IN THE DEBTS RECOVERY TRIBUNAL, DEHRADUN

(2nd Floor, Paras Tower, Saharanpur Road, Mazra, Dehradun, Uttarkahand-248171)
(Jurisdiction- Uttarakhand& Part of Western Uttar Pradesh)

S.A. No.116 of 2021
Om Prakash Vs. Punjab National Bank
&
S.A. No. 141 of 2022
Mr. Anil Kumar Vs. Punjab National Bank & Anr.

DATED THIS THE 08th DAY OF JULY, 2026
HON'BLE PRESIDING OFFICER: SH. UMESH KUMAR SHARMA

Between:

Om Prakash, S/o. Molhu, R/o.88, Faridapur Urf Mandoovala, District Saharanpur

..........Applicant

Versus

Punjab National Bank, Branch at Circle Sastra Division, Raj Towers, Shivaji Nagar, Delhi Road, Saharanpur through its Authorized Officer

..........Respondent Bank

Sh. Karm Solanki, Ld. Counsel for Applicant

Sh. Swaran Singh, Ld. Counsel for Respondent Bank

JUDGMENT

(Date of Decision: 08.07.2026)

S.A. No. 116 of 2021

1. The Applicant has filed this instant Securitization Application on 21.09.2021 to quash/set aside impugned possession notice under Section 13(4) dated 30.07.2021, the demand notice dated 30.04.2021 issued under Section 13(2) and the auction sale Notice dated 12.08.2021 of the SARFAESI Act of 2002 and the entire consequential action/proceeding be taken pursuance to or in furtherance of impugned notices. The Applicant has stated as under:

   A. That the applicant stood as a guarantor for the housing loan and over draft facility. The applicant is a senior citizen and does not have any source of income. That it is also relevant to mention here that the borrower i.e Mr. Anil Kumar is in jail from more than 4-5 months, and on account of Covid 19 pandemic, lockdown and consequences thereon the borrower could not able to regularise the account of the respondent bank.

B. That the Respondent Bank has classified the account of the Applicant as Non-Performing Assets on 31.03.2021 and issued the demand notice dated 30.04.2021 to the Applicant. (Annexure No.1). That earlier the Respondent bank issued another demand notice wherein the Date of NPA was 31.01.2020 but without withdrawing the earlier notice the Respondent bank issued another demand notice. That it is submitted that the alleged demand notice is bad in law as the Respondent has failed to follow the rules provided under Security Interest (Enforcement) Rules, 2002.

C. The Respondent bank further issued notice under Section 13(4) of SARFAESI Act, 2002 dated 30.07.2021 which was received by the applicant only on 22.08.2021, the notice is not as per the Rules provided under the Security Interest (Enforcement) Rules, 2002.(Annexure No. 2). The applicant also came to know that the Respondent bank has further put the sale of the mortgaged property on 17.09.2021 through a letter address to the borrower dated 12.08.2021(Annexure No.3)

D. That the Respondent has acted in arbitrary manner against the Applicant while exercising its power under the SARFAESI Act, 2002. That the impugned possession notice received by the applicant on 22.08.2021, whereas the Respondent bank fixed the sale through notice dated 12.08.2021, as such the Respondent bank has misused the provisions under the Act, 2002 by intimating about the sale proceedings before symbolic possession of the property. That as per provisions of the Act, 2002, the Bank has to first take the steps for taking possession as per Rules 8 (1) and 8(2) of the Security Interest (Enforcement) Rules, 2002. In the instant case, the sale notice dated 12.08.2021 has issued before receiving of the possession notice as such the proceedings are bad in law and liable to be set aside at the very outset.

E. That the Respondent has fixed the reserve price of the immovable property without obtaining the valuation report under Rule 8(5) of the Rules, 2002 while fixing the auction for 26.02.2021 since the reserve price has been fixed too low, contrary to the present prevailing market rate. The statute has imposed a mandatory condition upon every secured creditor to obtain "maximum sale price" of the secured assets, which requires application of mind from the authorities concerned while approving and accepting the valuation report of approved valuer and thereafter fixing reserve price, as failure to do so may cause substantial injury to the borrower / guarantor and that would amount to material irregularity and ultimately vitiate the subsequent proceeding. In the present case respondent bank has put the auction of the properties at throw away price which shows arbitrary and illegal exercise of power entrusted to them under SARFEASI Act, 2002. That the action of the Respondent Bank are contrary to the rule 8(5). 8(6), 8(7) and 9 of the Security Interest (Enforcement) Rules, 2002 of the Securitisation and Reconstruction of Financial assets and Enforcement of Security interest Act, 2002.

F. That entire recovery proceeding initiated by authorities of the respondent bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are void ab initio, in the eyes of law. That being aggrieved, and having been left with no other equally efficacious legal remedy, the Applicant is preferring the instant securitisation application before this Tribunal.

2. The respondent bank has filed objection vide diary No.2781 dated 06.10.2021 and stated that the respondent bank has not received any bid on the auction dated 17.09.2021 in response to the impugned Sale Notice dated 12.08.2021, hence, the auction dated 17.09.2021 failed, which renders the SA infructuous and also stated as under:

   I. That the sale notice dated 12.08.2021 has already rendered infructuous mentioned above and the impugned possession Notice dated 30.07.2021 is time-barred for about eight days, as the SA is filed on 20.09.2021, and there is no valid reason or any application for condonation of such delay is given in the present SA. Therefore, the SA being time-barred is liable be dismissed on this ground alone.

   II. The applicant has raised objection related to possession notice delivered on 22.08.2021 after the delivery of sale notice dated 12.08.2021. In this context, it submitted that there is no provision in the Act that the Possession notice has to be delivered before the sale notice first and thereafter the sale notice, the applicant thus is misinterpreting the Rules as against the fact that there is no such bar in the Act and Rules.

