of the mortgage property in a throw away price. If the applicants are thinking that the bank is trying to dispose of the property in throw away price then the applicants have the right to save the property by depositing the entire outstanding amount. The mortgaged property has already been auction in the meantime. Therefore, it is false to mention that the Respondent Bank being vindictive on the applicants threatening them and other legal heirs of the deceased D. Annapurna to dispose of the alleged mortgage properties in a throw away price to their near and dears though the valuation of the property is much more than the reserve price which may fetch more than Rs.50 Lakhs.

The applicant was well aware about all such notices including the sale notice dt. 25.06.2023, the individual sale notice and notice U/s.13(2) and 13(4) of the SARFAESI Act has been served on the applicants. Newspaper publication has been done and published in well circulated Newspaper of the state. So, the question of quashing of the sale notice does not arise at all. The Authorized Officer of the defendant bank in a legal manner without any personal grudge

against the applicants and the legal heirs of D. Annapurna and has adopted a fair practice in selling the property. The applicants have not deposited substantial amount in the loan account which is more than the principal amount. The entire deposit made by the applicants have been reflected in the statement of Accounts. The loan account of the applicants has been classified as NPA as per the IRAC norms of RBI. The other contentions raised by the applicants have been answered in the previous paragraphs of this counter affidavit. The borrower, guarantors and the mortgagors have received all notices i.e. notice U/s. 13(2) of the SARFAESI & under section 13(4) of the SARFAESI Act, and therefore the entire proceeding is not nullity in the eye of law. Though, the applicants have alleged so many things against the bank but the same has not been substantiated with any clinching evidence and documents. The initiation of the proceeding by the respondent is valid and proper in law and not without jurisdiction and contrary to the provisions of the Securitization Act, 2002. The Authorized Officer has the jurisdiction to proceed under the Securitization Act, 2002.

The actions initiated by the bank against the applicants are/were legal, valid and in consonance with due provisions of law. The bank was constrained to take action against the applicants when they failed to repay the loan amount as per the terms and conditions stipulated in sanction as well as various documents executed by them with the bank. Several demands and requests were made from the said of the bank to the applicants for repayment of the loan. Therefore no illegality has been committed by the bank in taking actions under the provisions of the SARFAESI Act. The bank had issued the notice U/s.13(2) of the SARFAESI Act on 08.06.2022 and thereafter after completion of the statutory period in the said notice the bank issued notice U/s.13(4) of the SARFAESI Act on dtd. 14.09.2022. Despite receipt of the notices, when the applicants failed

to repay the loan amount, the bank published the E-auction notice in the local Newspapers i.e. "Prameya" on dtd. 18.09.2022. Thereafter, sale notice was issued to the applicants on 31.10.2022 fixing the date of auction on 18.11.2022. But the auction could not be done on the date fixed and for that another sale notice for sale of immovable property was issued on 22.06.2023 fixing the date of auction on 13.07.2023. The said notice dtd. 22.06.2023 was duly received by the applicants on 24.06.2023 as revealed from the postal tracking report. Despite receipt of the said notice, the applicant did not show their willingness to clear up the loan amount. Therefore, the auction was held on the date fixed and Gudla Satish became the highest bidder in the auction process and the bidder deposited the bid amount and sale price of the property within the stipulated time period before the bank. After deposit of the sale price of the property, the bank issued the sale certificate in favour of the auction purchaser.

The applicants had not submitted any representation to the bank. Despite lapse of the huge amount of time the applicants did not deposited the entire loan amount before the bank. Though the applicants had mentioned that they had repaid substantial amount before the bank but actually they had not deposited substantial amount before the bank. The property was auctioned and the sale certificate has been issued in favour of the auction purchaser and the property was sold for an amount of Rs.27,64,000/-. An amount of Rs.19,79,167.93/- including interest and legal charges was outstanding against the applicants as on dtd. 19.08.2023 and after adjustment of the outstanding amount from the sale price of the property, the rest amount will be refunded to the applicants.

