Case Citation: (2026) ibclaw.in 773 DRT

Court of the Presiding Officer
Debts Recovery Tribunal, Lucknow

DEBTS RECOVERY TRIBUNAL, LUCKNOW
PRESIDING OFFICER: SH. VIMAL GUPTA

Order reserved 31.08.2026

Order signed & uploaded 30.09.2026

SA No.- 911/2022

1. **Mr. Sarvjeet Singh** R/o D-1/58, Sushant Golf City, Lucknow, 226030.
2. **Mrs. Shilpi Singh** R/o D-1/58, Sushant Golf City Lucknow, 226030.

.....Applicants

Versus

1. **Canara Bank**, Regional office – 1 Vipin Khand, Gomti Nagar Lucknow, 226010, through its Authorized Officer/Chief Manager, Lucknow.
2. **Mrs. Chandra Lekha Singh** W/o Mr. Ranajai Singh R/o Singh Niwas, Betiahata, Near Hanuman Mandir, Betiahata, Gorakhpur, 273001, Uttar Pradesh.

.....Respondents

Present: -

Sh. Suneet K. Sharma, Counsel for the Applicant

Sh. Praveen Dwivedi, Counsel for the Respondent Bank/FI

Sh. Sarvesh Tiwari, Counsel for the Auction Purchaser

(Final Order)

(31.08.2026)

Order corrected, signed at Jaipur & uploaded on 30.09.2026.

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The facts stated in written arguments are reproduced which throws ample light on facts of case & oral arguments:

1. Counsel for the Applicant has filed written submission and submitted that in the present case the applicants have approached the DRT after issuance of Sale notice dated 25.11.2022 which is one of the measures under Section 13(4) of the SARFAESI Act and thus as per law laid down by the Hon'ble Supreme Court, Hon'ble Gujrat High Court as well as by Hon'ble Allahabad High Court, Lucknow Bench, Lucknow the present Securitization Application is well within time from the last action i.e. Sale Notice dated 25.11.2022 issued under Section 13(4) of the SARFAESI Act, 2002 and as such this Hon'ble Tribunal is fully empowered to examine the validity of demand notice dated 15.06.2018 as the validity of demand notice can only be challenged after the measure under Section 13(4) of the Act have been taken likewise the challenge to the possession notice dated 28.12.2018 is also within limitation as the present S.A. is within time from the last measure taken under Section 13(4) i.e. issuance of sale notice dated 25.11.2022.
2. It is pertinent to mention that as per the language of the Section 17(1) of the Act the applicant has every right to challenge the proceedings from any measure within 45 days and therefore this Hon'ble Tribunal has completed right to examine the validity of the complete proceedings in accordance with law.
3. It is submitted that admittedly as per the documents filed by the respondent Bank along with the reply (Annexure No. R1, pages 15 to 43), the applicants were sanctioned following credit facilities: -
   a) Housing Loan of Rs. 45,50,000/- on 22.03.2014 in which Flat No. R116/ FF, Nehru Enclave, Gomti Nagar, Lucknow owned by Applicant no. 1 Sri Sarvjeet Singh was mortgaged and in this loan Smt. Shilpi Singh was Co-borrower and Sri Dhirendra Pratap Singh was Guarantor.
   b) Mortgaged Term Loan of Rs. 34,50,000/- on 12.09.2014 in which property i.e. Charm wood Villa No. D-1/058, Sector D, Pocket 1,

Sushant Gold City, Sultanpur Road, Lucknow was mortgaged and, in this loan, also Smt. Shilpi Singh was Co-borrower and Sri Amit Kumar Singh was Guarantor.

c) OD (Synd Mortgage) Loan of Rs. 79,00,000/- on 17.04.2015 in which property i.e. (1) Part of Khasra No. 469, admeasuring about 253 Sqr. Mtr., Abbu Sarai, Pargana Haveli Awadh, District Faizabad was mortgaged and the extension of mortgaged properties i.e. (II) Flat No. R-116 FF, Nehru Enclave, Gomti Nagar, Lucknow and (III) Charm wood Villa No. D-1/058, Sector D, Pocket 1, Sushant Gold City, Sultanpur Road, Lucknow was done and, in this loan, also Smt. Shilpi Singh was Co-borrower and Sri Pravesh Kumar Singh was Guarantor.

d) Term Loan of Rs. 5,00,00,000/- on 16.05.2015 in which three properties i.e. (1) Ground Floor, (II) Lower Ground Floor and (III) First Floor of building (vide three separate registered Sale Deeds of each Floor) constructed on Plot No. 20-A/3, East, Raja Ram Mohan Rai Marg, Gokhale Marg, Lucknow were given as primary security and the properties ((IV) Flat No. R-116 FF, Nehru Enclave, Gomti Nagar, Lucknow, (V) Charm Wood villa No. D-1/058, Sector D, Pocket 1, Sushant Golf City, Sultanpur Road, Lucknow, (VI) property Part of Khasra No. 469 admeasuring about 253 Sqr. Mtr., Abbu Sarai, Pargana Haveli Awadh, District Faizabad, along with two other properties i.e. (VII) Part of Khasra No. 469, admeasuring 379.44 Sqr. Mtr., Mohalla Abbu Sarai, Pargana Magalsi, Tehsil and District Faizabad and (VIII) House No. MD 1/309, Sector D, Kanpur Road Yojna, Wad Vidhyawati Devi Nagar, Lucknow were offered as collateral security and in this Loan Smt. Meenu Singh along with Sri Sarvjeet Singh along with Sri Nagendra Pratap Singh were borrower and Sri Pravesh Singh, Smt. Kusum Singh and Smt. Shilpi Singh were Guarantors.

4. is respectfully submitted that as the Hon'ble Apex court vide order dated 06/04/2026 has directed to decide the application under

section 17 of the Act afresh, on remand, therefore the findings of order passed by the Hon'ble High Court under 227 will have no bearing with this present Securitization Application.

5. It is submitted that the respondent Bank initiated Securitization Proceedings against the applicants and issued Demand Notice dated 15.06.2018 in three loan accounts i.e.

(I) Term Loan of Rs. 5,00,00,000/-,
(II) Mortgaged Term Loan of Rs. 34,50,000/- and
(III) OD (Synd Mortgage) Loan of Rs. 79,00,000/-

but while issuing the unserved demand notice dated 15.06.2018 the respondent Bank in the demand notice has only mentioned one property as the secured asset intended to be enforced by the secured creditor as per Section 13(3) of the SARFAESI Act, 2002 i.e. Charm Wood Villa, D-1/508 in Sector D, Pocket 1. Sultanpur Road, Lucknow although, the correct description of Villa is D-1/058, hence demand notice contains wrong description of the property.

Moreover, the details of remaining properties which were also mortgaged as per sanction letters, either as collateral security or primary security i.e.

(I) Flat No. R-116/ FF, Nehru Enclave, Gomti Nagar, Lucknow,
(II) Part of Khasra No. 469, admeasuring about 253 Sqr. Mtr., Abbu Sarai, Pargana Haveli Awadh, District Faizabad,
(III) Ground Floor,
(IV) Lower Ground Floor and
(V) First Floor of building all constructed on Plot No. 20—A/3, East, Raja Ram Mohan Rai Marg, Gokhale Marg, Lucknow,
(VI) Part of Khasra No. 469, admeasuring 379.44 Sqr. Mtr., Mohalla Abbu Sarai, Pargana Magalsi, Tehsil and District Faizabad and

(VII) House No. MD 1/309, Sector D, Kanpur Road Yojna, Wad Vidhyawati Devi Nagar, Lucknow were not mentioned in the demand notice as per requirement of Section 13(3) of the SARFAESI Act, 2002

and on this score alone the initiation of Securitization Proceedings by way of issuance of demand notice dated 15.06.2018 is illegal and bad in law. Thus, it is made clear that the unserved demand notice dated 15.06.2018 issued in the matter is beyond the sanction term.