   III. That the possession notice dated 30.07.2021 has been delivered to the Applicant well in time on 31.07.2021 as against the objection by the applicant for delayed delivery on 22.08.2021 by post. The Security Interest (Enforcement) Rules, 2002 provides in Rule 8(1) and 8(2) that the Possession notice is to be served by three modes ie. (1) Delivery, (2) Affixation, and (3) Publication. In compliance with the said rules, the Possession notice dated 30.07.2021 was sent by Registered post to

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the applicant on 31.07.2021, published in News Papers i.e. Business Standard Hindi and English on 31.07.2021. While Affixation and Publication on 31.07.2021 is considered to be an effective service on 31.07.2021, contention of the applicant that the delivery of the notice by registered post on 22.08.2021 was the only delivery date of the notice is not tenable. Thus the notice served by affixation and publication on 31.07.2021 is an effective delivery. Exhibit R/1 Colly to this reply.). Thus the allegation of the applicant with respect to the Possession notice to have been delivered before the Sale Notice and with respect to the late delivery of the notice is baseless and frivolous being against the fact and provisions of the law. The SA therefore is liable to be dismissed on this ground alone.

IV. That the respondent Bank has adopted strict procedure as per the provisions of SARFAESI Act & rules while taking action against the applicant and against secured assets. While the applicant has been raising vague objections about the violations at this later stage, the applicant has never filed any representation against notice u/s 13(2) dated 30.04.2021 and also not filed any objection against the Possession notice dated 30.07.2021 within prescribed period of limitation. The applicant thus has lost the opportunity to raise objections against the notice u/s 13(2) and against the Possession notice as provided in law.

V. There is no bar in the Act that the notice u/s 13(2) can be issued only once, therefore, while the objection in the SA is against the provisions of the SARFAESI Act, the applicant has lost his opportunity to raise objection on notice u/s 13(2) provided under Section 13(3A) as mentioned above.

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VI. That Sale Notice dated 12.08.2021 has been issued after due compliance of Rule 8(5) of the Security Interest (Enforcement) Rules, 2002. A valuation dated 02.08.2021 was obtained from the Penal Valuer M/S Sarvodya Associates, the following valuation of the secured assets: estimated Present market Value: Rs.60,39,000.00 Realisable Value: Rs.54,00,000.00 DistressedValue:Rs.48,00,000.00 The respondent Bank has fixed the Reserve Price of the first Sale as Rs.54,00,000.00 being the maximum realizable value of the secured assets.(Exhibit R/2)

VII. The respondent bank has complied with all the provisions of the SARFAESI Act and rules framed thereunder and with due compliance of all settled laws in this respect and as mentioned in the SA, while issuing the impugned Sale Notice and while taking other SARFAESI actions. The applicant is not entitled to any relief or Interim relief. Therefore, the SA is liable to be dismissed with an exemplary cost, as the present SA is nothing but an attempt to delay the recovery of bank debts.

S.A. No. 141 of 2022

Between:

Mr. Anil Kumar s/o Mr Om Prakash R/o 26, Pant Vihar, I.T.C. Road, Saharanpur, Uttar Pradesh - 247001, Currently residing in OM Santosh Paramedial, I.T.C. Rohalki, Dayalpur, Tehsil Bhagwanpur, District Haridwar, Uttarakhand - 247661. Pan No. BLXPK 7850B Aadhar No. 9550-6566-9078

..........Applicant

Versus

1. Punjab National Bank, through its Branch Manager, Branch Circle Sastra Division, Raj Towers, Shivaji Nagar, Delhi Road, Saharanpur, Uttar Pradesh,

a body corporate incorporated under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its Head office at Plot No. 4, Sector 10, Dwarka, New Delhi - 110075.

2. Ms Priyanka, W/o Mr Saurabh Kalra, R/o House No. 13 B, Near Eye Hospital, Hakikat Nagar, Civil Line, Saharanpur. Currently residing, at 26, Pant Vihar, I.T.C. Road, Saharanpur, Uttar Pradesh - 247001. (Auction Purchaser)
3. Mrs. Lalita Malhotra w/o Sh. Chetan Prakash Malhotra through attorney Smt. Meenakshi Suri (daughter) & W/o Sh. Mukesh Suri (Subsequent Purchaser)
4. Mrs. Parul Suri w/o Sh. Anuj Suri (Son of Mukesh Suri)(Subsequent Purchaser) Both subsequent purchasers are Resident of H. No. 59, Mission Compound Saharanpur

..........Respondents

Sh. Shreyes Aggarwal, Ld. Counsel for Applicant

Sh. Swaran Singh, Ld. Counsel for Respondent Bank/No.1

Sh. Vivek Kumar, Ld. Counsel for Subsequent Auction Purchaser

1A The Applicant has filed Securitization Application on 30.05.2022 to quash the Sale Confirmation letter dated 26.11.2021, Cancellation the sale deed dated 23.12.2021, Regularize the Loan accounts, quash/nullify the auction dated 15.11.2021 and to quash the entire SARFAESI action taken by the Respondent no. 1. The Applicant has stated as under:

a) That the loan account of the applicant was classified as Non-Performing Asset on 31.01.2020. However, the same is unsupported by the statement of account provided by the Respondent No. 1. The notice under Section 13(2) of the SARFAESI Act 2002 was issued on 04.02.2020 for the recovery of Rs.42,25,000/- and the notice under Section 13(4) of the SARFAESI Act, 2002 for taking over of the symbolic possession was issued on 30.07.2021. Further, the sale notice was issued on 12.08.2021 and auction was scheduled on 17.09.2021 which was rendered infructuous. Subsequently another auction was scheduled on 15.11.2021 and sale of the residential property was confirmed in favour of the Respondent No. 2 on 26.11.2021.

b) That none of the notices under Section 13(2), Section 13(4), Sale notice, e-auction notice, panchnama or even inventory list were ever served to the applicant. The applicant was in Sub- jail, Roorkee from 02.12.2020 and was released on 31.03.2022. Before going to the jail, the applicant along with his wife and two children used to live in the residential property and no notices were ever issued to the applicant. Only after releasing from the jail, the applicant came to know that the residential property was sold at a meagre price to the Respondent No. 2 and now the Respondent No. 2 is trying to further alienate the residential house. Hence, the present S.A. is filed to challenge the illegal action & sale of the residential property of the applicant to the Respondent No. 2.

