Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 01st DAY OF SEPTEMBER, 2026

PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No.1053/2025

P.Subramanian,
Prop: M/s. UPS Traders,
2A, Arasaradi 2nd Street,
Cheranmahadevi,
Tirunelveli – 627 414. --- Applicant

-Vs-

Bank of Maharashtra,
Rep. by its Authorised Officer,
Zonal Office,
New No. 25 & 27, Old No. 43,
Akshaya Shanti,
Annasalai, Chennai – 600 0002. --- Defendant Bank

Appearance of Advocates:
Mr. R.Ravichandran ---- ***Counsel for the Applicant***
Mr. J.Shenbagalingam ---- ***Defendant Bank***

This SARFAESI Application was heard in the presence of Counsel for the Applicant, the Defendant Bank Counsel and fixed for passing final order before me and upon hearing the arguments of the Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

O R D E R

1. This Application has been filed under Section17(1) of the SARFAESI Act 2002 by the Applicants praying that this Hon'ble Tribunal may be pleased to cancel the auction sale proceeding dated 06.09.2024 of the defendant bank and consequently direct the defendant bank to refund the petitioner sum of Rs.52,27,500/- to the applicant with interest at the rate of 18% from the date of payment till the date of refund and pass such further or other orders which this Hon'ble Court deems fit and proper under the circumstances of the case and thus render justice.

2. The brief averments of the Application filed by the Applicant are as follows:-

a) The Counsel for the Applicant submitted that, this SARFAESI application directing the defendant bank to refund the auction bid amount of Rs.52,27,500/-, including the earnest money of Rs.8,50,000/- paid by the applicant within the time frame stipulated by this Hon'ble Court, since the defendant bank has suppressed the subsistence of two encumbrances, i.e., court attachments subsisting over the schedule mentioned properties for several Crores, in the auction sale notice, which is in violation of the SARFAESI Act and Rules. As per Rule 8 (7) (b) of the Security Interest (Enforcement) Rules, 2002:

8. Sale of immovable secured assets.- (1) Where the secured asset is an immovable proper[y, the authorised 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.
[(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web- site of the secured creditor, which shall include;
(a) the description of the immovable property to be sold, including the details of the encumbrances Known to the secured creditor;

b) It is further submitted that, on 24.07.2024, the Respondent Bank issued an e-auction sale notice for the sale of immovable properties mortgaged with reference to the loan availed by M/s. Satyam Educational Trust, Aralvaimozhi, under the SARFAESI Act and Rules, and the e-auction sale was fixed on 06.09.2024.

c) It is further submitted that, in the e-auction sale notice, the 2nd item of property, i.e., the land and building to an extent of 5.7 cents bearing S.No. Gat. No. R.S. No.252/5A within the jurisdiction of Sub Registrar, Thovalai, and the land and building to an extent of 12 cents bearing S.No. Gat. No. R.S. No.252/7 within the jurisdiction of Sub Registrar, Thovalai, described in the schedule hereunder. It is submitted that the Defendant has fixed the reserve price of Rs.85,00,000/- and the earnest money deposit (EMD) was fixed as Rs.8,50,000/-.

d) It is further submitted that, accordingly, the Applicant participated in the auction intended to bid for the said 2nd item of property described in the sale notice, and the Applicant had paid earnest money deposit of Rs.8,50,000/- to the Defendant Bank through e-wallet and participated in the e-auction held on 06.09.2024. The Defendant had declared the Applicant as the highest bidder for a sum of Rs.1,74,25,000/- for the property described hereunder.

e) It is further submitted that, pursuant to the E-Auction, the Applicant has paid the balance in 25% bid amount of Rs.43,46,250/- to the Defendant Bank. Hence, the Bank has issued sale confirmation letter dated 06.09.2024 in favour of the Applicant. It is also submitted that the Bank has sent a letter dated 09.09.2024 to the Applicant for acceptance of bid for purchase of the schedule property. It is further submitted that as per Clause (4), the balance payment of Rs.1,30,68,750/- is to be paid on or before 21.09.2024. (5) In case the payment is not made as above said, the bank shall be at liberty

to forfeit the amount deposited by you and to put the said assets to resale without any intimation or note to you.

f) **It is pertinent to note that the para No.2 (b) of the sale notice dated 24.07.2024 : Caution To Bidders:**

b) to the best of knowledge and information of the authorized officer there are no encumbrance on the property.