6. It is submitted that it is a specific case of the applicants that the demand notice is neither addressed to all the borrowers nor the same has been served upon the individual applicants and there is violation of provisions of Section 13 (3), 13(3A) of the SARFAESI Act, 2002 and Rule 3(A) and 3(4) of S.I. Rules, 2002 and the respondent Bank while filing the reply has failed to bring on record the proof of service / Tracking Report of demand notice upon the individual applicants which is mandatory as per Law laid down in Letter Patent Appeal No. 1475 of 2014 Syndicate Bank Versus Rajesh Kumar and others decided by Hon'ble Division Bench of Patna High Court which clearly establishes that the Respondent Bank has failed to issue and serve the demand notice upon the individual Applicants and has violated proviso appended to Rule 3(1) and Rule 3(4) of the S.I. Rules, 2002 and has also infringes the rights of the Applicants as enshrined under Section 13 (3A) of the SARFAESI Act, 2002 which are mandatory in nature.
7. It is submitted that it is a recorded fact as per the demand notice dated 15.06.2018 there are two dates of NPA Classification i.e. 31.01.2017 and 01.04.2017 which is against the clause 2.2.2 of the RBI Guidelines Treatment of NPAs - Borrower-wise and not Facility-wise.
8. It is submitted that admittedly as a matter of record the unserved demand notice issued in the matter is against the sanction terms,

contains two dates of NPA Classification, wrong description of the property and there is Omission of other properties in the said demand notice dated 15.06.2018 as detailed in the sanction letter, hence the initial action i.e. issuance of the demand notice is illegal and arbitrary therefore all the subsequent measures taken in reference to demand notice dated 15.06.2018 are illegal and void and thus liable to be set aside /quashed.

9. It is submitted that after the matter was remanded back by the Hon'ble Supreme Court and that too after a gap of 4 years the Respondent Bank has filed the Supplementary Affidavit dated 25.05.2026 and has brought on record two different unserved demand notices of the same date thereby recalling the same loan accounts (Loan of Rs 5 Crore and Rs 79 Lacs apart from other loan accounts). The said two unserved demand notices subsequently filed by the Respondent Bank contains two dates of NPA Classification, incomplete details of the alleged mortgaged properties (beyond the sanction terms) and even the amount claimed in the said demand notices are different in all respect. Moreover, the Respondent Bank has failed to bring on record the proof of service of the said two subsequent demand notices i.e. postal receipts and Tracking report. Hence as matter of record there are three different types of demand notices of same date issued in the matter and on which the Respondent Bank is itself relying at different stages of the proceedings.

10. It is submitted that the possession notice issued in the matter is not addressed to the individual borrowers as per sanction letter dated 16.05.2015 and the Respondent Bank has even failed to bring on record the complete compliance of Rule 8 (1) and Rule 8 (2) of the S.I. Rules, 2002. Moreover, the compliances of Rule 8 (1) and Rule 8 (2) of the S.I. Rules, 2002 with regard to the other properties has not been filed by the Respondent Bank.

11. With regard to the legality and validity of possession notice dated 28.12.2018, it is submitted that the possession notice dated

28.12.2018 was neither addressed to the individual borrowers (as per sanction) nor the same was served upon the individual applicants as per mandatory requirement of Rule 8(1) and 8(2) of the S.I. Rules, 2002.

12. It is further submitted that the Respondent Bank has not complied Rule 8 (1) in letter and spirit and the possession notice has been allegedly dispatched on 01.01.2019 after delay of 4 days which is contrary to the law laid down by the Hon'ble Madhya Pradesh High Court in the case of Central Bank of India vs. M/s Jain Mineral Water and even the possession notice has not been issued to applicant no. 1 but has been issued to one unknown person **Shri Surjeeet Singh** and to Applicant No. 2 and even before complying the provisions of Rule 8 (1) the Respondent Bank has allegedly published the Possession Notice on 30.12.2018 in which the date of possession notice has been mentioned as 29.12.2018 and moreover, the language of possession notice dated 28.12.2018 alleged to have been dispatched on 01.01.2019 is entirely different from what has been published in the daily newspaper, though as per requirement of the Act, it is mandatory for the secured creditor to publish the possession notice in verbatim as has been issued to the borrowers/ guarantors.

The Respondent Bank has failed to bring on record the Postal Track report of service of possession notice and even the photograph for proof of affixation of possession notice does not contain the date and time to establish that on which date the possession notice was affixed in mandatory compliance of Rule 8 (1) of the SI Rules 2002.

13. Apart from above it is also relevant to submit here that no possession notice has been issued to Shri Pravesh Singh and Smt. Kusum Singh who are the guarantors in the Term Loan of Rs. 5,00,00,000/- which is included in the demand notice and apart from above Sri Pravesh Singh was also guarantor in the Loan Account of Rs. 79,00,000/- which was also included in the demand notice but still no possession notice was issued to Sri Pravesh Singh.

14. It is submitted that the respondent Bank initially obtained order dated 01.03.2023 under Section 14 of the SARFAESI Act, 2002 in respect of property i.e. Charm wood Villa No. D-1/508, Sector D, Pocket 1, Sushant Gold City, Sultanpur Road, Lucknow and the same was challenged before this Hon'ble Tribunal by way of amendment.

15. As soon as the respondent Bank realized that the irregularities and discrepancies occasioned in the order dated 01.03.2023 including the wrong description of the property details in the application under Section 14 and the order, the respondent Bank without informing and seeking liberty from this Hon'ble Tribunal filed another application under Section 14 and obtained subsequent order dated 19.10.2023 under Section 14 of the SARFAESI Act, 2002 from ADM (Judicial), Lucknow in respect of the same property irrespective of the fact that the earlier order dated 01.03.2023 was sub-judice for adjudication before this Hon'ble Tribunal.

16. It is repeatedly submitted here that the respondent Bank filed another application under Section 14 and obtained subsequent order dated 19.10.2023 under Section 14 of the SARFAESI Act, 2002 from ADM (Judicial), Lucknow in respect of the same property irrespective of the fact that the earlier order dated 01.03.2023 was sub-judice for adjudication before this Hon'ble Tribunal and no liberty was sought by the respondent Bank from this Hon'ble Tribunal even the Hon'ble High Court while passing the order dated 20.04.2023 in Writ C No. 3071 of 2023 has nowhere granted liberty to the respondent Bank to file a fresh application under Section 14 of the SARFAESI Act, 2002 in respect of the same property. The execution of both the orders passed under Section 14 i.e. order dated 01.03.2023 and 19.10.2023 was stayed by this Hon'ble Tribunal vise order dated 27.02.2024. Thus, the said action of the Respondent Bank clearly establishes that the Bank obtained the first order dated 01.03.2023 with regard to the property mentioned in the demand

notice dated 15.06.2018 and the subsequent order dated 19.10.2023 which was not part of the demand notice 15.06.2018.

17. It is submitted that both the orders passed under Section 14 of the Act, 2002 are based on wrong and misleading facts which are contrary to the sanction terms and the securitisation notices issued in the matter. Further, the order dated 19.10.2023 under Section 14 has been obtained from ADM (Judicial), Lucknow on the basis of affidavit which was not in consonance with the provisions of Section 14(1)(b), clause (i) to (ix) of the SARFAESI Act, 2002. The respondent Bank while filing the affidavit under Section 14 in para 2 has wrongly mentioned the aggregate amount of financial assistance granted to the applicant and even the total claim of the Bank as on the date of filing of the application which is violation of Section 14 (1)(b)(i) of the SARFAESI Act, 2002, in para 4 of the affidavit the details of security interest over the secured asset has not been given which was mandatory to be mentioned as per Section 14(1)(b)(ii), in para 7 of the affidavit the specified amount as mandatory to be mentioned as per Section 14 (1)(b)(iv) has not been mentioned, the date of NPA has not been mentioned which was mandatory to be mentioned as per Section 14(1)(b)(v), in para 10 of the affidavit the respondent Bank has wrongly mentioned that the borrower has not given any objection against the demand notice under Section 13(2) without bringing on record the proof of issuance and service of demand notice on the individual borrowers and guarantors.

Further, in the application and in affidavit Shri Pravesh Singh and Smt. Kusum Singh were not made party who were the guarantors in the loan account of Rs. 5,00,00,000/-. In the affidavit filed in support of Application under Section 14 the name of father of the person swearing the affidavit has not been mentioned and the verification clause of the affidavit finds mention of date 6th of June, 2023 whereas, the affidavit has been sworn on 09.06.2023.

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Apart from above, the order dated 19.10.2023 passed under section 14 of the SARFAESI Act, 2002 by ADM (Judicial), Lucknow is also against the law as laid down by this Hon'ble Court in the case of M/s Durga Travels Vs. DRT Lucknow and Others in Matter Under Article 227 No. 1133 of 2025 as the directions has been issued to Officer In-charge, thana Sushant Golf City, Lucknow to take physical possession is against the mandate of Section 14(1-A) of the SARFAESI Act, 2002 as the Officer-in-charge, Thana Shushant Golf City, Lucknow cannot be termed as the officer subordinate to Additional District Magistrate (Judicial), even if the functional subordination test is accepted for interpreting Section 14(1-A) as held by the Hon'ble Supreme Court in the case of NKGSB Cooperative Bank Limited.