c) The applicant has purchased one double storied residential house measuring area 169.37 Sq yards or 141.61 sq mtrs, built on western part of plot no. 26 of khasra no. 50 situated at Mauza Mohd. Pur Mafibaairoon PT & Distt Saharanpur, Dar Abadi Pant Vihar colony Phase 2. ("Residential Property.(Annexure SA 1)

d) The applicant had availed the following loan facilities from the respondent no.1 Housing Loan Rs.42,25,000/- and OD Rs.12,00,000/ . On 02.12.2020, a false FIR was registered against the applicant and consequently the applicant was sent to the sub-jail Roorkee Bhagwanpur. The applicant was sent to judicial custody on

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02.12.2020 and was released on 31.03.2022. The applicant spent a total of one year three months and 29 days in the jail. A copy of the approval letter demonstrating the duration of the jail term dated 12.05.2022 is Annexure SA 2.

e) When the applicant was sent to jail, wife of the applicant also went to her maternal house in Chutmalpur and the applicant's wife put her lock at the Residential Property. After securing bail from the Hon'ble High Court of Uttarakhand, the applicant only on 04.05.2022 went to his Residential Property and the applicant saw that the lock of the house was open and the door was locked from inside. When the applicant knocked the door, a lady by the name of Ms Priyanka (the Respondent No. 2) and the gentlemen by the name of Saurabh Karla came out, only then the applicant came to know that the Respondent No. 1 has sold the Residential Property of the applicant at a throw away prices to the Respondent No. 2 and a sale deed to that effect is also executed on 23.12.2021.(Annexure SA 7)

f) The Respondent No. 2 informed the applicant that the Respondent no. 2 purchased the Residential Property in an e-Auction that was scheduled on 15.11.2021 by the Respondent No. 1. Further, the applicant inquired from the Respondent No. 2 about his necessary belongings including but not limited to utensils, gold and silver jewelry, clothes, important documents were inside the Residential Property. The Respondent No. 2 informed the applicant that the Respondent No. 1 has sold the Residential Property along with all the belongings present inside the Residential Property. After learning the same, the applicant approached the Respondent No. 1 and on inquiring about the same, the applicant was made aware that the Residential Property of the applicant was sold to the Respondent No. 2 and a sale has been confirmed on 26.11.2021.(Annexure SA 8)

g) The applicant also inquired about his household items, jewelry, documents which were locked inside the house. The Respondent No. 1 did not give any answer to the same and blatantly replied nothing can be done now as the Residential Property has been sold to the Respondent No. 2. Immediately after that the applicant inquired about its bank statement and from the bare perusal of the bank statement, it is apparently clear that under the ideal circumstances the said Term Loan Account could not have been marked as NPA on 31.01.2020 as the applicant has deposited Rs.38,000/- on 17.09.2019, Rs.23,964/- on 30.11.2019 and Rs.18,000/- on 26.12.2019. Further the applicant after marking account as NPA deposited Rs.40,000/- on 27.02.2020, Rs.1,15,000/- on 29.02.2020 and on 07.03.2022 Rs.40,000/-. Therefore, under any circumstance the loan account could not have been marked as NPA on 31.01.2020. The entire SARFAESI Action took place without the knowledge of the applicant. The applicant did not receive, the notices under Section 13(2) nor 13(4) of the SARFAESI Act, 2002. Further, the applicant was also not informed about the auction proceedings. A copy of the loan account statement is being marked and filed as Annexure SA 10.

h) That Respondent No. 1 on 15.11.2021 sold the Residential Property at Rs.49,50,000/- to the Respondent No. 2. It is imperative to highlight that at the time of availing the loan facilities, the panel valuer of the bank gave the following value of the Residential Property. Market Value Rs.73,65,484/- Realizable/distress value of the Property Rs.66,00,000/- A copy of the valuation report dated 10.08.2018 is being marked and filed as Annexure SA 11.

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i) It is ex-facie evident that the Residential Property was sold at a meagre price and it is no doubt that there was a collusion between the respondent bank and the Respondent No. 2. It is furthermore important to state that proviso to Rule 9(2) of the Security Interest (Enforcement) Rules, 2002 ("Rules") categorically states that: Provided further that if the authorized officer fails to obtain a price higher than the reserve price he may, with the consent of the borrower and the secured creditor effect the sale at such price . In the present case, it is apparent that the Residential Property was sold at the lower price and that too without obtaining the consent of the borrower. Therefore, the entire auction and sale is infructuous and liable to be set-aside at the outset.

j) It is ex facie evident that the Residential Property was sold at a highly undervalued price and the collusion between the Respondent No. 1 and the Respondent No. 2 is evidently clear. It is necessary to highlight that when the possession of the Residential Property was taken no one was present at the Residential Property and the Residential Property was lock. As per the applicable law, the Respondent No. 1 could not have opened the lock without the permission of the District Magistrate/CMM obtained under Section 14 of the SARFAESI Act, 2002. As per the law, the respondent no. 1 was required to make panchnama and inventory as per Rules 4(1) and 4(2) of the Rules.

That neither the panchnama nor the inventory was prepared by the respondent no. 1 and no copy has ever been served to the applicant. Furthermore, as per Rule 4(2A) of the Rules, which states the borrower shall be intimated by a notice, enclosing the panchnama drawn in Appendix I and the inventory made in Appendix II. It is incumbent upon the respondent no. 1 to intimate borrower, i.e., the

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applicant. However, in the present case, the respondent no. 1 failed to inform the borrower. Therefore, it is evident that the entire auction proceeding was just a hoax in order to sell the Residential Property at a throw away price.

k) The present case is an absolute case of collusion and fraud against the applicant. The Respondent No. 1 had the knowledge that the applicant is in jail and therefore, the Respondent No. 1 sought it as a golden opportunity to sell off the Residential house at throw away prices. That since the applicant was in jail and due to surge in the cases of covid-19, all the visitation rights of the prisoners no one was allowed to visit the prisoners. Hence, the applicant could not have had any knowledge about the said proceedings before being suspended released on bail.

l) That the applicant's father has kept no relation with the applicant since the applicant has gone to the jail and the wife and children of the applicant had also gone to the paternal house of the applicant's wife. Therefore, the applicant had no knowledge as to what has happened in all this meanwhile when the applicant was in jail. The applicant is the victim of the adverse situation. After coming out on bail, the applicant duly deposited Rs.17,00,000/- to the Social Welfare Department as per the directions of the Hon'ble High Court. A copy of the receipts and letters are collectively being marked and filed as Annexure SA 13 to the S.A.

m) That all the documents related to the loan account and otherwise were kept in the Residential Property and the respondent no. 1 auctioned the Residential Property and none of the documents or belongings were given to the applicant or his wife.