As per Rule (7) of the Security Interest (Enforcement) Rules, 2002 : (a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

g) It is also submitted that, as per the above said provisions of Rule (7)(b) of the Security Interest (Enforcement) Rules, 2002, the Authorized Officer has to mention the known encumbrance of the property. But the Bank, with an intention to defraud the auction purchaser or by negligence, suppressed the two attachment orders passed in O.S.No.124/2012 by the learned District Judge, Nagercoil, and O.S.No.24/2017 by the learned Additional District Judge, Nagercoil, which was in total violation of the provision of Rule (7)(b) of the Security Interest (Enforcement) Rules, 2002.

h) on 10.09.2024, upon verification of the encumbrances on the above said properties, it was a shock and surprise that there are two court attachments passed by the District Judge, Kanyakumari at Nagercoil, in E.P.No.1 of 2017 in O.S.No.124 of 2012 for Rs.4,53,49,372/- with interest and cost, and another attachment passed by the Additional District Judge, Nagercoil, in I.A.No.92 of 2017 in O.S.No.24 of 2017 against the above said property as well as other properties. The same have not been disclosed in the e-auction sale notice issued by the Defendant, which is in violation of the SARFAESI Act and Rules.

i) It is further submitted that, Applicant has sent an email to the Defendant Bank requesting to take steps to clear the attachment order over the said property and extend the date to pay the remaining amount. On receipt of the said mail, instead of sending either a reply to his mail or taking any steps to raise the attachment order, the Bank called the Applicant over phone and advised the Applicant to make yet another further payment for the bid amount not less than 5% of the sale proceeds, failing which the Bank will forfeit the bid amount. Further, the Authorized Officer assured the Applicant that he will be taking further steps to file necessary application to raise the attachment order only on payment of 5% of the bid amount.

j) It is further submitted that while so, the Applicant came to know that the Borrower has filed a Securitization Application in S.A.No.571 of 2024 before the Debts Recovery Tribunal, Madurai, and the same is still pending adjudication. The Authorized Officer gave an assurance that he will take steps for disposal of the appeal as early as possible.

k) It is further submitted that without any other option, the Applicant has deposited additional 5% of bid amount of Rs.8,71,250/- to the Defendant Bank on 19.09.2024. Totally, the Applicant has paid Rs.52,27,500/- so far. That the said attachments are made in the year 2017 for several Crores of rupees, the Respondent has wantonly suppressed the facts, and the title of the property is not clear, and the Defendant has not taken any steps to clear the said encumbrances.

l) It is further submitted that the Applicant has sent another email to the Defendant requesting to take steps to clear the attachment order subsisting over the said property to enable the Applicant to pay the remaining amount. Since no action was taken by the Defendant, on 05.12.2024, the Applicant has sent a registered letter to the Respondent requesting to refund the amount of Rs.52,27,500/- paid

by the Applicant. But so far, the Defendant has not taken steps to refund the amount paid.

m) It is further submitted that in order to get refund of the said bid amount of Rs.52,27,500/-, the Applicant is a third-party bidder to the auction proceedings. Hence, the Applicant had filed a writ petition before the Hon'ble Madurai Bench of Madras High Court. The said Writ Petition No.5435/2025 was dismissed by its order dated 06.06.2025 with direction to the Applicant to approach the DRT for alternative remedy under Sec.17(1) of the SARFAESI Act.

n) On receipt of the final order dated 06.06.2025, he obtained a certified copy on 19.06.2025 before the Hon'ble High Court and filed this application on the following grounds set out below.

- That the Defendant Bank is duty bound under Section 13(4) of the SARFAESI Act and Rule 8(7)(a) of the Security Interest (Enforcement) Rules, 2002, to disclose all the encumbrances subsisting on the properties to be auctioned and to deliver the property free from all encumbrances known to them.

- That the Petitioner has participated in the e-auction sale based on the statement made in the e-auction sale notice that "To the best of knowledge and information of the Authorised Officer, there are no encumbrances on the properties".