18. It is submitted that the amount mentioned in sale notice dated 25.11.2022 relating to property i.e. Charm Wood Villa No. D-1/058, Sector D, Pocket 1, Sudhant Golf City, Sultanpur Road, Lucknow is the first sale notice and admittedly the amount claimed in the said sale notice is different to what has been claimed in the Original Application No. 554 of 2020 and the sale notice suffers from several irregularities i.e. the sale notice in respect of property Charm wood Villa No. D- 1/058, Sector D, Pocket 1, Sushant Gold City, Sultanpur Road, Lucknow has not been issued to the guarantor Shri. Amit Singh, the sale notice issued on 25.11.2022 is not as per appendix IV-A the issuance of which was mandatory after the judgment passed by the Hon'ble Supreme Court in the case of Hindon Forge and amendment made in the Act, 2002 in the year 2018.

Further the Respondent Bank has failed to mention the nature of possession held with the bank on the date of issuance of sale notice and even failed to mention the details of encumbrances and pending litigation in the sale notice dated 25.11.2022. The sale notice is alleged to have been dispatched on 25.11.2022 at 16:00 Hrs. i.e. on Friday and the date of sale has been fixed on 28.12.2022 and the

Bank has failed to bring on record the Track Report of service of sale notice dated 25.11.2022 to establish the date on which the sale notice was served upon the Applicants, if it is presumed that the sale notice has been served in three days upon the Applicants then the service of sale notice upon the Applicants can be presumed on 28.11.2022 and if the service of sale notice is done on 28.12.2022 then the sale has been conducted on 30th Day thus no clear 30 days' notice of sale as per requirement of Rule 8 (6) of the S.I. Rules, 2002, hence clear violation of Rule 8 (6) in conducting the sale on 28.12.2022.

19. Further, the affixation photograph of sale notice does not contain the date and time on which it has been affixed and even in the paper publication the date of sale notice has been mentioned as 26.11.2022 which is incorrect and two different outstanding amounts has been mentioned in the sale notices i.e. Rs. 9,81,42,611.26 in respect of sale notice of property i.e. Charm Wood Villa No. D-1/058, Sector D, Pocket 1, Sudhant Golf City, Sultanpur Road, Lucknow and Rs. 10,10,73,895.20 in respect of sale notice of property i.e. R-116/FF, Nehru Enclave, Gomti Nagar, Lucknow which is legally perverse.

20. Apart from above, Shri Pravesh Singh and Smt. Kusum Singh who are the guarantors in Term loan of Rs. 5,00,00,000/- which is included in the demand notice dated 15.06.2018 no sale notice was issued to them. Moreover, Sri Pravesh Singh was also guarantor in loan account of Rs. 79,00,000/- which was also included in the demand notice but still no sale notice was issued to him.

21. It is submitted that the Bid acceptance letter dated 28.12.2022 i.e. Wednesday, issued by the Respondent Bank calling upon the respondent no. 2 Auction Purchaser to remit 25% of the bid amount (less the EMD 10%) on or before 30.12.2022 in itself is contrary to the provisions of Rule 9 (3) of the S.I. Rules, 2002 which very specifically provides that the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit off 25% of the amount of the sale price, which is inclusive

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of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again which itself vitiate the sale conducted on 28.12.2022.

22. It is submitted that the Auction Purchaser i.e. Respondent No. 2 in the entire Counter Reply has failed to bring on record the mode of payment and the date on which the amount of 10% and thereafter 15% was deposited by her and even failed to place on record the mode of payment and the date on which remaining 75% of the sale amount was deposited by Auction Purchaser and in absence of any such documentary evidence in this regard the compliance of Rule 9 (3) and Rule 9 (4) of S.I. Rules, 2002 is not fortified and on this score alone the sale conducted on 28.12.2022 deserve to be set aside by this Hon'ble Tribunal.

23. The sale notice issued on 25.11.2022 published on 26/11/2022 by which auction was conducted on 28.12.2022 is contrary to the law propounded by the Hon'ble Apex Court. The respondent has failed to serve the redemption notice before publishing the same as required in the case of Bafna and further the same is clarified by the Hon'ble Supreme Court in the case of M. Rajendran & Ors. Vs M/s KPK Oils and Proteins India Pvt. Ltd. & Ors.

24. It is submitted that while issuing the Sale Notice dated 25.11.2022 with regard to the property i.e. Charm Wood Villa No. D-1/058, Sector D, Pocket 1, Sudhant Golf City, Sultanpur Road, Lucknow the Respondent Bank issued a separate Sale Notice dated 25.11.2022 with regard to the property i.e. R-116/FF, Nehru Enclave, Gomti Nagar, Lucknow, though no sale was conducted in respect of this property, however it is relevant to clarify that the Respondent Bank has failed to bring on record the service of demand notice, issuance and service of possession notice in reference to which the sale notice was issued i.e. complete noncompliance of Rule 3, 8(1) and 8(2) of the S.I. Rules, 2002 while putting the property R-116/FF, Nehru Enclave, Gomti Nagar, Lucknow on auction.

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25. In view of the aforesaid facts and submissions, it is most respectfully prayed that in the interest of justice, this Hon'ble Tribunal may graciously be pleased to set aside the entire SARFAESI measures including sale notice dated 25.11.2022 by which illegal auction was conducted on 28.12.2022 including all the notice as the same has not been served as per the Rules and the SA No. 911/2022 deserves to be allowed.

Written arguments of Respondent Bank are reproduced below:

26. Counsel for the Respondent Bank has filed written submission and submitted that the answering respondent bank is a bona fide secured creditor and had sold the secured asset strictly for the recovery of public money in accordance with the provisions of the SARFAESI Act, 2002 and the Rules framed thereunder. The sale was conducted through a public e-auction held on 28.12.2022 pursuant to the Auction Sale Notice dated 25.11.2022, after following the due procedure prescribed under law. The Respondent No. 2 was declared the highest and successful bidder in the said auction after participating in a transparent, fair and competitive bidding process. Thereafter, Respondent No. 2 duly complied with all the terms and conditions of the auction sale, including the deposit of the entire sale consideration within the stipulated period. Accordingly, the sale in favour of Respondent No. 2 was lawfully concluded and all consequential rights accrued in his favour. The auction purchaser, being a bona fide purchaser for value without notice of any alleged dispute, is entitled to protection under law, and therefore the sale cannot be assailed on frivolous or untenable grounds.

27. It is submitted that it is also relevant to point out that the Applicants are chronic defaulters and had availed various credit facilities from the Respondent Bank, namely, a Housing Loan of Rs. 45.00 Lakhs, a Term Loan of Rs. 34.50 Lakhs, an OD (Synd

Mortgage) facility of Rs. 79.00 Lakhs, and a Term Loan of Rs. 5.00 Crores. It is pertinent to state that the property in question, namely, Charm Wood Villa No. D-1/58, admeasuring 242 square meters, situated at Sector-D, Pocket— 1, Sushant Golf City, Sultanpur Road, Lucknow Was mortgaged as security in respect of the Term Loan of Rs. 34.50 Lakhs, OD (Synd Mortgage) facility of Rs. 79.00 Lakhs, and the Term Loan of Rs. 5.00 Crores.

28. It is submitted that thereafter, the aforesaid borrowers/guarantors failed to maintain financial discipline and committed persistent defaults in repayment of the outstanding loan dues. Consequently, the respective loan accounts were classified as Non-Performing Assets (NPA) and recovery proceedings were initiated by the Respondent Bank in accordance with law.

29. It is further submitted that the Respondent Bank classified the loan accounts as NPA borrower-wise and not facility-wise, strictly in conformity with the applicable guidelines issued by the Reserve Bank of India and the settled principles governing asset classification.

Accordingly, the loan accounts pertaining to Sarvjeet Singh, Shilpi Singh, Meenu Singh and Nagendra Pratap Singh were classified as NPA on 01.04.2017. However, the Term Loan facility of Rs. 5.00 Crores sanctioned in favour of Meenu Singh, Sarvjeet Singh, Nagendra Pratap Singh, Pravesh Singh, Kusum Singh and Shilpi Singh was classified as NPA on 31.01.2017. The difference in the dates of NPA classification is solely attributable to the fact that the aforesaid facilities related to distinct borrower groups and separate credit facilities, each having an independent repayment track record and asset classification status. Therefore, the classification of the respective loan accounts was carried out independently borrower wise in accordance with the RBI norms applicable to each borrower account. As such, the allegation that different dates of NPA classification render the recovery

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proceedings invalid is wholly misconceived, baseless and liable to be rejected.