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2B The Respondent Bank has filed preliminary reply vide diary No.3670 dated 02.09.2022. In para-5 it is stated by the respondent bank that the applicant in Para-4 of limitation in the above SA has given a false declaration on oath that the present SA is in within limitation and stated that:

> The applicant is taking the support of Hon'ble Supreme Court suo moto order extending the limitation till 29.05.2022, has declared that the SA is within limitation, whereas the SA has been filed on 05.07.2022 as per filing record displayed on the website of DRT. Thus delay is of about 37 days. That the filing date of the above SA is being claimed as 30.05.2022 which is not possible as the Securitization Application, supporting affidavit, stamp papers notorization etc all are dated 20/30.06.2022. Thus it is impossible to believe that when the whole SA and documents are post dated 30.05.2022, and there is no document which is dated 30.05.2022 or prior how can the SA be filed on 30.05.2022 or prior and there is another SA No. 116/2021 titled OM Prakash vs. PNB pending before this Tribunal on the same ground of challenging the auction conducted by the Respondent No. 1 on 15.11.2024, which goes against the settled law for restriction on multiplication of litigation, therefore the SA is liable to be dismissed.

2C The Respondent bank has filed another reply by diary No.4770 dated 15.10.2022. it is submitted that the applicant in the present SA raising some objections, for which, a time limit has been provided in the Act, and the applicant has not availed that opportunity of objection within the time limit, hence, such objections are not tenable at this stage. That moreover, the applicant in the present SA is falsely taking advantage of him being in judicial custody from 02.12.2020 to 31.03.2022, and also spread of Covid-

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19 that he had no information and was not aware about the happenings with his Bank Account, his house and his family as against the fact that all his family members who are co-borrowers in the present Loan were active dealing with the Bank on various matters, therefore, the contention of the applicant is unbelievable, and moreover the covid restrictions began from 24.03.2020 were strict for first one or two months, and afterwards, relaxations were provided for the public to lead a normal life. Therefore, it is false, misrepresented and misleading that the applicant was not aware of sale, possession etc. of his mortgaged house and also stated as under:

i. That the respondent Bank has auctioned the secured asset on 15.11.2021, Sale Certificate issued and Registration executed, as such a third party interest has already been created well within the knowledge of the applicant. That as per information available with the respondent Bank, the Auction Purchaser has further sold the property to some other person and thus a fourth party interest has also been created.

ii. That the property in question is in joint name of Mrs. Poonam Lata Vikshit w/o Sh. Anil Kumar, and Sh. Anil Kumar s/o Sh. Om Prakash. Both the joint owners of the property are also borrowers and mortgagors, however, the present Securitisation Application is only from the one borrower/owner Anil Kumar, therefore the application suffers from non-joinder of applicants, hence, liable to be dismissed on this ground alone

iii. That the applicant has questioned the classification of Account as NPA, which has been done in routine and as per guidelines of the Reserve Bank of India. After classification of NPA, a notice u/s 13(2) dated 30.04.2021 was issued clearly informing all the borrowers of classification of NPA on 31.03.2021. The notice was served on all the borrowers on given addresses by registered post on 04.05.2021, but none of the borrowers raised any objection or any claim of the respondent Bank within time limit of Representation u/s 13(3A), as such the applicant has lost the opportunity of raising any objection at this belated stage, hence liable to be dismissed(copy of demand notice along with postal receipt are at Exhibit A-1)

iv. That on non-compliance of notice of demand u/s 13(2) dated 30.04.2021, a Possession notice u/s 13(4) dated 30.07.2021 was issued and served on the borrowers/defendants by registered post on 31.07.2021, by affixation on the property on 31.07.2021 and by publication in two leading News Papers Business Standard Hindi and English on 31.07.2021, as such the time limit of 45 days provided in the Act for objection or 13(4) notice has also expired. Therefore, the SA is liable to be dismissed on this ground also. (exhibit A-2)

v. That the statement of the applicant that he was not aware about the SARFAESI proceedings by the respondent Bank while in jail is not reliable as against the fact that the proceedings before the Learned District Magistrate, Saharanpur were duly participated by applicant and on receipt of notice from the DM office and application on behalf of the applicant dated 17.09.2021 was filed to grant 15 days time, as duly recorded in Order dated 16.11.2021. A True and Attested copy of DM order dt. 16.11.2021 is annexed as exhibit A-3.

vi. That as mandatory, a valuation dated 02.08.2021 was obtained from the Panel Valuer M/S Sarvodya Associates, who estimated the following valuation of the secured assets: Present market Value:Rs.60,39,000.00 Realisable Value: : Rs.54,00,000.00, Distressed ValueRs.48,00,000.00 Since, the Auction in question was a second auction, therefore, on the basis of distressed value was of Rs.48.00Lacs, a Reserve price of Rs.49.00Lacs was fixed for the second auction of the secured asset. (Exhibit R/4)

vii. That a second Sale Notice dated 26.10.2021 was issued for E-Auction scheduled for the secured asset on 15.11.2021, which was served on the borrowers/defendants by registered post on 29.10.2021, affixed on the secured asset on 29.10.2021 and published in News paper Amar Ujala Hindi and Hindustan Times English on 28.10.2021. Thus the Sale Notice was duly served on the defendants as mandatory. (True and Attested copy of Sale Notice dt. 28.10.2021 alongwith postal receipts, Affixation Photographs and News paper publications are annexed as exhibit A-5).