Since the applicants failed to repay the loan amount within the stipulated time period fixed in the notice the defendants were compelled to issue notice to take possession of the secured assets in

connection with the loan account of the applicants. So issuances of all such notices by the defendants are neither illegal nor arbitrary and bad in the eyes of law.

Law is well settled that anyone who takes recourse to method of suppression in a court of law, playing fraud with the court should not get any relief. A person coming to court with UNCLEAN hands is neither entitled to be heard in merits nor entitled for any relief. Similarly, a litigant who attempts to pollute the stream of justice with tainted hands is not entitled to any relief, interim or final. The applicant in order to halt the recovery process of loan has deliberately filed this SA before this Hon'ble Tribunal without any valid and tenable grounds. Because off non-payment of the loan amount by the Applicant the bank is facing difficulties financially and sustaining loss in each and every day.

5. The Respondent No.4 filed counter affidavit contending that he has participated in the auction sale proceedings on 13.07.2023 as per the e-auction sale notice dtd. 23.06.2023 published in the Newspaper. After participating in the aforesaid auction, the auction purchaser have been declared as H-1 bidder against the Bid amount of Rs.27,64,000/- and had also deposited the bid amount and sale price of the property within the stipulated time before the Bank. A sale Certificate was duly issued by the Bank Authorities on 27.07.2023. The present Securitization application filed by the Applicant is not maintainable any more in light of the decision passed by the Hon'ble Supreme Court in Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. And Ors. Civil Appeal No. 5542 – 5543/2023. The process of auction has been conducted in a fair manner and the proposal by the Petitioner to pay the amount due on the date of publication of notice cannot be accepted in this stage and as such the said contention is untenable in the eyes of law. The fact remains that the auction purchaser has already paid the complete amount and as such is the rightful owner

of the scheduled property. Unless the stay order dtd. 15.09.2023 passed in favour of the Petitioner is vacated and the Securitization Application is dismissed, the auction purchaser is given the possession of the scheduled property, the auction purchaser will suffer irreparable loss and injury which cannot be compensated by any means.

6. On the perusal of the pleadings of the rival parties, the following issues arise for consideration.
  - (i) Whether notice under Section 13(2) & 13(4) of SARFAESI Act has been served on the applicants?
  - (ii) Whether the Bank has taken proper valuation of the property before putting the property into auction sale?
  - (iii) Whether the bank has issued individual auction sale notice under Rule 8(6) & 9(1) of the Security Enforcement Rules 2002 as per provisions of law?
  - (iv) Whether the proceeding under SARFAESI Act is a nullity as no notice has been served to the legal heirs of deceased D. Annapurna and the son of the deceased D. Annapurna namely Gopi Naidu?
  - (v) Whether the applicant is entitled to the reliefs as claimed?
7. **Issue No.(i):-**Whether the notice under Section 13(2) & 13(4) of SARFAESI Act has been served on the applicants?

The contention of the applicant is that the applicants getting no other way out, enquired in the market and could not get a copy of the e-auction sale notice on much difficulty and found that the defendant bank without issuing or serving any notice either under section 13(2) of the SARFAESI Act or possession notice under section 13(4) of the SARFAESI Act has put the property to auction on 13.07.2023 vide their e-auction sale notice dt. 23.06.2023 by publishing the same in the Newspaper dt. 25.06.2023 and also could know that no individual notice of sale has been served either

on the applicants or on the legal heirs of the said D. Annapurna the original guarantor-cum-mortgage of the property.