30. It is submitted that it is further relevant to point out that Applicant No. 1 was the principal borrower in all the aforesaid credit facilities, whereas applicant no. 2 was also a co-borrower in the said credit facilities. It is also relevant to point out here that the Respondent Bank, for enforcement of the security interest over the property in question, namely, Charm Wood Villa No. D-1/58, admeasuring 242 square meters, situated at Sector-D, Pocket-1, Sushant Golf City, Sultanpur Road, Lucknow, issued a Demand Notice dated 15.06.2018, which is on record at Page Nos. 9 to 12 of the Reply filed by the Respondent Bank dated 27.02.2024.

31. It is submitted that although the aforesaid properties are not directly in question in the present Securitisation Application, however, since the applicants are attempting to mislead this Hon'ble Tribunal by suppressing and misconstruing the material facts relating to the SARFAESI proceedings, the present submissions are being made for proper adjudication of the controversy involved herein.

32. It is submitted that the Respondent Bank had issued separate Demand Notices dated 15.06.2018 in respect of different loan accounts and distinct secured assets. One Demand Notice dated 15.06.2018 was **issued to Sarvjeet Singh, Shilpi Singh, Meenu Singh, Nagendra Pratap Singh and Pravesh Kumar Singh** in relation to the secured asset bearing **Khasra No. 469, admeasuring 253 sq. mtr., situated at Mohalla Abu Sarai, Magalsi, Tehsil and District Faizabad**, whereas another Demand Notice dated 15.06.2018 was issued to **Sarvjeet Singh, Shilpi Singh, Meenu Singh, Nagendra Pratap Singh and Dhirendra Pratap Singh** in respect of the secured asset bearing **Flat No. R-16/FF, admeasuring 143.86 sq. mtr., being a three-storey building situated on the first floor at Nehru Enclave, Gomti Nagar, Lucknow**. Consequent to the aforesaid separate Demand Notices,

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the Respondent Bank had also undertaken independent symbolic possession proceedings in respect of the respective secured assets. Symbolic possession in respect of Flat No. R-16/FF was taken on 28.12.2018 and the Possession Notice was duly published, copy whereof has already been annexed by the Respondent Bank along with its reply dated 27.02.2024 at page nos. 17 and 18.

Similarly, symbolic possession in respect of Khasra No. 469, situated at Mohalla Abu Sarai, Magalsi, Tehsil and District Faizabad, was taken on 07.01.2019 and the corresponding Possession Notice dated 07.01.2019 was duly issued and published in accordance with law.

It is submitted that the possession notice dated 07.01.2019 issued in respect of Faizabad property has already been annexed in the supplementary affidavit dated 25.05.2025 filed on 29.05.2026 at page no. 15.

33. It is submitted that, thereafter, the Applicants/Borrowers filed the present Securitisation Application on 19.12.2022, inter alia, challenging the Possession Notice dated 07.01.2019, Auction Sale Notice dated 25.11.2022, auction sale dated 28.12.2022, order dated 29.11.2022, order dated 01.03.2023 passed by the District Magistrate, Lucknow in Case No. 01963/2019 (Syndicate Bank/Canara Bank Vs. Shilpi Singh and the order dated 19.10.2023. It is further submitted that now, by way of amendment application, the Applicants have sought correction of the date of the Possession Notice from 07.01.2019 to 28.12.2018.

34. At the very outset, Respondent No.1 raises a preliminary objection that the present SA is not maintainable, being hopelessly barred by limitation. The SA was filed on 19.12.2022 challenging the measures under Section 13(4) dated 28.12.2018, whereas the limitation prescribed under Section 17 of the SARFAESI Act is only 45 days. Thus, the SA is barred by about 1406 days. Moreover, no application for condonation of delay has been filed along with the SA and, therefore, the same is liable to be dismissed at the threshold.

35. However, in the Rejoinder, the Applicant has placed reliance upon the judgment passed by the Hon'ble High Court in, namely Vimla Kashyap & Others Vs. Union of India & Others, and has particularly referred to paragraph 14 thereof. It is respectfully submitted that the reliance placed upon the said judgment is wholly misconceived and misplaced. The SARFAESI Act itself is explicit and unequivocal inasmuch as Section 17 specifically mandates that any person aggrieved by the measures taken under Section 13(4) may approach the Tribunal "within forty-five days from the date on which such measures had been taken." Thus, the limitation commences from the date of the impugned measure itself and not from any subsequent or consequential proceeding arising therefrom.

36. It is respectfully submitted that although certain judgments had taken a view that while challenging a subsequent measure, such as an auction notice or sale proceedings, the borrower may also seek to assail earlier measures taken under Section 13(4) of the SARFAESI Act, the Hon'ble Supreme Court in Arce Polymers Put. Ltd. Vs. Alphine Pharmaceuticals Pvt. Ltd. & Others has emphasized the principles of waiver, acquiescence and estoppel in cases where the borrower, despite having knowledge of the SARFAESI proceedings, permits the measures to attain finality and allows third-party rights to crystallize. The Hon'ble Supreme Court has specifically deprecated belated challenges raised after completion of auction proceedings and has protected the rights created in favour of bona fide auction purchasers. In the present case also, the Applicants admittedly did not challenge the Possession Notice dated 28.12.2018 within the statutory period prescribed under Section 17 of the SARFAESI Act and allowed the auction proceedings to attain finality. Having remained silent for several years and having permitted valuable third-party rights to come into existence, the Applicants are now estopped from reopening concluded SARFAESI measures by way of the present belated proceedings.

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37. It is submitted that the Respondent Bank has duly created and registered a valid security interest over the secured asset with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) on 12.09.2014, bearing Security Interest ID No. 400009260469. Therefore, the contention of the applicants that no charge was created or registered with CERSAL is wholly misconceived, incorrect, and contrary to the records. The Respondent Bank has complied with the statutory requirements relating to registration of security interest, and consequently, the proceedings initiated under the provisions of the SARFAESI Act, 2002 are legal, valid, and maintainable.

38. It is submitted that the Respondent Bank had issued a Demand Notice dated 15.06.2018 under Section 13(2) of the SARFAESI Act to the Applicants as well as to the other borrowers/guarantors, namely Mrs. Meenu Singh, Mr. Nagendra Pratap Singh and Mr. Amit Singh, in respect of the Term Loan of Rs. 34.50 Lakhs, OD (Synd Mortgage) facility of Rs. 79.00 Lakhs, and the Term Loan of Rs. 5.00 Crores, thereby calling upon them to discharge the outstanding liability amounting to Rs. 4,96,77,113.96 as on 31.05.2018. By means of the said Demand Notice, the Respondent Bank had also invoked and enforced its security interest over the secured asset/property in question, namely Charm Wood Villa No. D-1/58, admeasuring 242 square meters, situated at Sector-D, Pocket-1, Sushant Golf City, Sultanpur Road, Lucknow.

39. It is submitted that the aforesaid Demand Notice was duly issued and served upon the applicants as well as the other borrowers/guarantors in accordance with the provisions of the SARFAESI Act and the Rules framed thereunder.

40. It is submitted that it is pertinent to mention no notices were returned to the respondent bank which clearly reveals that the demand notice dated 15.06.2018 was duly served to the applicants.

41. It is submitted that once the notice was properly addressed and dispatched through registered/speed post, a statutory presumption of

valid service arises under Section 27 of the General Clauses Act, 1897, unless rebutted by cogent evidence. The applicants have failed to rebut the said presumption. Hence, there has been due and complete compliance with the requirements of Section 13(2) of the SARFAESI Act, and the allegations of non-compliance raised by the Applicants are wholly false, baseless and specifically denied.

42. It is submitted that the allegations raised by the Applicants in the rejoinder regarding alleged non-compliance of Rules 3(1) and 3(4) of the Security Interest (Enforcement) Rules, 2002 and Section 13(3) of the SARFAESI Act are wholly misconceived, baseless and contrary to the record. The Demand Notice dated 15.06.2018 was duly dispatched and served upon the applicants and other borrowers/guarantors, and there is no specific denial of receipt thereof. The alleged mention of house number as "D-1/508" instead of "D-1/058" is merely a typographical/inadvertent error which caused no prejudice whatsoever to the Applicants, particularly when the secured asset was otherwise sufficiently described and well within the knowledge of the Applicants.

is further submitted that mere inadvertent or clerical errors, in absence of any prejudice, do not invalidate proceedings under the SARFAESI Act, as held by the Hon'ble Supreme Court in ***Varimadugu Obi Reddy vs. B. Sreenivasulu & Ors***.,. The remaining objections regarding non-mentioning of collateral securities and alleged non- bifurcation of dues are also untenable and do not render the Demand Notice invalid in the facts and circumstances of the present case.