viii. That the auction scheduled on 15.11.2021 was conducted through an Auction Service Provider M/S MSTC limited, through which the auction was finalized in favour of a sole bidder Ms. Priyanka D/o Sh. Shashi Veer Chopra for the highest bid of Rs.49,50,000/-, and on confirmation as highest bidder, full amount of Rs.49,50,000/- was deposited by the said sole auction purchaser Ms. Priyanka. Accordingly, a Sale Certificate was issued in favour of Mrs. Priyanka on 10.12.2021, who as per information available with the respondent Bank has further sold it to some other buyer. (Sale certificate R/6)

3. The Applicant of S.A. No. 141 of 2022 had sent notice to auction purchaser submitted affidavit about service on record by diary No.4779 dated 17.10.2022 and the auction purchaser in person appeared before Tribunal on 23.11.2022 and stated that the property has already been sold but nothing submitted on record except the said oral version. The

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Applicant has filed amendment application by diary No.5742 dated 23.11.2022 also for impleadment of subsequent purchasers even though the applicant of S.A. No. 116 of 2021 had already filed amendment application in relation to auction sale notice dated 26.10.2021, by which the property in question was auctioned on 15.11.2021.

4. The subsequent purchasers through Sh. Mukesh Suri(Husband of Smt. Meenakshi Suri and father-in-law of Mrs. Parul Suri, he is also witness of sale deed executed by auction purchaser in favour of subsequent purchasers) with Ld. Counsel had appeared on 02.01.2023 and filed application by diary No.821 dated 01.02.2023 for dismissal of S.A. being non-maintainable on the basis of not filed within limitation by saying that the subsequent purchasers are bonafide purchasers.

5. Heard Ld. Counsel for the Applicant, respondent bank and Subsequent Purchasers.

6. The Securitization Application No. 116 of 2021 and 141 of 2022 have been filed by guarantor and principal borrower in relation to same loan account respectively. So both are decided by one judgment.

7. In. S.A. No. 116 of 2021, the Applicant has challenged demand notice dated 30.04.2021, possession notice dated 30.07.2021 and auction sale notice dated 12.08.2021 and filed on 21.09.2021. The Tribunal had issued notice to respondent bank on 29.09.2021 and the respondent bank has submitted objections on 06.10.2021 by diary No.2781.

8. The Applicant of S.A. No. 116 of 2021 has specifically mentioned in para 5.3 of Securitization Application filed on 21.09.2021 that the borrower Mr. Anil Kumar is in jail from more than 4-5 months. The respondent

bank has filed objection and vakalatnama by diary No. 2781 dated 06.10.2021 as per ordersheet dated 12.10.2021.

9. The Respondent bank has filed objections and stated that the respondent bank has not received any bid on the auction date of 17.09.2021 in response to impugned sale notice dated 12.08.2021 which renders the S.A. infructuous. The possession notice was issued on 30.07.2021, the S.A. is time barred for about eight days for impugned possession notice.

10. The Applicant has specifically stated that the possession notice dated 30.07.2021 was received on 22.08.2021 after issuance of sale notice dated 12.08.2021. The respondent bank has stated that there is no provision in the Act that the possession notice has to be delivered first and thereafter the sale notice. Again stated that the possession notice dated 30.07.2021 has been delivered on 31.07.2021 by affixation and publication, published in Business Standard Hindi and English on 31.07.2021 and sent by registered post on 31.07.2021 and submitted postal receipt dated 31.07.2021 Numbering 'RU147765199IN'. The Applicant has submitted Tracking report, as per Tracking report the registered post was delivered on 22.08.2021 even though tracking report should be submitted by respondent bank in proof of service. The publication has made in 'Business Standard.'

As per sub rule(2) of Rule 8 SARFAESI Rules, 2002 the publication should be made in 'One in vernacular language having sufficient circulation in that locality', by the authorized Officer. The Applicant as per petition is resident of faridpur urf Mandoovala, District Saharanpur and as per respondent bank the applicant was resident of village faridpur. If a registered post has been reached in 22 days from the date of dispatch, there is no possibility that the newspaper like Business Standard was circulated in the said area sufficiently. The said situation itself has shown that the respondent bank has not complied Rule 8(2) of SARFAESI Rules, 2002 in relation to publication of possession notice under Section 13(4) of SARFAESI Act. The possession notice under Section 13(4) of SARFAESI Act was received to applicant of S.A. No. 116 of 2021 on 22.08.2021 and petition was filed on 21.09.2021.

Hence the plea of time barred has no force and the respondent bank has failed in compliance of Rule 8(2) of SARFEASI Rules, 2002 in relation to publication of possession notice and the SARFESI action is liable to be quashed on this point only.

11. After failure auction dated 17.09.2021, the respondent bank has issued auction sale notice again on 26.10.2021 for 15.11.2021 by which, the property in question was auctioned. The respondent bank has already submitted objections in S.A. No. 116 of 2021 by diary No.2781 dated 06.10.2021 and the Applicant of S.A. No. 116 of 2021 has already clarified by mentioning in original Securitization Application filed on 21.09.2021 that 'the borrower i.e. Mr. Anil Kumar is in jail for more than 4-5 months'. The fact that the applicant of S.A. No. 141 of 2022 was in jail prior to issuance of first auction sale notice has come into the knowledge of respondent bank before issuance of IInd auction sale notice dated 26.10.2021 but the respondent bank has issued IInd sale notice in the same manner even though duty bound to serve the auction notice dated 26.10.2021 through Jailor concerned on applicant Mr. Anil Kumar.

12. In the light of above, it cannot be said that the fact that Mr. Anil Kumar who has filed another Securitization Application numbering 141

of 2022 after release from jail was not in the knowledge of the respondent bank. And it was the duty of the authorized officer concerned to acknowledge the said fact and took action in relation to IInd auction sale notice on the basis of which the property in question was auctioned accordingly.

13. The respondent bank and subsequent purchasers have raised point of limitation against the S.A. No. 141 of 2022 filed by borrower after release of applicant from jail. The said point has no relevance in the light of circumstances of the case in hand.

