

DEBTS RECOVERY TRIBUNAL No.3, MUMBAI

PRESIDING OFFICER: HARISH KUMAR KAUSHIK

SECURITISATION APPLICATION NO.186 OF 2025

Date of Institution: 21.02.2025

Date of Decision: 30.06.2026

Sharan Shelters Private Limited, A
Company Incorporated under the
Companies Act and having its
registered Office at 396, Swan Lake,
Building, 14th Road, Khar (W),
Mumbai – 400052

... Applicant

Versus

1. Union Bank of India A Banking
Company established under the
provisions of Banking Companies
(Acquisition & Transfer of
Undertakings) Act, 1970 Through
its Asset Recovery Management
Branch, having its address at
Mezzanine Floor, Veena Chambers,
Dalal Street, Fort, Mumbai - 400001
2. The Chief Manager & Authorized
Officer, Union Bank of India Having
its address at Mezzanine Floor,
Veena Chambers, Dalal Street, Fort,
Mumbai 400001

...Respondents

APPEARANCES

For the Applicant : Mr Harjot Singh and Mr Dev
Tejnani - Advocates

For Respondents : Mr Nainesh Amin and Mr Vipin
Chandra – Advocates

Final Order

- (1) The present Securitisation Application No.186 of 2025 is filed under Section 17 of the SARFARSI Act challenging the measures taken by the Respondent No.1 under the provisions of the SARFAESI Act, 2002.
- (2) The Applicant has preferred this Securitisation Application No.186 of 2025 challenging the impugned letter dated 07.05.2024, issued by Respondent No.1, Bank under Rule 9(5) of the Security Interest (Enforcement) Rules, 2002, whereby the 25% amount paid by the Applicant was forfeited and further prays to direct the Respondent Bank to refund the 25% bid amount of Rs.65,25,000 along with interest at the rate of 12% from the date of forfeiture until the date of filing of the S.A. and to hold that the Respondent Bank acted in violation of the provisions of Rule 8(6), Rule 9(1) and Rule 9(10) of Security Interest (Enforcement) Rules, 2002 and to restrain the Respondent Bank from reselling or taking any further steps in respect of property in question.

Factual matrix of the case:

- (3) That the Applicant stated that the Applicant is neither a borrower nor a mortgagor or a guarantor to the credit facility sanctioned by the Respondents. The Applicant is a successful auction purchaser of the immovable property being "Shop No. G-01. admeasuring 2236 sq. ft. carpet area on ground floor. Kamla Executive Park, CTS No.173 of village Mulgaon, Andheri (E). Mumbai 400059 (for short, 'the said Shop') purchased by the Applicant in an e-auction conducted by the Respondents on 26.09.2023.
- (4) That the Applicant states that as M/s. Kamala Landmarc Realtors failed to comply with the Demand Notice dated 17.07.2014 under Section 13(2) of SARFAESI Act, 2002. The Respondents proceeded to take possession of the said shop under Section 13(4) of SARFAESI Act. Accordingly, Respondents took physical possession of the said shop from the original owners and are in possession of the said Shop since 26.11.2015.
- (5) That as the borrower i.e., M/s. Kamala Landmarc Realtors failed to clear the outstanding dues of the Respondent No. 1, the Respondents started issuing sale notices in order to sell the said shop and recover its dues therefrom.
- (6) Further that the Applicant came across the sale notice dated 05.09.2023 where the Respondent

Bank informed the borrower vide sale notice dated 05.09.2023 that the sale of the said Shop will be conducted via public e-auction on 26.09.2023.