43. Further, with regard to the allegation that the Demand Notice did not mention other collateral securities, it is submitted that Section 13(3) of the SARFAESI Act merely requires the secured creditor to furnish the details of the secured assets intended to be enforced. In the present case, the Respondent Bank intended to enforce the security interest only in respect of the property in question and, accordingly, complete particulars thereof were specifically

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mentioned in the Demand Notice. Hence, there is no violation whatsoever of Section 13(3) of the Act.

It is further submitted that Section 13(3) only mandates disclosure of the amount payable by the borrower, which requirement stood duly complied with by specifically mentioning the outstanding liability in the Demand Notice. There is no statutory requirement mandating separate bifurcation of principal, interest, costs and other charges in the manner alleged by the Applicants.

44. It is submitted that it is also relevant to point here that Hon'ble DRAT Kolkata in Appeal No. 54 of 2021 (order dated 22.06.2023); ***HDFC Bank versus Deepali Vaidya*** has already held that there is no requirement of mentioning the rate of interest of the principal amount or the accrued interest therein. As such, the Demand Notice dated 15.06.2018 is fully valid, legal and in complete compliance with the provisions of the SARFAESI Act and the Rules framed thereunder.

45. It is further submitted that even assuming, without admitting, that there existed any procedural irregularity at any stage of the proceedings, the Applicants have failed to plead or establish any actual prejudice caused thereby. It is settled law that SARFAESI proceedings cannot be invalidated on mere technicalities in absence of substantial prejudice, particularly where the borrowers had full knowledge of the proceedings and participated therein.

46. It is submitted that with regard to the alleged non-compliance of the Possession Notice, it is most respectfully submitted that the Respondent Bank had duly issued the Possession Notice dated 28.12.2018 strictly in accordance with the provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002. It is pertinent to submit that the said Possession Notice has never been challenged by the Applicants in the present Securitisation Application and, therefore, the legality and validity of the same cannot now be indirectly questioned or assailed by way of vague and omnibus pleadings. Once the Applicants, despite having

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full knowledge of the said measure under Section 13(4) of the Act, failed to challenge the Possession Notice dated 28.12.2018 in accordance with law, the same has attained finality and cannot be permitted to be reopened collaterally at this belated stage.

47. It is submitted that the applicants have subsequently moved an amendment application seeking to alter and improve the nature of the original Securitisation Application by introducing a challenge to the Possession Notice dated 28.12.2018 and the consequential proceedings arising therefrom, after an enormous and unexplained lapse of time. The respondent no.2 has already filed detailed objections to the said amendment application.

It is respectfully submitted that by way of amendment, a time-barred challenge cannot ordinarily be permitted to be introduced so as to defeat accrued rights and vested interests already created in favour of third parties. The proposed amendment seeks to reopen concluded SARFAESI measures which had long attained finality and pursuant where to third-party rights have crystallized in favour of the auction purchaser. Such an amendment is legally impermissible, highly prejudicial to the rights of respondents and liable to be rejected outrightly.

48. It is submitted that without prejudice to the aforesaid submissions, it is further submitted that the Respondent Bank has already brought on record the complete statutory compliances pertaining to the Possession Notice dated 28.12.2018. The Respondent Bank has duly filed copies of the Possession Notice, postal receipts evidencing dispatch, publication of the Possession Notice in two newspapers, as well as documents relating to affixation of the notice upon the secured asset, which are available at Page Nos. 13 to 19 of the Reply dated 27.02.2024 filed by Respondent Bank. The said documents clearly establish full and substantial compliance of the mandatory requirements contemplated under Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002.

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Thus, the allegations raised by the applicants regarding non-compliance of the statutory provisions with regard to the possession notice are wholly misconceived, baseless and contrary to the material available on record, and therefore deserve to be rejected outrightly.

49. It is most respectfully submitted that, with regard to the alleged non-compliance of the Sale/Auction Notice, the applicants themselves have categorically admitted that the Sale Notice dated 25.11.2022 was issued and dispatched on 25.11.2022 at about 16:00 hours fixing the date of auction as 28.12.2022. However, the applicants have attempted to raise frivolous and hyper-technical objections by alleging that the amount mentioned in the Sale Notice differs from the amount claimed in the Original Application earlier filed by the Bank and further that the mandatory period of thirty days was allegedly not complied with. It has also been vaguely alleged that the Sale Notice was not in consonance with Appendix-IV A of the Security Interest (Enforcement) Rules, 2002.

In reply to the aforesaid allegations, it is respectfully submitted that the amount mentioned in the Sale Notice was based upon the outstanding dues recoverable as on the relevant date pursuant to the Demand Notice and subsequent accruals in the loan account. The applicants have deliberately concealed the fact that the Original Application previously instituted by the Bank pertained only to a specific loan account, namely the housing loan account, whereas the dues reflected in the Sale Notice represented the liability recoverable against the secured asset under the SARFAESI proceedings. As such the amount mentioned in the sale notice is correct.

50. It is further submitted that the allegations regarding non-compliance of the thirty days' notice period are wholly baseless, misconceived and founded upon mere conjectures and assumptions. The Sale Notice was admittedly dispatched on 25.11.2022 on the local Lucknow address of the applicants and, therefore, in the ordinary course of business and postal practice, the same would have

been delivered either on the next day or within one day thereafter, i.e., well before the expiry of the statutory period prior to the auction conducted on 28.12.2022. Thus, there has been complete and substantial compliance of the statutory requirement prescribed under the Rules.

Most importantly, the applicants themselves have annexed the copy of the Sale Notice along with the present Securitisation Application, yet they have intentionally failed to disclose the actual date on which the said notice was received by them. The deliberate omission to disclose such material fact clearly demonstrates that the allegations now sought to be raised are nothing but an afterthought and a concocted story devised solely to frustrate and delay the recovery proceedings initiated by the respondent bank.

51. It is submitted that further, the respondent bank has already filed its detailed Reply dated 09.01.2023 along with complete documentary records pertaining to the impugned auction proceedings. The Respondent Bank has placed on record the Sale/Auction Notice, postal receipts evidencing dispatch, affixation along with photographs, newspaper publication at Page Nos. 59 to 74 of the said Reply, which clearly establish due compliance of the mandatory procedure prescribed under the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002.

52. It is further pertinent to submit that although the Applicants have not specifically challenged the valuation of the secured asset, even then, in order to maintain utmost transparency and bona fides, the respondent bank has also filed the Valuation Report dated 08.11.2022 at Page Nos. 44 to 58 of the Reply. Apart from the same, the Respondent Bank has further brought on record the sanction documents, mortgage-related records and other relevant loan documents so as to completely rebut the false, fictitious and misleading allegations levelled by the Applicants.

53. Thus, the entire record placed before this Hon'ble Tribunal unequivocally demonstrates that the Respondent Bank has acted

strictly in accordance with law and has complied with all mandatory statutory requirements at every stage of the proceedings. Accordingly, the allegations of non-compliance raised by the Applicants are wholly untenable, devoid of merit and liable to be rejected out rightly.

54. It is submitted that although there is no specific pleading in the Securitisation Application regarding alleged non-compliance of Rule 9(3) of the Security Interest (Enforcement) Rules, 2002, the applicants, in the rejoinder affidavit filed to the reply of the auction purchaser, have attempted to raise such objection by alleging that time was granted till 30.12.2022 for deposit of 25% of the bid amount in respect of the auction dated 28.12.2022.

However, the applicants have deliberately suppressed the confirmation letter dated 29.12.2022 wherein it is specifically recorded that the respondent bank had already received Rs.25,00,000.00/- towards the requisite balance amount.

55. It is further submitted that the Auction Purchaser had already deposited Rs. 13,90,000.00/- prior to the auction towards EMD and thereafter deposited Rs.25,00,000/- on 29.12.2022. Thus, there is complete compliance of Rule 9(3) of the Rules, 2002 and the allegations raised by the applicants are wholly baseless and misleading.

56. It is submitted that it is a settled principle of law that once an auction sale is conducted in accordance with law and third-party rights have crystallized, the same cannot be lightly interfered with, particularly at the instance of defaulting borrowers who have failed to discharge his liabilities. That the respondent bank has complied all the mandatory provisions provided in act.