14. Ld. Counsel for the subsequent purchasers has argued that the petition has been filed on 30.06.2022 even though date of filing mentioned 29.05.2022, court fee was paid on 30.05.2022. The Applicant firstly submitted Securitization application on 30.05.2022 as per ordersheet dated 06.07.2022 and after curing defects filed fresh copy of securitization Application on 30.06.2022. The copy of Original Securitization application dated 29.05.2022 is on record. The same point has also been raised by respondent bank/secured creditor even though respondent bank was well acquainted about applicant Mr. Anil Kumar as mentioned in S.A. No. 116 of 2021. So the said point raised by Respondent No. 1 and subsequent purchasers has no force and liable to be rejected. Hence rejected.

15. The subsequent Purchasers have also submitted power of attorney executed by Smt. Lalita Malhotra in favour of Smt. Meenakshi Suri in 2008. In the said attorney it is mentioned the attorney enter into any agreement to purchase movable or immovable property in the name of executor but no any property is mentioned in the attorney about other clauses as mentioned to manage, control and supervise, to lease or let

out, sell or transfer, to institute or compromise legal proceedings relating to movable or immovable property of executor. Nothing has been mentioned from what source purchase money has been paid. No source of income has been shown.

16. No any attorney for sale-purchase of property in casual manner for a long period has been given to another person, in absence of any license legally valid as the attorney was executed in 2008 and property in question has been purchased by attorney in the name of executor in the year 2022. The version of attorney itself has shown business transaction, not permissible in the eye of law, if there is no permissible by any law applicable, the action become illegal even though the rights of subsequent purchasers are governed by Section 52 of Transfer of Property Act and legal sanctity of auction sale in question.

17. Primarily, the borrower/guarantor has filed Securitization Application S.A. No. 116 of 2021 on 21.09.2021 by challenging the first auction sale notice with possession notice under Section 13(4) and demand notice under Section 13(2) of SARFAESI Act. The first auction sale dated 17.09.2021 was failed and another auction sale notice dated 26.10.2021 for 15.11.2021 was issued, the applicant of S.A. No. 116 of 2021 has challenged the said auction sale notice also by amendment.

The auction sale dated 15.11.2021 has also been challenged by applicant of S.A. No. 141 of 2022 on 30.05.2022 by saying that the applicant was in Jail from 02.12.2020 and released on 31.03.2022. The fact that the applicant of S.A. No. 141 of 2022, borrower Sh. Anil Kumar was in jail for more than 4-5 months, has already been mentioned by applicant of S.A. No. 116 of 2021 filed on 21.09.2021 and the respondent bank auctioneer of property in question has submitted objection on 06.10.2021.

It is clear from the above that the respondent bank was well acquainted about the fact that on the date of issuance of auction sale notice dated 26.10.2021 the applicant principal borrower was in jail before issuance of Ist auction sale notice and the respondent bank was duty bound to take action in accordance with law as per circumstances of this case.

18. The first auction sale notice dated 12.08.2021 was issued by respondent bank by mentioning address of borrower Mr. Anil Kumar (Applicant of S.A. No. 141 of 2022) H. No. 88, village Faridpur urf Mandoowala District. Saharanpur Tehsil Behat even though property in question is situated at Mauza Mohd. Pur Maafibaarioon, P.T. & Distt. Saharanpur Dar Abadi Pant Vihar Colony Phase-2 Eastern part of Plot No. 26 as per respondent bank mentioned in sale notice (Anneuxre-3 S.A. No. 116 of 2021). Even though in possession notice dated 30.07.2021 both addresses have been mentioned(Annexure -2 of S.A. No. 116 of 2021).

The Respondent bank has submitted demand notice dated 30.04.2021, possession notice dated 30.07.2021 with postal receipts and both the notices had been sent on both addresses of applicant of S.A. No. 141 of 2022 and his wife. The auction sale notice in question has been sent on both addresses of applicant Sh. Anil Kumar borrower and one address of his wife at Village Faridpur. But no any tracking report has been submitted in relation to demand notice (Annexure R-1), possession notice(Annexure R-2) and sale notice (Annexure-5). The Applicant of S.A. No. 141 of 2022 has denied receipt of the said notice, in the said situation the respondent bank was duty bound to prove that the notices were served properly as per Act and Rules applicable to the case and also disprove the version of applicant borrower, who has challenged by filing SA No. 141 of 2022. The version of the applicant in relation to service of demand notice and possession notice dated 30.07.2021 has also been supported by valuation report submitted by valuer dated 02.08.2021, the property was locked at the time of inspection, the same version has been mentioned by applicant and also stated that he was in jail from 02.12.2020 till 31.03.2022 and demand notice was issued on 30.04.2021. In the said situation, the service of demand notice, possession notice and auction sale notices was not possible on applicant Mr. Anil Kumar and the respondent bank has failed to disprove the version of applicant Mr. Anil Kumar that he was in jail since 02.12.2020 till 31.03.2022. The Applicant has also submitted a Certificate issued by Ld. Superintendent, Sub-Jail Roorkee dated 12.05.2022 in support of his version as Annexure SA-2, that he was in jail since 02.12.2020 till 10.03.2022. There is no reason to doubt on the version of applicant in absence of disproving the said fact on the part of respondents.

19. The sale notice in question was issued on 26.10.2021 for auction sale dated 15.11.2021 published on 28.10.2021 and dispatched to the applicants on 29.10.2021.

<u>Sub Rule (6) of Rule, 8 SARFAESI Rules, 2002 says:</u>

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 asset 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 newspapers including one in vernacular language having wide circulation in the locality.]*

<u>Sub Rule (1) of Rule, 9 SARFAESI Rules, 2002 says:</u>

No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty 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 fifteen days to the borrower, for any subsequent sale.

The auction sale notice in question dated 26.10.2021 has been issued in the same manner as previous auction sale notice dated 12.08.2021, sent in the name of applicant at Pant Vihar Colony address even though the Ld. Authorized Officer was duty bound to take action in accordance with law, when the fact has come in the knowledge of Ld. Authorized Officer that the borrower Mr, Anil Kumar is in Jail (applicant of S.A. No. 141 of 2022) prior to 06.10.2021 before issuance of auction sale notice dated 26.10.2021. No proof of service has been submitted on the Co-borrower Smt. Poonam Lata on record by respondent bank except postal receipt even though applicant has stated that his wife had gone to her maternal home, when he was sent to jail. It is the duty of the secured Creditor to prove that the auction sale notice has been served on the borrowers in compliance of Rule 8(6) of SARFAESI Rules, 2002, not only dispatch the auction sale notice by registered post as the auction sale notice should be served by providing opportunity of redemption before auction sale of the secured asset.