- That the court attachments are made in the year 2017 itself for several Crores of rupees. The Respondent has wantonly suppressed the facts, which is against the public policy and in violation of the principles of natural justice.

- That it is well settled law that the Bank could auction the property even with encumbrances attached to the property, but it was incumbent upon the Bank to disclose the encumbrances and litigations on the same or tenancy, if any, attached to the property to all the persons who wanted to participate in the same and to the successful bidder. By including a clause of "as is where is", it would not be sufficient for the Respondent from disclosing encumbrances or handing over the property.

- That it is well settled law that any violations of the procedures contemplated under Rule 9 of the Security Interest (Enforcement) Rules would cause infringement of the right of bona fide Auction Purchasers of the secured assets auctioned by the secured creditors. True disclosure of the facts and the status of the secured assets are of paramount importance in order to protect the interest of the Auction Purchasers. Any violations in this regard would cause prejudice to the interest of Auction Purchasers.

- It is pertinent to note that the photo showing the mortgaged properties uploaded on the Bank website is totally different from the actual availability in the ground reality. It could be seen from the photos submitted in the type set, and it was proved that the Bank has been making fraud to sell the property through more property to attract more bidders.

SCHEDULE OF PROPERTIES

1. All that part and parcel of the land and building constructed and to be constructed on 5.7 cents, bearing S.No./Gat/No. R.S.No. 252/5A, within the jurisdiction of the Sub-Registrar, Thovalai, the said plot is bounded as under:

   On or towards the East: National Highway

On or towards the West: Property of Kovil

On or towards the North: Property of Subramania Pillai & Balakrishnan

On or towards the South: Property of Meenatchi & Ramasamy

2. All that part and parcel of the land and building constructed and to be constructed on 12.00 cents, bearing S.No./Gat/No. R.S.No. 252/7, within the jurisdiction of the Sub-Registrar, Thovalai, the said plot is bounded as under:

On or towards the East: National Highway

On or towards the West: Property of Kovil

On or towards the North: Property of Subramania Pillai & Balakrishnan

On or towards the South: Property of Meenatchi & Ramasamy

The Applicant has submitted the following List of documents in support of his claim in the SA, which are as follows:

SI.No	DATE	PARTICULARS
1	20.06.2025	Memorandum of application
2	06.01.2017	Attachment order passed by the District Judge, Kannyakumari at Nagercoil in E.P. No. 1 of 2017 in O.S. No.124 of 2012
3	03.07.2018	Additional District Judge, Nagercoil in I.A. No. 92 of 2017 in O.S. No. 24 of 2017
4	24.07.2024	Auction Sale Notice issued by the Respondent
5	06.09.2024	Sale Intimation letter issued by the Respondent
6	09.09.2024	Sale acceptance letter issued by the Respondent
7	09.09.2024	RTGS Payment acknowledgement
8	Nil	Email sent by the Petitioner

9	Nil	Email sent by the Petitioner
10	05.12.2024	Letter sent by the Petitioner with postal acknowledgement
11	06.06.2025	Writ order passed in W.P(MD) No5435/2025 by the Hon'ble Madurai Bench of Madras High Court,

3. On the other hand, the Counsel for the Defendant Bank appeared and filed Reply Statement and Typed set wherein it was submitted that, the main claim of the Applicant is that he came to know of an encumbrance in the secured property on 10.09.2024 (admitted in Para 7 at page 7 of the main SA). Thus, the limitation starts from his date of knowledge, i.e., 10.09.2024. The Applicant had not stated any reason to condone the delay for filing the SA on 24.06.2025 from the date of 10.09.2024.

a) It is further submitted that, the Applicant's knowledge on 10.09.2024 was also recorded in Para No.5 of the judgment dated 06.06.2025 of the Hon'ble Madras High Court, Madurai Bench, in Writ Petition W.P.(MD).No.5435 of 2025 (Para No.5, Page 67 of the main SA).

b) It is further submitted that, the Applicant's above knowledge of encumbrance is also acknowledged by his email dated 19.09.2024 & 21.09.2024 sent to the Defendant Bank seeking extension for balance sale consideration by 21.11.2024, the Doc.No.9 of his Typed set of papers, Page 57 & 58. To suppress such fact, the Doc.No.9 is filed as an undated document.