57. It is submitted that it is further well settled that the scope of interference under Section 17 of the SARFAESI Act, 2002 does not extend to unsettling concluded sales except in cases of fraud or fundamental illegality, neither of which is present in the instant case. The Hon'ble Supreme Court has consistently held that once sale is

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confirmed and third-party rights are created, the same cannot be Oset aside on mere technical or procedural irregularities.

58. It is most respectfully submitted that the applicants admittedly failed to challenge the Possession Notice dated 28.12.2018 issued under Section 13(4) of the SARFAESI Act within the prescribed statutory period, pursuant whereto the auction sale dated 28.12.2022 was lawfully conducted and valuable third-party rights crystallized in favour of Respondent No.1/ Bank.

59. It is submitted that there has been full and complete statutory compliance by the Respondent Bank with Rules 8(5), 8(6) and 9(3) of the Security Interest (Enforcement) Rules, 2002, including due issuance/publication of the Sale Notice, affixation, valuation and deposit of the requisite sale consideration within the prescribed period. Further, no case of fraud, fundamental illegality or substantial prejudice has either been pleaded or established so as to warrant interference with a concluded auction sale conducted through a transparent process.

60. Accordingly, the present Securitisation Application as well as the amendment applications deserve to be dismissed with exemplary costs, and the auction sale in favour of Respondent No.1/ Bank deserves to be protected and upheld in the interest of justice, equity and finality of statutory proceedings.

Written arguments of Respondent No. 2 i.e. Auction Purchaser are reproduced below:

61. Counsel for the Respondent No. 2 has filed written submission and submitted that the Respondent No.2 most respectfully craves leave of this Hon'ble Tribunal to refer to and rely upon the contents of the pleadings of SA/ Reply filed by Bank and material available on record at the time of hearing of the present Application.

62. It is submitted that the Applicant is a bona fide auction purchaser for value, who has purchased the property in question through a duly

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conducted public e-auction held on 28.12.2022 in pursuant to the auction notice dated 25.11.2022, in accordance with the provisions of the SARFAESI Act, 2002 and the rules framed there under. The Applicant was declared the highest and successful bidder in the said auction after participating in a transparent and competitive bidding process, and has duly complied with all the terms and conditions of the auction, including deposit of the requisite bid amount.

63. It is submitted that it is also relevant to point out that the Applicants are chronic defaulters and had availed various credit facilities from the Respondent Bank, namely, a Housing Loan of Rs. 45.00 Lakhs, a Term Loan of Rs. 34.50 Lakhs, an OD (Synd Mortgage) facility of Rs. 79.00 Lakhs, and a Term Loan of Rs. 5.00 Crores. It is pertinent to state that the property in question, namely, Charm Wood Villa No. D-1/58, admeasuring 242 square meters, situated at Sector–D, Pocket–1, Sushant Golf City, Sultanpur Road, Lucknow, was mortgaged as security in respect of the Term Loan of Rs. 34.50 Lakhs, OD (Synd Mortgage) facility of Rs. 79.00 Lakhs, and the Term Loan of Rs. 5.00 Crores.

64. It is submitted that, thereafter, the aforesaid borrowers/guarantors failed to maintain financial discipline and committed persistent defaults in repayment of the loan dues, as a result whereof the respective loan accounts were classified as Non-Performing Assets (NPA) and recovery proceedings were initiated.

65. It is further submitted that the Respondent Bank classified the loan accounts as NPA borrower-wise and not facility-wise, strictly in accordance with the applicable RBI guidelines and settled principles of law. The loan accounts pertaining to ***Sarvjeet Singh, Shilpi Singh, Meenu Singh and Nagendra Pratap Singh were classified as NPA on 01.04.2017, whereas the Term Loan of Rs. 5.00 Crores sanctioned in favour of Meenu Singh, Sarvjeet Singh, Nagendra Pratap Singh, Pravesh Singh, Kusum Singh and Shilpi Singh was classified as NPA on 31.01.2017***. The difference in the dates of NPA classification is attributable to the fact that the

aforesaid facilities pertained to distinct borrower groups and separate credit facilities and, therefore, the classification was carried out independently with reference to the respective loan accounts.

66. It is submitted that it is further relevant to point out that Applicant No. 1 was the principal borrower in all the aforesaid credit facilities, whereas Applicant No. 2 was also a co-borrower in the said credit facilities. It is also relevant to point out here that the Respondent Bank, for enforcement of the security interest over the property in question, namely, ***Charm Wood Villa No. D-1/58, admeasuring 242 square meters, situated at Sector–D, Pocket–1, Sushant Golf City, Sultanpur Road, Lucknow***, issued a Demand Notice dated 15.06.2018, which is on record at Page Nos. 9 to 12 of the Reply filed by the Respondent Bank dated 27.02.2024.

67. It is submitted that, although the aforesaid properties are not directly in question in the present Securitisation Application, however, since the applicants are attempting to mislead this Hon'ble Tribunal by suppressing and misconstruing the material facts relating to the SARFAESI proceedings, the present submissions are being made for proper adjudication of the controversy involved herein. It is submitted that the Respondent Bank had issued separate Demand Notices dated 15.06.2018 in respect of different loan accounts and distinct secured assets. One Demand Notice dated 15.06.2018 was issued to **Sarvjeet Singh, Shilpi Singh, Meenu Singh, Nagendra Pratap Singh and Pravesh Kumar Singh** in relation to the secured asset bearing **Khasra No. 469, admeasuring 253 sq. mtr., situated at Mohalla Abu Sarai, Magalsi, Tehsil and District Faizabad**, whereas another Demand Notice dated 15.06.2018 was issued to **Sarvjeet Singh, Shilpi Singh, Meenu Singh, Nagendra Pratap Singh and Dhirendra Pratap Singh** in respect of the secured asset bearing ***Flat No. R-16/FF, admeasuring 143.86 sq. mtr., being a three-storey building situated on the first floor at Nehru Enclave, Gomti Nagar, Lucknow***. Consequent to the aforesaid separate Demand Notices, the Respondent Bank had also

undertaken independent symbolic possession proceedings in respect of the respective secured assets. Symbolic possession in respect of Flat No. R-16/FF was taken on 28.12.2018 and the Possession Notice was duly published, copy whereof has already been annexed by the Respondent Bank along with its reply dated 27.02.2024 at page nos. 17 and 18. Similarly, symbolic possession in respect of Khasra No. 469, situated at Mohalla Abu Sarai, Magalsi, Tehsil and District Faizabad, was taken on 07.01.2019 and the corresponding Possession Notice dated 07.01.2019 was duly issued and published in accordance with law.

68. It is submitted that, thereafter, the Applicants/Borrowers filed the present Securitisation Application on 19.12.2022, inter alia, challenging the Possession Notice dated 07.01.2019, Auction Sale Notice dated 25.11.2022, auction sale dated 28.12.2022, order dated 29.11.2022, order dated 01.03.2023 passed by the District Magistrate, Lucknow in Case No. 01963/2019 (Syndicate Bank/Canara Bank Vs. Shilpi Singh), and the order dated 19.10.2023. It is further submitted that now, by way of amendment application, the Applicants have sought correction of the date of the Possession Notice from 07.01.2019 to 28.12.2018.

69. ***At the very outset, Respondent No. 2 raises a preliminary objection that the present SA is not maintainable, being hopelessly barred by limitation. The SA was filed on 19.12.2022 challenging the measures under Section 13(4) dated 28.12.2018,*** whereas the limitation prescribed under Section 17 of the SARFAESI Act is only 45 days. Thus, the SA is barred by about 1406 days. Moreover, no application for condonation of delay has been filed along with the SA and, therefore, the same is liable to be dismissed at the threshold.

70. However, in the Rejoinder, the Applicant has placed reliance upon the judgment passed by the Hon'ble High Court in, namely Vimla Kashyap & Others Vs. Union of India & Others, and has particularly referred to paragraph 14 thereof. It is respectfully submitted that the reliance placed upon the said judgment is wholly

misconceived and misplaced. The SARFAESI Act itself is explicit and unequivocal inasmuch as Section 17 specifically mandates that any person aggrieved by the measures taken under Section 13(4) may approach the Tribunal "within forty-five days from the date on which such measures had been taken." Thus, the limitation commences from the date of the impugned measure itself and not from any subsequent or consequential proceeding arising therefrom.