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20. It is clear from the above that as per record available on file submitted by respondent bank, the respondent bank has failed in compliance of Rules 8(6).

Specifically, in case of applicant, Mr. Anil Kumar borrower, the Ld. Authorized Officer of respondent bank was duty bound to serve the sale notice on the applicant of S.A. No. 141 of 2022 through Ld. Jailor concerned after coming into the knowledge the fact that Sh. Anil Kumar borrower is in Jail from last 4-5 months. The respondent bank has failed in compliance of Rule 8(6) SARFAESI Rules, 2002 in relation to Mr. Anil Kumar and the auction sale in question is liable to be quashed on this point alone.

21. The respondent bank has obtained order under Section 14 of the SARFAESI Act from Ld. Additional District Magistrate, Saharanpur on 16th November, 2021 i.e. after the date of auction 15.11.2021 submitted on record as Annexure R-3. It is clear from the above that the possession had taken by respondent bank on the strength of order under Section 14 of the SARFAESI Act. The borrower Mr. Anil Kumar has specifically alleged that the possession was taken in absence of applicant, the property in question was locked and no information has been given to the applicant, no inventory and punchnama have been prepared. No inventory and punchnama has been served on the applicant in compliance of Rule 4 of the SARFAESI Rules. But nothing submitted on record on the part of respondent bank in counter of the version stated by applicant in relation to physical possession and non-compliance of Rule 4 of SARFAESI Rules and also silent about the said version of applicant in objections. Even though as per valuation report dated 02.08.2021 submitted by respondent bank with objections as R-4 supported the version of applicant that the property was locked, as

mentioned in valuation report that the property in question was locked at the time of inspection.

It is clear from the above, that the Ld. Authorized Officer of respondent bank has adopted high handedness in this matter in relation to physical possession of the property in question and not followed the provisions of law when the physical possession was taken by respondent bank. It is so serious situation, specifically in case of nationalized bank and the conduct of respondent bank authority has spoiled the image and credibility of financial institution and the authority concerned is liable to compensate the applicant in the said circumstances.

22. The respondent bank has mentioned in objections that the second sale notice was issued on 26.10.2021, served on the borrower by registered post on 29.10.2021 and published in newspapers in Amar Ujala Hindi and Hindustan Times English on 28.10.2021. The sale notice was prepared on 26.10.2021, published on 28.10.2021 and sent on 29.10.2021 after publication. The said action of the bank curtails the right of the borrower/guarantor provided under Section 13(8) of the SARFAESI Act as held by Hon'ble Debts Recovery Appellate Tribunal, Allahabad in Sandeep Dogra Vs. State Bank of India Appeal Dy. No. 637 of 2022 decided on 04.07.2023.

23. The Hon'ble Supreme Court in M. Rajendran & Ors. Vs. M/s KPK Oils & Protiens India Pvt. Ltd. & Ors. Civil Appeal No.12174 of 2025 decided on 22nd September 2025 after considering Rule 8(6) and 9(1) of SARFAESI Rules, 2002 has held that right of redemption is not a contractual right and rather a statutory right even under SARFAESI Act,

the right of redemption has been statutorily recognized and given effect to in Section 13(8) of SARFAESI Act.

A remedial statute applies to pending proceedings and SARFAESI Act is a remedial statute.

24. From a conjoint reading of para 107, 112, 117, 154, 159, 164, 176, 179 and 191 of M. Rajendran case (Supra) has clarified about right of redemption. The para 112 and 178 have specifically clarified in relation to right of redemption as mentioned in para 112 that the proviso to Rule 9(1) further stipulates that if the sale of the immovable secured asset under Rule 8(5) fails, then for conducting subsequent sale, the secured creditor would be required to serve, affix and publish the subsequent notice of sale for a period of fifteen days only. In other words, for the sale of immovable secured asset in the first instance, a notice period of thirty days required to be observed by the secured creditor and if the first sale fails, then for all subsequent sales, only a notice fifteen days is to be given, as opposed to thirty days.

25. In Sharp Industries Vs Bank of Maharashtra &Ors Special Appeal No. 220 of 2023 decided on 05.01.2024, a division bench of Hon'ble Allahabad High Court after considering judgment of Hon'ble Supreme Court in Bafna Motors Case (Supra) and has held in para 27 & 29 as under:

Para 27. It is by now well settled that service of notice upon the borrower in terms of Rule 8(6) is mandatory.

Para 29. Right of redemption is an important right available to a borrower, who is in default. Such important right cannot be taken away and any action taken in its breach cannot be approved.

26. The right of redemption is a paramount right of the borrower and cannot be deprived the borrower in any manner. There is no authority to secured creditor to extinguish the right of redemption of the borrower in any circumstance and duty bound to comply in the light of principles laid down by Hon'ble supreme Court and Hon'ble High Courts.

27. In Mathew Varghese Vs. M. Amritha Kumar & Ors. Civil Appeal No. 1927 -1929 of 2014 case, it was argued on behalf of the borrower that there should have been a definite intimation to the borrower, before the sale or transfer which is a legal requirement both under section 13(8) read with rules 8(6) and 9(1) as well as S.60 of the T.P. Act.

In para 27 and 28 the Hon'ble Supreme Court has clarified the situation about auction sale of secured asset as under:-

Para 27- Therefore, by virtue of the stipulations contained under the provision of the SARFAESI Act, in particular. Section 13(8), any sale or transfer of a SECURED ASSET, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the SECURED CREDITOR with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.

Para 28- Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said rules prescribe as to the procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings under Section 13(1) to (4) of the SARFAESI Act.. Sub-rule (6) of Rule 8 again states that the authorized officer should serve

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to the borrower a notice of 30 days for the sale of the immovable SECURED ASSETS. Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days time gap for effecting any sale of immovable SECURED ASSET is a statutory mandate.