c) It is further submitted that, the Defendant Bank, even in their email dated 21.11.2024, had categorically communicated that time will not be extended for paying the balance sale consideration beyond 03.12.2024, failing which the Defendant Bank will forfeit the

deposited sum, i.e., Rs.52,27,500/- (rupees fifty-two lakhs twenty-seven thousand five hundred only), and put the subject property for re-sale, without any further notice to the Applicant. Thus, limitation also starts from Defendant Bank's email dated 21.11.2024. The Applicant's above knowledge of encumbrance is also acknowledged by his email dated 05.12.2024, Doc.No.8 of his Typedset of papers, Page 54 to 56.

d) It is further submitted that, the Applicant also claims that a letter dated 05.12.2024, the Doc.No.9 of his Typedset of papers, Page 59 & 60, was sent seeking refund of the bid amount, which was not replied to by Defendant Bank. It is settled law that the Applicant's knowledge of encumbrance on 10.09.2024 and the period of limitation cannot be extended or saved by sending/exchanging communications from 10.09.2024. Even from such date, 05.12.2024, also, the main SA is hit by limitation, as the Applicant had not stated any reason to condone the delay for filing the SA on 24.06.2025 from 05.12.2024.

e) It is further submitted that, the Applicant filed Writ Petition W.P.(MD).No.5435 of 2025 only on 26.02.2025. His knowledge from 10.09.2024 to 26.02.2025 is also hit by limitation even on 26.02.2025 for filing a SA on the said date.

f) It is further submitted that, the Applicant also suppressed the Judgment and directions passed by the Hon'ble Madras High Court, Madurai Bench, on 06.06.2025 in W.P.(MD).No.5435 of 2025, which are as follows: "Para No.14: In this regard, it is needless to state that the period during which the writ petition was pending before this Court is to be taken into consideration for the purpose of condoning the delay. In respect of any previous delay, the petitioner is at liberty to file an appropriate affidavit assigning reasons, which may be

considered on merits and in accordance with law" (Para 14 at Page 67 of the main SA Typed set of papers). The writ petition pending period is 26.02.2025 to 06.06.2025. Thus, the Applicant has not stated any reason for the delay period from 10.09.2024 to 25.02.2025; thus, the present SA is hit by limitation.

g) It is further submitted that, the Applicant made yet another false misrepresentation that, during the hearing of the writ petition, he gained knowledge that the 30% bid amount was forfeited and also recorded in Page No.3, Para No.3, by which the present SA is filed. No such forfeiture statement is made or recorded in the Judgment dated 06.06.2025 at Page No.3, Para No.3, by the Hon'ble Madras High Court, Madurai Bench, in Writ Petition W.P.(MD).No.5435 of 2025.

h) It is further submitted that, after claiming knowledge of Encumbrance on 10.09.2024, the Applicant made further payment of Rs.8,71,250/- on 19.09.2024. The said fact is also recorded in Para No.5 of the judgment dated 06.06.2025 of the Hon'ble Madras High Court, Madurai Bench, in Writ Petition W.P.(MD).No.5435 of 2025. No prudent person will make further payment after knowing any encumbrance.

i) It is further submitted that, the main SA is also non-maintainable for Non-Joinder of Necessary parties. The core issue in the main SA is the alleged attachment encumbrance of Doc.No.3 of 2017 & Doc.No.3 of 2020, caused only at the behest of the Borrower/Guarantor, 1. The Sathyam Educational Trust, Rep. by its Chairman A.Thinakar and 2. Mr.Thinagar, the 3. M/s I.K.Construction, Rep. by its Proprietor, and 4. Mr.Zafrullakahan, at whose instance the attachment order is passed. The above said persons are not made as necessary parties to the main SA, to decide

whether the attachment entries are made at the behest of the Defendant Bank and whether they made the Defendant Bank as a party to the litigations/civil suit filed by them.