71. It is respectfully submitted that although certain judgments had taken a view that while challenging a subsequent measure, such as an auction notice or sale proceedings, the borrower may also seek to assail earlier measures taken under Section 13(4) of the SARFAESI Act, the Hon'ble Supreme Court in Arce Polymers Pvt. Ltd. Vs. Alphine Pharmaceuticals Pvt. Ltd. & Others2 has emphasized the principles of waiver, acquiescence and estoppel in cases where the borrower, despite having knowledge of the SARFAESI proceedings, permits the measures to attain finality and allows third-party rights to crystallize. The Hon'ble Supreme Court has specifically deprecated belated challenges raised after completion of auction proceedings and has protected the rights created in favour of bona fide auction purchasers. In the present case also, the Applicants admittedly did not challenge the Possession Notice dated 28.12.2018 within the statutory period prescribed under Section 17 of the SARFAESI Act and allowed the auction proceedings to attain finality. Having remained silent for several years and having permitted valuable third-party rights to come into existence, the Applicants are now estopped from reopening concluded SARFAESI measures by way of the present belated proceedings.

72. It is submitted that the Respondent Bank had issued a Demand Notice dated 15.06.2018 under Section 13(2) of the SARFAESI Act to the Applicants as well as to the other borrowers/guarantors, namely Mrs. Meenu Singh, Mr. Nagendra Pratap Singh and Mr. Amit Singh, in respect of the Term Loan of Rs. 34.50 Lakhs, OD (Synd Mortgage) facility of Rs. 79.00 Lakhs, and the Term Loan of

Rs. 5.00 Crores, thereby calling upon them to discharge the outstanding liability amounting to Rs. 4,96,77,113.96 as on 31.05.2018. By means of the said Demand Notice, the Respondent Bank had also invoked and enforced its security interest over the secured asset/property in question, namely Charm Wood Villa No. D-1/58, admeasuring 242 square meters, situated at Sector–D, Pocket–1, Sushant Golf City, Sultanpur Road, Lucknow.

73. It is submitted that the aforesaid Demand Notice was duly issued and served upon the Applicants as well as the other borrowers/guarantors in accordance with the provisions of the SARFAESI Act and the Rules framed thereunder.

74. It is submitted that once the notice was properly addressed and dispatched through registered/speed post, a statutory presumption of valid service arises under Section 27 of the General Clauses Act, 1897, unless rebutted by cogent evidence. The Applicants have failed to rebut the said presumption. Hence, there has been due and complete compliance with the requirements of Section 13(2) of the SARFAESI Act, and the allegations of noncompliance raised by the Applicants are wholly false, baseless and specifically denied.

75. It is submitted that the allegations raised by the Applicants in the Rejoinder regarding alleged non-compliance of Rules 3(1) and 3(4) of the Security Interest (Enforcement) Rules, 2002 and Section 13(3) of the SARFAESI Act are wholly misconceived, baseless and contrary to the record. The Demand Notice dated 15.06.2018 was duly dispatched and served upon the Applicants and other borrowers/guarantors, and there is no specific denial of receipt thereof. The alleged mention of house number as "D-1/508" instead of "D-1/058" is merely a typographical/inadvertent error which caused no prejudice whatsoever to the Applicants, particularly when the secured asset was otherwise sufficiently described and well within the knowledge of the Applicants.

76. It is further submitted that mere inadvertent or clerical errors, in absence of any prejudice, do not invalidate proceedings under the

SARFAESI Act, as held by the Hon'ble Supreme Court in ***Varimadugu Obi Reddy vs. B. Sreenivasulu & Ors.,.*** The remaining objections regarding non mentioning of collateral securities and alleged non-bifurcation of dues are also untenable and do not render the Demand Notice invalid in the facts and circumstances of the present case.

77. Further, with regard to the allegation that the Demand Notice did not mention other collateral securities, it is submitted that Section 13(3) of the SARFAESI Act merely requires the secured creditor to furnish the details of the secured assets intended to be enforced. In the present case, the Respondent Bank intended to enforce the security interest only in respect of the property in question and, accordingly, complete particulars thereof were specifically mentioned in the Demand Notice. Hence, there is no violation whatsoever of Section 13(3) of the Act.

78. It is further submitted that Section 13(3) only mandates disclosure of the amount payable by the borrower, which requirement stood duly complied with by specifically mentioning the outstanding liability in the Demand Notice. There is no statutory requirement mandating separate bifurcation of principal, interest, costs and other charges in the manner alleged by the Applicants.

79. It is submitted that it is also relevant to point here that Hon'ble DRAT Kolkata has already held that there is no requirement of mentioning the rate of interest of the principal amount or the accrued interest therein. As such, the Demand Notice dated 15.06.2018 is fully valid, legal and in complete compliance with the provisions of the SARFAESI Act and the Rules framed thereunder.

80. It is further submitted that even assuming, without admitting, that there existed any procedural irregularity at any stage of the proceedings, the Applicants have failed to plead or establish any actual prejudice caused thereby. It is settled law that SARFAESI proceedings cannot be invalidated on mere technicalities in absence

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of substantial prejudice, particularly where the borrowers had full knowledge of the proceedings and participated therein.

81. It is submitted that with regard to the alleged non-compliance of the Possession Notice, it is most respectfully submitted that the Respondent Bank had duly issued the Possession Notice dated 28.12.2018 strictly in accordance with the provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002.

82. It is pertinent to submit that the said Possession Notice has never been challenged by the Applicants in the present Securitisation Application and, therefore, the legality and validity of the same cannot now be indirectly questioned or assailed by way of vague and omnibus pleadings. Once the Applicants, despite having full knowledge of the said measure under Section 13(4) of the Act, failed to challenge the Possession Notice dated 28.12.2018 in accordance with law, the same has attained finality and cannot be permitted to be reopened collaterally at this belated stage.

83. It is submitted that the Applicants have subsequently moved an amendment application seeking to alter and improve the nature of the original Securitisation Application by introducing a challenge to the Possession Notice dated 28.12.2018 and the consequential proceedings arising therefrom, after an enormous and unexplained lapse of time. The Answering Respondent has already filed detailed objections to the said amendment application.

84. It is respectfully submitted that by way of amendment, a time-barred challenge cannot ordinarily be permitted to be introduced so as to defeat accrued rights and vested interests already created in favour of third parties. The proposed amendment seeks to reopen concluded SARFAESI measures which had long attained finality and pursuant where to third-party rights have crystallized in favour of the Auction Purchaser. Such an amendment is legally impermissible, highly prejudicial to the rights of Respondent No.2 and liable to be rejected outrightly.

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85. It is submitted that without prejudice to the aforesaid submissions, it is further submitted that the Respondent Bank has already brought on record the complete statutory compliances pertaining to the Possession Notice dated 28.12.2018. The Respondent Bank has duly filed copies of the Possession Notice, postal receipts evidencing dispatch, publication of the Possession Notice in two newspapers, as well as documents relating to affixation of the notice upon the secured asset, which are available at Page Nos. 13 to 19 of the Reply dated 27.02.2024 filed by Respondent Bank. The said documents clearly establish full and substantial compliance of the mandatory requirements contemplated under Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002.

86. Thus, the allegations raised by the Applicants regarding noncompliance of the statutory provisions with regard to the possession notice are wholly misconceived, baseless and contrary to the material available on record, and therefore deserve to be rejected outrightly.

87. It is most respectfully submitted that, with regard to the alleged non-compliance of the Sale/Auction Notice, the Applicants themselves have categorically admitted that the Sale Notice dated 25.11.2022 was issued and dispatched on 25.11.2022 at about 16:00 hours fixing the date of auction as 28.12.2022. However, the Applicants have attempted to raise frivolous and hyper-technical objections by alleging that the amount mentioned in the Sale Notice differs from the amount claimed in the Original Application earlier filed by the Bank and further that the mandatory period of thirty days was allegedly not complied with. It has also been vaguely alleged that the Sale Notice was not in consonance with Appendix-IV A of the Security Interest (Enforcement) Rules, 2002.

In reply to the aforesaid allegations, it is respectfully submitted that the amount mentioned in the Sale Notice was based upon the outstanding dues recoverable as on the relevant date pursuant to the

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Demand Notice and subsequent accruals in the loan account. The Applicants have deliberately concealed the fact that the Original Application previously instituted by the Bank pertained only to a specific loan account, namely the housing loan account, whereas the dues reflected in the Sale Notice represented the liability recoverable against the secured asset under the SARFAESI proceedings. As such, mere variation in the figures does not, in any manner, render the Sale Notice illegal or invalid.