28. The Hon'ble Supreme Court in Rajiv Subramaniyan & Anr Vs. M/s Pandiyas & Ors. [(2014) 5 SCC 651] has held as under:-

As noticed above, this Court in Mathew Varghese case also examined Rules 8 and 9 of the Rules, 2002. On a detailed analysis of Rules 8 and 9(1), it has been held that any sale effected without complying with the same would be unconstitutional and, therefore, null and void.(Para 14)

29. The Applicant has also raised the point of valuation and reserve price. If the point of valuation is not considered, in that case, the sale price was fixed in first auction sale notice Rs.54.00Lacs and in second notice Rs.49.00Lacs even though it is admitted to the respondent bank that market price was of Rs.60.39Lacs as per valuation report dated 02.08.2021 as mentioned in objection also. The Applicant has also submitted valuation report dated 07/10.08.2018 as Annexure SA-11. As per the said valuation report the value of the property was of Rs.73,65,484/-(Rupees Seventy Three Lacs Sixty Five Thousand Four Hundred Eighty Four only) total area 141.61 sq. mt. in both the reports dated 02.08.2021 and 07/10.08.2018 G.F. 1295.68 sq. fts and F.F.500.00 Sq. ft. The said valuation report was obtained by respondent bank at the time of granting financial assistance as per applicant not counter by respondent bank.

30. The Hon'ble Supreme Court in Mathew Varghese Vs M. Amritha Kumar & Ors, Civil Appeal No.(s) 1927-1929 of 2014 has also laid down as under:

"Be that as it may, the paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or transfer, or ensure that the secured asset derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed.

The Hon'ble Supreme Court has also held as under:

A reading of Section 13(1), therefore, is clear to the effect that while on the one hand any secured creditor may be entitled to enforce the secured asset created in its favour on its own without resorting to any court proceedings approaching the Tribunal, such enforcement should be in conformity with the other provisions of the SARFAESI Act.

31. The Hon'ble Supreme Court has also laid down in Ram Kishun & Ors. Vs. State of Uttar Pradesh and Others(2012) 11 SCC 511 has laid down after considering principle laid down by Hon'ble Supreme Court in Duncans Industries Ltd. Vs. State of U.P(2000) 1 SCC 633, in which the Hon'ble Supreme Court explained that reserve price limits the authority of auctioneer. The concept of reserve price is not synonymous with the valuation of the property. These two terms operate in different spheres as under:

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

32. It is also pertinent to mention here that as per valuation report the property in question was locked at the time of inspection as per valuer. The valuation report on the basis of which the property in question was auctioned is contradictory with previous valuation report of the bank. The respondent bank has failed in compliance of Rule 8(5) of the SARFAESI Rules in relation to fixation of reserve price as held by Hon'ble Supreme Court. In the said situation, the auction sale in question is also liable to be quashed due to non-compliance of Rule 8(5) of SARFAESI Rules, 2002 alone.

33. It is clear from the above discussions, that the respondent bank has taken action in relation to auction sale in question and physical possession in contravention of Rules 8(5), 8(6), 9(1) and 4 of SARFAESI Rules, 2002 and Section 13(8) of SARFAESI Act. All the provisions are of mandatory in nature as held by Hon'ble Supreme Court and Hon'ble High Courts and the respondent bank was duty bound to comply in strict manner. The auction sale in question in absence of compliance of the said provisions including physical possession is not sustainable and liable to be set aside.

34. The subsequent purchasers are not entitled for any relief in the light of provisions of Section 52 of Transfer of Property Act, 1882, as held in Samarendra Nath Sinha Vs. Krishan Kumar Nag A.I.R. 1967 SC1440 that under the doctrine of lis pendens, the purchaser pendente lite is bound by the result of litigation on the principle that since the result must bind the party to it, so must it bind the person deriving his right, title and interest from or through him.

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The doctrine is therefore, based upon expediency and it is immaterial whether the transferee pendente lite had or had not notice of the suit.

The principle of the doctrine of 'lis pendens' embodied in the section is expressed by the maxim 'pendente lite nihil innovetur' (pending litigation no new thing be introduced). The doctrine as observed by Turner, L. J. in bellamy Vs. Sabine(1857) 1 Dec & J 566 rests 'upon this foundation that it would plainly be impossible that any action or suit could be brought to a successful termination if alienations pendente lite were allowed to prevail. The plaintiff would be liable in every case to be defeated by defendants, alienating before the judgement or decree, and would be driven to commence his proceedings de novo subject again to the same course of proceedings.

35. In view of the discussions held in the preceding paragraphs of this judgement, the possession notice dated 30.07.2021, auction sale notice dated 26.10.2021 as well as auction dated 15.11.2021 are set aside and subsequent actions thereof. Consequently the Securitization application is allowed.

36. The Sale Certificate and registration of Sale Certificate, subsequent sale deed in favour of subsequent purchasers have no legal force and the Applicants are entitled for restoration of physical possession. The respondent bank is directed to restore physical possession of the property in question in favour of Applicant of S.A. No. 141 of 2022 by providing physical possession to applicant.

37. The Respondent Bank is directed to return the auction amount to the Auction Purchaser along with simple interest @7% per annum from the date of deposit till the date of payment. The subsequent purchasers

shall be entitled to claim relief against the auction purchaser as per remedy available to him in law.

38. The respondent bank is further directed to give the outstanding amount to the applicants of S.A. No. 116 /2021 and S.A. No. 141/2022 within a period of fifteen days from the date of this judgment, who shall deposit the same within 30 days thereafter, failing which, the respondent bank shall be free to proceed with the matter of recovery of its amount by issuance of possession notice afresh in accordance with law.

Interim order, if any vacated. All Interim Applications are disposed off in the light of above.

Record be consigned.

If any party is not satisfied with this judgement may approach Hon'ble Debts Recovery Appellate Tribunal, Allahabad in Appeal under Section 18 of the S.A.R.F.A.E.S.I. Act.

Dated: 08.07.2026

08.07.2026

(Umesh Kumar Sharma)
Presiding Officer
DRT, Dehradun