j) It is further submitted that, the Applicant is well aware that the Defendant Bank is neither a party nor connected with the litigations pertaining to the alleged attachment encumbrance of Doc.No.3 of 2017 & Doc.No.3 of 2020. The Applicant is also well aware that the Defendant Bank is having first charge over the secured property as it was Mortgaged as per MODT Doc.No.1496 of 2007, 275 of 2008, 863 of 2008, 578 of 2009, 723 of 2010, 656 of 2011 (pertaining to Item No.2 property) by depositing the Title Deeds. The alleged encumbrance is only of the year 2017 & 2020 as Doc.No.3 of 2017 & Doc.No.3 of 2020. Only after concluding the above fact on 10.09.2024, the Applicant made further payment of Rs.8,71,250/- on 19.09.2024.

k) It is further submitted that, the Applicant is suppressing his inability to pay the balance 70% sale consideration, by which the present SA is an after-thought and a delayed proceeding is initiated, apprehending forfeiture of 30% bid amount already paid, i.e., Rs.52,27,500/- (rupees fifty-two lakhs twenty-seven thousand five hundred only). The Applicant also suppressed the fact that the Borrower/Guarantor has also filed S.A.No.571 of 2024, challenging sale notice dated 24.07.2024 scheduling auction sale on 06.09.2024, to which he is also a party to the said SA.

l) It is settled law that the above SA is not maintainable as per Statute, which is hit by Limitation, and the same cannot be condoned as per settled dictums. To overcome such issues and Law, the Applicant made fraudulent misrepresentation to condone the delay in filing the main SA.

m) It is further submitted that, the Defendant Bank could not raise the above objections before the delay is condoned, as the necessary counter affidavit and necessary documents could not be filed at the prevailing time, to substantiate before this Hon'ble Tribunal that the main SA is not Maintainable on the Ground of Limitation.

n) It is further submitted that, the delay is condoned as if the Applicant approached this Hon'ble Tribunal immediately after the receipt of the judgment dated 06.06.2025 in W.P.(MD).No.5435 of 2025. The directions of Hon'ble High Court, regarding condonation of previous delay before approaching Hon'ble Court, are totally suppressed and misrepresented by the Applicant.

o) It is further submitted that, the suppression and misrepresentation came to know only while preparing the Reply Statement in the subject SA.

p) It is further submitted that, the Applicant had raised the only Ground and bald allegation that Defendant Bank did not disclose the known encumbrance while issuing the auction sale notice. The Applicant had not filed any proof/document to prove that Defendant Bank had prior knowledge regarding the encumbrance before issuing the auction sale notice.

q) It is further submitted that, the Applicant is well aware that Defendant Bank is not a party to any of the court proceedings/attachment entry.

r) It is further submitted that, the Applicant is well aware that Defendant Bank is having first charge over the secured property as per MODT Doc.No.1496 of 2007, 275 of 2008, 863 of 2008, 578 of

2009, 723 of 2010, 656 of 2011. The alleged encumbrance is only of the year 2017 & 2020 as Doc.No.3 of 2017 & Doc.No.3 of 2020.

s) It is further submitted that, for the reasons stated above, the Defendant Bank prays that this Hon'ble Tribunal decide the issue of Maintainability of the main SA on the admitted facts as a preliminary issue, as the same is barred by limitation and non-joinder of necessary parties. The Defendant Bank is also filing a separate Interlocutory Application along with this Reply Statement to decide the issue of Maintainability of the main SA on the admitted facts as a preliminary issue.

t) It is further submitted that, the Defendant Bank had followed the due procedure prescribed under the Code, and the above facts will prove that the allegation made by the Applicant to the contra is false.

Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the Application with cost and thus render justice.

TYPED SET OF DOCUMENTS FILED BY THE DEFENDANT BANK

Sl. No.	Date	Particulars
1.	19.09.2024 & 21.09.2024	Applicant's knowledge of encumbrance on 10.09.2024 is acknowledged by his emails dated 19.09.2024 & 21.09.2024 sent to Defendant Bank – Doc.No.9 of Applicant's Typed set of papers – An undated paper.
2.	21.11.2024	Applicant's knowledge of encumbrance on 10.09.2024 is acknowledged by his email dated 21.11.2024 sent to Defendant Bank – Doc.No.8 of Applicant's Typed set of papers – An undated paper.
3.	21.11.2024	Email sent by Defendant Bank to the Applicant.
4.	06.12.2024	Applicant's knowledge of encumbrance on 10.09.2024 is acknowledged by his email 06.12.2024 of letter dated 05.12.2024 sent to Defendant Bank – Doc.No.10 of Applicant's Typed set of papers.