The contention of the Respondent Bank is that the notices U/s.13(2), 13(4) and e-auction sale notices issued by the bank have been served upon all the applicants including other legal heirs of D. Annapurna. The bank had issued the notice U/s.13(2) of the SARFAESI Act on 08.06.2022 and thereafter after completion of the statutory period in the said notice the bank issued notice U/s.13(4) of the SARFAESI Act on dtd. 14.09.2022. Further contention of the Respondent Bank is that the borrower, guarantors and the mortgagors have received all notices i.e. notice U/s. 13(2) of the SARFAESI & under section 13(4) of the SARFAESI Act, and therefore the entire proceeding is not nullity in the eye of law. Though, the applicants have alleged so many things against the bank but the same has not been substantiated with any clinching evidence and documents. The initiation of the proceeding by the respondent is valid and proper in law and not without jurisdiction and contrary to the provisions of the Securitization Act, 2002. The Authorized Officer has the jurisdiction to proceed under the Securitization Act, 2002.

From the perusal of the record it is seen that the notice under Section 13(2) have not been served on the applicant No.1, 2 & 3 but not to all the legal heir of deceased D. Annapurna and all the notices U/s 13(2) received by one person viz. D.A. Naidu as evident from as evident from the postal acknowledgment filed by the Respondent Bank in its counter affidavit. Though the Respondent Bank had issued notice under Section 13(4) of SARFAESI Act, 2002 but no proof of service has been filed. Further more the Respondent Bank has filed proof of paper publication of possession notice under Section 13(4) in vernacular language but proof in respect of publication of 13(4) notice in English Newspaper is not filed. As such the Respondent

Bank failed to prove that the notices under Section 13(4) has been served on the applicant. Accordingly Issue No.(i) is answered.

8. **Issue No.(ii):-** Whether the Bank has taken proper valuation of the property before putting the property into auction sale?

The contention of the applicant is that the defendant bank while putting the property to auction has not followed due procedure of law as laid down under the SARFAESI Act and has not even given 30/15 days clear individual notice of sale and even has not made valuation of property properly as it is clear from the reserve price fixed by the bank as because the value of property will be much more than reserve price and the above action of the bank shows that the defendant bank is bent upon to sale the schedule property in a throw away price as such the sale notice as has been issued under Annexure-7 is liable to be quashed.

The contention of the Respondent Bank is that the valuation of the property has been done as per the valuation report of the approved valuer. In the said valuation report, the realizable value of the property was Rs.26,25,000/- and the Government valuation was Rs.11,90,378/-. Therefore, the reserve price of the property has been fixed at Rs.27,54,000/-.

Further contention of the Respondent Bank is that if the applicants are thinking that the value of property will be much more than reserve price then they have got liberty to participate in the auction to purchase the property in low price. The actions of the bank never shows that the defendant-bank is bent upon to sale the schedule property in a throw away price.

From the perusal of the record it is seen that the applicant has challenged the valuation of the property. Though the Respondent Bank has taken the plea that the Respondent Bank has put the mortgaged property to auction as per the present prevalent market

value and the valuation report submitted by the valuer but not filed any valuation report of any approved valuer. Hence the said plea taken by the Respondent Bank cannot be considered. As such it is proved that the Respondent Bank failed to prove that the Bank has taken proper valuation of the property before putting the property into auction sale. Accordingly issue No.(ii) is answered

**Issue No.(iii):-**Whether the bank has issued individual auction sale notice under Rule 8(6) & 9(1) of the Security Enforcement Rules 2002 as per provisions of law?

The contention of the applicant is that the defendant bank while putting the property to auction has not followed due procedure of law as laid down under the SARFAESI Act and has not even given 30/15 days clear individual notice of sale, as such the sale notice as has been issued under Annexure-7 is liable to be quashed.

The e-auction sale notice under Annexure-7 is published on 25.06.2023 fixing the date of auction to 13.07.2023 under Rule 9 of the Rule, 2002 which clearly says that no sale of immovable property under the rule shall be taken place before the expiry of 30/15 days from the date on which the public notice of sale is published in the newspaper as referred to, in the proviso to sub-rule (6) of Rule 8 and individual notice of sale has been served on the borrower but in this case no individual sale notice has been served on the Applicants or the legal heirs of D. Annapurna or deceased D.Kavitha including on the Applicants' and it has not been published in two leading newspaper both in Oriya Daily and English Daily which violated the provisions as laid down under the SARFAESI Act as such the sale notice under Annexure-7 is liable to be quashed.