88. It is further submitted that the allegations regarding noncompliance of the thirty days' notice period are wholly baseless, misconceived and founded upon mere conjectures and assumptions. The Sale Notice was admittedly dispatched on 25.11.2022 on the local Lucknow address of the Applicants and, therefore, in the ordinary course of business and postal practice, the same would have been delivered either on the next day or within one or two days thereafter, i.e., well before the expiry of the statutory period prior to the auction conducted on 28.12.2022. Thus, there has been complete 9 and substantial compliance of the statutory requirement prescribed under the Rules.

89. It is submitted further that the Respondent Bank has already filed its detailed Reply dated 09.01.2023 along with complete documentary records pertaining to the impugned auction proceedings. The Respondent Bank has placed on record the Sale/Auction Notice, postal receipts evidencing dispatch, affixation along with photographs, newspaper publication at Page Nos. 59 to 74 of the said Reply, which clearly establish due compliance of the mandatory procedure prescribed under the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002.

However, the Applicants have deliberately suppressed the Confirmation Letter dated 29.12.2022 (at Page 15 of Reply filed by Auction Purchaser) wherein it is specifically recorded that the Respondent Bank had already received Rs.25, 00,000/- towards the requisite balance amount. It is further submitted that the Auction

Purchaser had already deposited Rs.13,90,000/- prior to the auction towards EMD and thereafter deposited Rs.25,00,000/- on 29.12.2022. Thus, there is complete compliance of Rule 9(3) of the Rules, 2002 and the allegations raised by the Applicants are wholly baseless and misleading.

90. It is submitted that it is a settled principle of law that once an auction sale is conducted in accordance with law and third-party rights have crystallized, the same cannot be lightly interfered with, particularly at the instance of defaulting borrowers who have failed to discharge his liabilities. The Respondent No.2 / Auction Purchaser is a bona fide auction purchaser for value without notice of any alleged defect, and has acquired vested rights upon confirmation of sale and issuance of sale certificate. Such rights deserve protection in law and equity.

91. It is further well settled that the scope of interference under Section 17 of the SARFAESI Act, 2002 does not extend to unsettling concluded sales except in cases of fraud or fundamental illegality, neither of which is present in the instant case. The Hon'ble Supreme Court has consistently held that once sale is confirmed and third-party rights are created, the same cannot be set aside on mere technical or procedural irregularities.

92. To sum up, it is most respectfully submitted that the Applicants admittedly failed to challenge the Possession Notice dated 28.12.2018 issued under Section 13(4) of the SARFAESI Act within the prescribed statutory period, pursuant whereto the auction sale dated 28.12.2022 was lawfully conducted and valuable third-party rights crystallized in favour of Respondent No.2 / Auction Purchaser.

93. It is submitted that, there has been full and complete statutory compliance by the Respondent Bank with Rules 8(5), 8(6) and 9(3) of the Security Interest (Enforcement) Rules, 2002, including due issuance/publication of the Sale Notice, affixation, valuation and deposit of the requisite sale consideration within the prescribed

period. Further, no case of fraud, fundamental illegality or substantial prejudice has either been pleaded or established so as to warrant interference with a concluded auction sale conducted through a transparent process.

94. Accordingly, the present Securitisation Application as well as the amendment applications deserve to be dismissed with exemplary costs, and the auction sale in favour of Respondent No.2 / Auction Purchaser deserves to be protected and upheld in the interest of justice, equity and finality of statutory proceedings.

95. **Heard arguments and perused the record.**

96. Much efforts are made by applicant to argue that demand notice was unserved and sans the sanction terms.

97. He also emphasized that the there are two dates of NPA but has not countered to state that his account was not NPA thus candidly admitted that his account was NPA. Admission also deemed to be had been made to the sanction of loan & default. The entire proceedings are taken against the correct property & since he accepts that demand notice was not served **so no prejudice could have been caused to him.** Respondent Bank has duly created and registered a valid security interest over the secure asset with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) on 12.09.2014, bearing Security Interest ID No. 400009260469.

98. There is a limitation issue as the possession notice was issued on 28.12.2018, SA is file after almost three years later when sale has taken place.

99. The applicant is trying to get the limitation from sale notice dated 25.11.2022 but has failed to show any reason for delay. Can a person who take loan, utilize it and have no intention to pay, keep quiet for long time and do not also challenge the action be permitted to take advantage of some technical issues which sans the legal provisions as enumerated:

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"Arce Polymers (P) Ltd. v. Alphine Pharmaceuticals (P) Ltd. & Ors" Reported in (2022) 2 SCC 221, more particularly Para 16 therein which reads thus: -

"Waiver is an intentional relinquishment of a known right. Waiver applies when a party knows the material facts and is cognizant of the legal rights in that matter, and yet for some consideration consciously abandons the existing legal right, advantage, benefit, claim or privilege. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favorable decision. The fact that the other side has acted on it, is sufficient consideration."

100. It is argued that the limitation aspect was given quietus by my Ld predecessor when it was condoned but Hon'ble Supreme Court has directed to decide the SA which includes limitation also. It is respectfully submitted that the Hon'ble Apex court vide order dated 06/04/2026 has directed to decide the application under section 17 of the Act afresh thus limitation is also to be decided afresh. The applicant cannot rely on part of order in his favour & seek adjudication of rest. Once he failed to challenge the action of bank in time, he has waived his rights.

101. A review application of the bank is also pending for allowing SA to be taken on record but with all respect to my ld. predecessor while condoning the delay it is not seen if the applicant has explained the day today delay or not leave apart any plausible reason. Since the issue of limitation is also to be decided the said application is disposed of as deemed allowed.

102. Much is talked about sanction letter and its content but applicant is totally silent on loan documents & how his property papers have gone in to the hands of bank. He has not denied the mortgage with the Bank & much reliance is placed on reply of bank rather making his case stand on its own legs.

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103. However, in the Rejoinder, the Applicant has placed reliance upon the judgment passed by the Hon'ble High Court in, namely Vimla Kashyap & Others Vs. Union of India & Others, and has particularly referred to paragraph 14 thereof. It is respectfully submitted that the reliance placed upon the said judgment is wholly misconceived and misplaced. The SARFAESI Act itself is explicit and unequivocal inasmuch as Section 17 specifically mandates that any person aggrieved by the measures taken under Section 13(4) may approach the Tribunal "within forty-five days from the date on which such measures had been taken." Thus, the limitation commences from the date of the impugned measure itself and not from any subsequent or consequential proceeding arising therefrom.

104. There are various sets of judgments which deal with the issue. While some have held an SA to be in the nature of 'original proceedings' i.e., similar to an original suit under the Code of Civil Procedure, 1908 ('CPC') implying that Section 5 of the Limitation Act has no application, others have held it to be in the nature of a remedial measure against an action-initiated u/s 13(4), therefore clarifying that Tribunals do in fact have the power to condone the delay. The present piece seeks to delve into the quandary that is prevalent with regards to the sanctity and stringency of the period of limitation applicable to a SA moved under Section 17 of the SARFAESI Act. To condone or not to condone: The Existing Conundrum to begin with the Supreme Court, in the decision of Bank of Baroda V/s Parasaadilal Tursiram Sheetgrah (P) Ltd. [2], held that the provisions of SARFAESI Act had been enacted for quick enforcement of security interests and that proceedings ought to be decided as expeditiously as possible. The much-required remark came from the Apex Court in light of the fact that the issue therein remained inconclusive for more than a decade. In this peculiar context, the Supreme Court observed that a specific time limit of 45-days had been provided for filing an application under Section 17 of the Act in order to put the issue at rest.

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105. The sale has attained finality and there is no ground taken or argued of FRAUD or highly under valuation of property. The sale notices were served he could have exercised his rights available under section 13(8) but has no intention pay just talking & talking.

106. Much reliance is placed that other borrowers were not served demand notice/possession notice but none has come forward to say so. He has also not made them a party else the complete truth would have come to forefront thus it has to be presumed that the story narrated is not complete truth.

107. The entire case if seen on merits of sale notice also is not proved to the satisfaction of legal provisions to say that any borrower could sit quietly and then try to take advantage of **continuous cause of action.** The Tribunals have not been given enough powers to condone the delay in filing the SA. If limitation to challenge the first action is to be given then there are no questions if the Tribunal will have power to condone or not. Thus, one the delay condonation power is discussed each measure will have separate limitation period and if the period has lapsed to great extent creating third party rights, it can not be revived from day one.

108. The Securitisation application stand dismissed. No order as to cost.

109. File be consigned to record room. Order be uploaded on the Tribunal's website.

(Vimal Gupta)
Presiding Officer
Debts Recovery Tribunal, Jaipur
Additional Charge, DRT, Lucknow

Digitally signed by VIMAL GUPTA
Date:Wed Sep 30 13:01:30 IST 2026

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