Sl. No.	Date	Particulars
5.	26.02.2025	Filing status of W.P.(MD).No.5435 of 2025 by Applicant before the Hon'ble Madras High Court, Madurai Bench.
6.	06.06.2025	Judgment passed by the Hon'ble Madras High Court, Madurai Bench, in W.P.(MD).No.5435 of 2025.

4. *ON THE BASIS OF ABOVE PLEADINGS, THE POINT WHICH ARISES FOR CONSIDERATION IS: -*

Whether the Applicants is entitled to get the reliefs as prayed for?

5. Having heard the parties, I perused the entire documents available on record, this Tribunal finds that, at the outset, the objection raised by the Defendant Bank regarding limitation requires consideration. The present S.A. was filed on 24.06.2025 with a delay of 241 days. The Applicant has filed an application seeking condonation of the said delay and has explained the circumstances under which he pursued the matter through correspondence with the Defendant Bank and thereafter approached the Hon'ble High Court.

6. It is not in dispute that the Applicant came to know about the court attachments on 10.09.2024. However, the materials placed before this Tribunal show that, thereafter, the Applicant corresponded with the Defendant Bank regarding the attachments and sought extension of time for payment of the balance sale consideration. He also brought to the notice of the Bank the pendency of S.A. No.571 of 2024 and subsequently sought refund of the amount already deposited.

7. The Applicant thereafter approached the Hon'ble Madurai Bench of the Madras High Court by filing W.P.(MD) No.5435 of 2025 on 26.02.2025. The said writ petition was disposed of on 06.06.2025. The Hon'ble High Court specifically observed that the period during which the writ petition

was pending is to be taken into consideration for the purpose of condoning the delay and permitted the Applicant to explain the previous delay by filing an appropriate affidavit.

8. Considering the explanation offered by the Applicant, the correspondence exchanged between the parties, the fact that the Applicant had pursued his grievance before the Hon'ble High Court, and the specific observations made by the Hon'ble High Court, this Tribunal is of the considered view that the Applicant has shown sufficient cause for the delay of 241 days. Accordingly, the delay of 241 days in filing the present S.A. is condoned.

9. Coming to the merits of the case, the undisputed facts are that the Defendant Bank issued the e-auction sale notice dated 24.07.2024, and the Applicant was declared the successful bidder on 06.09.2024 for a sum of **Rs.1,74,25,000/- (Rupees One Crore Seventy-Four Lakhs Twenty-Five Thousand only).** Pursuant to the said auction, the Applicant deposited a total sum of **Rs.52,27,500/- (Rupees Fifty-Two Lakh Twenty-Seven Thousand Five Hundred Only).**

10. It is also evident from the documents produced by the Applicant that the court attachments relied upon by him were dated 06.01.2017 and 02.07.2018, much prior to the issuance of the e-auction sale notice dated 24.07.2024.

11. The important question that arises for consideration is whether the Defendant Bank was required to disclose the said attachments in the sale notice. Rule 8(7)(a) of the Security Interest (Enforcement) Rules, 2002 requires the sale notice to contain

> ***(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor.***

12. In the present case, the Defendant Bank, in the sale notice, specifically stated under the heading "Caution to Bidders" that, to the best of the knowledge and information of the Authorised Officer, there were no encumbrances on the property. The same sale notice also contained a general condition requiring intending bidders to make their own independent enquiries and stating that the property was being sold with existing and future encumbrances, whether known or unknown to the Bank.

13. The general disclaimer contained in the sale notice cannot, however, be construed as completely absolving the secured creditor of its statutory obligation to disclose material encumbrances known to it. The requirement upon an intending bidder to conduct an independent enquiry and the statutory duty of the secured creditor to disclose known encumbrances operate in different fields.

14. The purpose of requiring disclosure of encumbrances is to enable a prospective purchaser to take an informed decision before participating in the auction. A subsisting court attachment affecting the property is a material circumstance which a prospective auction purchaser would necessarily take into consideration before committing a substantial amount towards the purchase.