The Rule-8(6) of the security interest (enforcement) Rules 2002 says that the Authorized Officer shall serve to the borrower which includes the guarantor/mortgager a notice of 30 days for sale

of the immovable secured assets under sub-Rule 5. Rule-9 says about time of sale, issue of sale certificate and delivery of possession etc., and sub rule-1 of Rule-9 says that no sale of immovable property under these rule in first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in Newspapers as referred to in the proviso to sub Rule-6 of rule-8 or notice of sale has been served to the borrower provided further that if sale of immovable property by any one of the methods specified by sub Rule-5 of Rule-8 fails and sale is required to be conducted again, the authorized officer shall, serve, affix and publish notice of sale of not less than 15 days to the borrower for any subsequent sale as such the provision laid down under Rule 8 and 9 of the security interest (Enforcement) Rule-2002 is violated in the instant case by not serving any individual notice of sale on the Applicant No.1 and other legal heirs including the Applicant No.3 of original mortgagor namely D. Annapurna and the deceased D. Kavitha who has expired in the meantime, hence the sale notice dt. 25.06.2023 being not sustainable under laws is liable to be quashed as the same has not been made in consonance with the provisions as laid down under SARFAESI Act and Rule made thereunder.

The contention of the Respondent bank is that the Authorized Officer have served the notice of 30 days for sale of the immovable secured assets to the borrower including the guarantor/mortgagor as provided under sub-Rule-5. Rule-9 says about time of sale, issue of sale certificate and delivery of possession etc., and sub rule-1 of Rule-9 says that no sale of immovable property under these rule in first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in News papers as referred to in the proviso to sub Rule-6 of Rule-8 or notice of sale has been served to the borrower provided further that if sale of

immovable property by any one of the methods specified by sub Rule-5 of Rule -8 fails and sale is required to be conducted again, the authorized officer shall, serve, affix and publish notice of sale of not less than 15 days to the borrower for any subsequent sale as such the provision laid down under Rule 8 and 9 of the security interest (enforcement) Rule 2022. These provisions have not been violated as the individual notice of sale on the Applicants and mortgagors have been served upon them as per the postal tracking report under Annexure-A & B Series. So the sale notice is sustainable under law and not liable to be quashed as the same has been issued in consonance with the provisions as laid down under SERFAESI Act and Rule.

Rule-8(6) of SARFAESI Rules, 2002 stipulates that:- The Authorized Officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under Sub- rule (5); “ Provided that if the sale of such secured assets is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the form given in Appendix IV-A to be published in two leading newspaper including one in vernacular language having wide circulation in the locality”

In view of the clear cut provisions of law as envisaged in the said rule, the notice under Rule 8(6) of Security Interest (Enforcement) Rules, 2002 provides that the Authorised Officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets, under sub-rule 5.

From the perusal of the record it is seen that notice under Rule 8(6) was issued to the applicants and served on the applicant No.1, 2 & 3 but not to all legal heirs of deceased D. Annapurna as is evident from the tracking report filed to the counter affidavit of the Respondent Bank under Annexure-A & B. It is also evident from the record that the sale notice has been published in two leading

Newspapers but no Khata No. is mentioned in "A" to the counter and Annexure-7 in SA . As such complied the provisions of Rule 9(1) of SARFAESI Act being defective sale notice. As such, there is violation of Rule 8(6) and 9(1) by the Respondent Bank Accordingly issue No.(iii) is answered.

**Issue No.(iv):-** Whether the proceeding under SARFAESI Act is a nullity as no notice has been served to all the legal heirs of deceased D. Annapurna and the son of the deceased D. Annapurna namely Gopi Naidu?