- (7) That the Applicant was keen on purchasing a shop in the area in which the said shop is located, the Applicant enquired about the reserve price and the terms and conditions of the sale of said shop. As per the terms and conditions of the sale of the said shop, the reserve price of the said Shop was fixed at Rs.2,60,00,000/- (which was within the Applicant's budget) and that there are no known encumbrances to the said shop. The Applicant submitted its bid as required by the Respondents along with EMD of Rs.26,00,000/- being 10% of the Reserve Price to participate in the e-auction scheduled for 26.09.2023 by the Respondent No.2.
- (8) That the Applicant thereafter, participated in the e-auction proceedings conducted by the Respondent No.2 for the sale of the said Shop on 26.09.2023 and placed a bid for a sum of Rs.2,61,00,000/-. Upon conclusion of the auction, the Applicant's bid of Rs.2,61,00,000/- ("Bid Amount") was accepted as the highest bid, and the Applicant was consequently vide email dated 26.09.2023 declared as highest bidder by the Respondent No.2 for the said Shop.
- (9) That vide the said email dated 26.09.2023, the Applicant was also called upon to deposit 25% of

the bid amount, aggregating to the tune of Rs.65,25,000/-, which sum included the 10% of the Reserve Price paid by the Applicant as EMD. The Respondent No.1, Bank further directed that the aforesaid amount be deposited forthwith, but in any event, no later than 27.09.2023.

- (10) That the Applicant stated that upon receipt of the email dated 26.09.2023, immediately on 27.09.2023, deposited the balance amount of Rs.39,25,000/- as demanded. Accordingly, the Applicant duly paid 25% of the Bid Amount, aggregating to Rs.65,25,000/- as part consideration for the purchase of the said Shop. The Applicant stated that vide letter dated 27.09.2023, Respondent No.2 acknowledged the receipt of the sum of 25% of the bid amount, i.e., a sum of Rs.65,25,000/-, comprising of Rs.26,00,000/- deposited as EMD and the balance amount of Rs.39,25,000/ deposited on 27.09.2023.
- (11) That the Respondent No.2 further directed the Applicant to remit the remaining balance amount of Rs.1,95,75,000/- within fifteen days from the date of the auction, i.e., on or before 11.10.2023. The said letter expressly stipulated that any default in making the payment of the balance amount within the prescribed timeframe would result in the forfeiture of the amount already deposited, and the

Respondent No.1 Bank would be entitled to conduct a fresh auction of the said Shop.

- (12) The Applicant states that, by way of an email dated 02.10.2023 and 05.10.2023, the Applicant's Advocate called upon the Respondents to provide the title certificate of the said Shop. Despite emails, the Respondents failed to provide the requisite documents pertaining to the said Shop.
- (13) That the Applicant stated that upon conducting due inquiries, the Applicant learnt that an amount of Rs.78,33,672/- remained due and payable to the Kamla Executive Park Premises Co-operative Society Ltd., where the said Shop was situated, as on 30.09.2023. The Applicant stated that the sum of Rs. Rs.78,33,672/- was accrued in respect of maintenance charges pertaining to the said Shop.
- (14) That in light of the aforesaid developments, the Applicant, vide a letter dated 06.10.2023, requested Respondent No.2 to grant an extension of 90 days for making the balance payment of said bid amount. Pursuant thereto, the Applicant conducted the further enquiries and thereafter, learnt that the said Shop is legally is a stilt parking area. After learning, the Applicant issued a legal notice dated 09.10.2023 through its Advocate to Respondent No.1, Bank. By way of the aforesaid legal notice, the Applicant, in addition to the outstanding maintenance amount due to the

Society where the said Shop was situated, also stated that it has discovered that the said Shop is, in fact, designated as a stilt parking area as per the approved plans. The Applicant by way of the said Legal Notice dated 09.10.2023, further contented that the Respondent No.1 Bank misrepresented material facts, thereby committing cheating. In light of these facts, the Applicant called upon the Respondents, as and by way of the Legal Notice dated 9th October, 2023, to refund the sum of Rs. 65,25,000/- (Rupees Sixty-Five Lakh Twenty-Five Thousand Only) already paid by the Applicant towards to the purchase of the said Shop.