15. The Defendant Bank has contended that it was not a party to the proceedings in which the attachments were passed and that the Applicant has not established that the Bank had prior knowledge of the attachments. However, the said attachments were created several years prior to the issuance of the sale notice. The Bank, while bringing the property to public auction, was required to exercise due diligence regarding the status of the property and make proper disclosure of the material encumbrances known to it.

16. The subsequent correspondence between the parties also assumes significance. Immediately after coming to know about the attachments, the Applicant approached the Defendant Bank, sought clarification and requested appropriate action. He also sought extension of time for payment of the balance sale consideration. However, by its communication dated 21.11.2024, the Defendant Bank insisted upon payment within the stipulated time without satisfactorily addressing the grievance relating to the court attachments.

17. The contention of the Defendant Bank that the Applicant suppressed the pendency of S.A. No.571 of 2024 also does not merit acceptance. The Applicant has specifically stated that the pendency of the said S.A. was brought to the notice of the Defendant Bank in his communication. Therefore, the allegation of deliberate suppression of the said proceeding is not established.

18. The further contention that the Applicant made an additional payment of **Rs.8,71,250/- (Rupees Eight Lakh Seventy-One Thousand Two Hundred Fifty only)** on 19.09.2024 even after coming to know about the attachments also cannot, by itself, defeat his claim. The said payment has to be considered in the context of the correspondence between the Applicant and the Bank, particularly his request for extension of time and for taking appropriate steps regarding the attachments.

19. It is also relevant to note that the Applicant is a third-party auction purchaser and is not the borrower who created the security interest. His participation in the auction was based upon the particulars and representations contained in the sale notice issued by the secured creditor.

20. An auction purchaser cannot be expected to bear the entire consequence of a material defect or non-disclosure relating to the auction property when the purchaser has acted upon the particulars furnished by the secured creditor. The “as is where is” condition cannot be treated as a

licence for the secured creditor to omit material particulars which are required to be disclosed under the Rules.

21. In the present case, the Defendant Bank has not established that the Applicant was informed, prior to his participation in the auction, about the two court attachments relied upon by him. On the contrary, the Applicant has established that he came to know of the same only on 10.09.2024, after the auction had already taken place.

22. Thereafter, the Applicant sought to have the issue resolved by requesting the Bank to clear the attachments and extend the time for payment. When the issue was not resolved, he sought refund of the amount already deposited. In such circumstances, compelling the Applicant to proceed with the transaction and pay the remaining substantial amount would cause serious prejudice to him.

23. The principle of restitution is intended, as far as possible, to restore a party to the position in which he stood prior to the transaction where the transaction could not be completed on account of circumstances affecting its validity or fairness. The judgment relied upon by the Applicant also recognises the need to protect a bona fide auction purchaser in appropriate circumstances where material facts affecting the auction transaction have not been properly disclosed.

24. Therefore, having regard to the facts and circumstances of the present case, this Tribunal is of the considered view that the Applicant has established that the material court attachments affecting the subject property were not properly disclosed in the auction sale notice and that the general disclaimer contained therein cannot, in the circumstances of this case, absolve the Defendant Bank of its obligation to make proper disclosure.

25. Consequently, the Applicant cannot be compelled to proceed with the auction purchase by paying the balance sale consideration. The amount of **Rs.52,27,500/- (Rupees Fifty-Two Lakhs Twenty-Seven Thousand Five Hundred only)** deposited by the Applicant is liable to be refunded.

In view of the above findings, this Tribunal is of the considered view that the Applicant has made out a case for refund of the amount deposited by him pursuant to the e-auction proceedings. The Defendant Bank is therefore liable to refund the said amount to the Applicant.

In the result, **S.A. No.1053 of 2025 is allowed** and the Defendant Bank is directed to refund a sum of **Rs.52,27,500/- (Rupees Fifty-Two Lakhs Twenty-Seven Thousand Five Hundred only)** deposited by the Applicant pursuant to the e-auction proceedings, together with interest at the rate of **4%** per annum from the respective dates of deposit till the date of actual refund.

Consequently, all pending IAs (if any) are also disposed of. No costs.

Dictated to LDC (KK), taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 01st September 2026.

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 07.09.2026

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