The contention of the applicant is that while the applicant No.1 was running its shop/unit smoothly, the applicant No.1, lost his mother in law/D. Annapurna, the mortgagor/guarantor on 4<sup>th</sup> April, 2019. The said D, Annapurna died leaving behind her husband namely D. Anama Naidu, son D. Gopi Naidu and D. Ravi Kumar, daughter namely K. Bharathi, D. Kavetha. On 25.11.2019 the son of D. Annapurna namely D. Gopi Naidu expired leaving behind his widow D. Bhabana @D. Bharathi and sons namely D. Ramkrishna and D. Tarun Kumar(the daughter in law and grand sons of D. Annapurna).The applicant No.1, however informed the above facts of death of the said D. Annapurna and the death of D. Gopi Naidu to the Bank.

That the applicants have also raised the respondent Bank has contended the issue of not mentioning the name of applicant No.3 in the auction sale notice and publishing the auction notice against a dead person. It is the bounden duty of either the borrower or the guarantor to submit the legal heir certificate of the deceased before the bank so that the bank will act upon the same. The applicants have not yet produced the same before the bank. So it is not the fault from the side of the bank rather it is a deliberately laches on the part of the applicants. After local inquiry the bank had sent such notices to the legal heirs of the deceased. The applicant No.3 is a

minor and in the said the mother guardian of the applicant No.3 has been mentioned in the notice.

From the perusal of notice under Section 13(2) of SARFAESI Act dated 08.06.2022, possession notice dated 14.09.2022 and Sale notice for sale of immovable properties dated 22.06.2023 it is seen that the applicant has issued notice to seven persons and in Sl.No.8 the Respondent Bank has mentioned to all other legal heirs of deceased Smt. D. Annapurna not mentioned above without giving the details of the legal heirs of the deceased. As such it is defective one. Accordingly issue No.(iv) is answered.

**Issue No.(v):-**Whether the applicant is entitled to the reliefs as claimed?

From the perusal of the record it is seen that after availing the credit facilities from the bank, the applicants did not adhere to the terms and conditions of the sanction and did not clear the amount despite several correspondences and request from the bank for which the said loan accounts of the applicant became NPA. Thereafter the Respondent Bank had initiated the actions against the applicant under the provisions of the SARFAESI Act. But the Respondent Bank failed to prove that the notices under Section 13(2) and 13(4) have been served on the applicants. Further the Respondent Bank also failed to prove that the valuation of the property has been made properly and also failed to prove that notices have been issued to all the legal heirs of deceased D. Annapurna and D. Gopi Naidu.

In view of the aforesaid discussion made above, and the issues already answered in the preceding paragraphs and considering the facts and circumstances of the case and the materials available on record, this Tribunal is of the view that the Respondent Bank failed to prove its defence and the applicant established its case against the Respondent Bank. Therefore, the instant SA bearing SA No.146/2023

is allowed and the notice under Section 13(2) of SARFAESI Act dated 08.06.2022, possession notice dated 14.09.2022 and Sale notice for sale of immovable properties dated 22.06.2023 being violative of the provisions enshrined in the SARFAESI Act are hereby quashed. Accordingly Issue No.(v) is answered.

O R D E R

In the result, S.A. No.146 of 2023 is allowed in favour of the applicant declaring the notices under Section 13(2), and 13(4) of the SARFAESI Act so also the sale notice under Annexure-7 are hereby set aside. Respondent Bank is directed to take fresh steps as per law. Respondent Bank is further directed to refund the amount deposited by the auction purchaser along with interest @7% p.a. from the date of deposit till payment is made. It is further directed to the Registry that DDs amounting to Rs.22,23,344/- deposited by the applicant be returned to the applicant within 30 days from the date of this order.

Since the main SA is disposed of, hence all the IAs, pending, if any, stands disposed of and interim order, if any, stands vacated.

Let a copy of this order be supplied to the parties forthwith as per rules.

Let the file of SA No.146 of 2023 be consigned to the record room.

This order is dictated and corrected by me and pronounced in the open Court under my signature, this the 22<sup>th</sup> day of June, 2026.

**(Jitendra Prasad Singh)**  
**Presiding Officer.**