- (15) That the Applicant stated that the Respondents have failed to conduct its due diligence before creating its charge over the said shop and have considered the said shop as a shop which in fact and reality is a stilt parking and therefore cannot in any manner be sold as a shop to any party by way of e-auction under the provisions of the SARFAESI Act, 2002
- (16) That in view of the above, the Applicant filed a Writ Petition, being Writ Petition No.157 of 2024 before the Hon'ble Bombay High Court seeking refund of the sum of Rs.65,25,000/- i.e., 25% of the bid amount paid by the Applicant to the Respondents. The Respondents were well aware about the pendency of the Writ Petition. However, from

December 2023 to May 2024, the Respondents did not take any action however, on 07.05.2024, without giving any notice, unlawfully forfeited the 25% Bid Amount duly paid by the Applicant towards the purchase of the said Shop. The Applicant states that as the amount has been forfeited by the Respondents during the pendency of the Writ Petition and the legal remedy challenging the sale conducted by the Respondents and the illegal forfeiture, the Applicant withdrew the said Writ Petition with liberty to file the present Application

- (17) In view of the above facts and circumstances of the case, S.A. No.186 of 2025 should be allowed.

Reply Affidavit of Respondent Bank

- (18) The Respondent Bank in reply states that the Applicant in the present SA is challenging the Letter dated 07.05.2024 whereby the 25 % amount deposited by the Applicant was forfeited. It is submitted that any application to challenge any measure taken by the secured creator under the SARFAESI Act, 2002 is required to be filed under section 17 of the SARFAESI Act, 2002 within a period of 45 days from the date of accrual of such cause of action. Admittedly, to challenge letter dated 07.05.2024, for which the present SA has been by the Applicant on or about 24.02.2025 is barred by the period of limitation.

- (19) That the Applicant participated in the entire auction process with open eyes and as specifically stipulated in the Terms and Conditions of Sale and submitted, ought to have made all enquires and verification before participating in the auction which was conducted on "what is where is whatever is" basis. The Applicant cannot now be permitted to claim refund of the amount forfeited by the Bank under Rule 9 (5) of the SARFAESI Rules, 2002.
- (20) That subsequent to cancellation of the said auction, the Respondent Bank again issued e-auction sale notice dated 11.07.2025 putting the same property for auction on 30.07.2025. In the auction conducted on 30.07.2025, one Ms. Sonia Amit Tandon participate and made the highest bid for the said shop and was declared as successful Purchaser. Respondent Bank has also issued sale certificate dated 19.09.2025 in favour of the successful purchaser.
- (21) That the forfeiture of 25 % of the deposit under rule 9 (5) of the SARFEASI Rules is a legal consequence that has been statutorily provided in the event of default in payment of the balance of amount. Hence, SA is liable to be dismissed.
- (22) Heard Ld. Advocates for the parties, considered the arguments. Perused the record.
- (23) It is evident from the record that the auction sale in question was conducted on "what is where is

whatever is basis”. It is undisputed that the Respondent Bank was having possession of the said Shop for a long period but, there was no encumbrance of any kind known to Respondent Bank.

- (24) The Applicant’s main contention is that Respondent Bank cannot be permitted to profit from their own wrong. However, Applicant itself has not shown what kind of due diligence was exercise before offering bid to purchase that Shop. The Applicant ought to have exercise proper and complete due diligence before participation in the e-auction sale dated 26.09.2023.
- (25) It is also pertinent to note that regarding the above e-auction sale dated 26.09.2023, the sale notice was issued on 05.09.2023. Hence, it is clear that time of 20 days was provided for intended auction purchasers to get enquired all the facts regarding the e-auction sale. Admittedly, there was no legal encumbrance or legal issue regarding the said Shop.
- (26) It is also evident from the perusal of Applicant’s letter dated 06.10.2023 that by way of that letter, the Applicant not only sought extension of 90 days’ time to pay the remaining amount but also to settle the pending issues with the Society and also to complete due diligence of the said Shop and regularise the above said property with local

authorities, which indicates that the Applicant also sought time to regularise any other issue with the said Shop and due diligence must have been completed before the participating in e-auction sale.

- (27) In the above facts and circumstances of the case, I pass the following order:

Order

- (a) The Applicant failed to prove the present Securitisation Application No.186 of 2025. On the other hand, the action of forfeiting the amount by letter dated 07.05.2024 appears to be in accordance with Rule 9(5) of the Security Interest (Enforcement) Rules, 2002.
- (b) Hence, Securitisation Application No.186 of 2025 deserves to be rejected. Accordingly, dismissed.
- (c) No order as to costs.

Sd/-

(Harish Kumar Kaushik)
Presiding Officer,
DRT-2, Mumbai

Radhika