IN THE DEBTS RECOVERY TRIBUNAL-III, CHENNAI

Dated this the 28th day of September, 2026

Present: SMT. S.V. GOWRAMMA
Presiding Officer

TRANSFER SARFAESI APPLICATION No. 275 of 2023

A.H. Ahamed Shakir,
S/o. Ameer Hamsa,
No.33, (Old No. 16),
Kodambakkam High Road,
Nungambakkam, Chennai – 600 034 ….Applicant

-Vs-

The Authorized Officer and
The Chief Manager,
Punjab National Bank,
Khivraj Buildings, First Floor,
No. 624, Anna Salai, Chennai – 600 006. ….Respondent

Counsels on record / appeared:

Counsel for Applicant : M/s. S.A. Rajan, Nirmal Roy Sanjeevi.

Counsel for respondent : M/s. M.L. Ganesh & S. Arun Kumar.

ORDER ON TSA 275/2023

1. The applicant is the unsuccessful bidder who had participated in the auction sale conducted by the respondent of the property measuring about 10 cents, comprised in Survey Nos. 177/1B2A and 177/1B2B, situated in Sholinganallur Village and Taluk on 06.02.2015.

2. The applicant participated in the e-auction sale conducted by the respondent bank pursuant to sale notice dated 06.02.2015 offering to purchase the property for a total price of Rs.86,25,000/- on 13.03.2015 and deposited a sum of Rs.8,60,000/- being 10% value of the upset price as earnest money.

3. As the applicant did not comply with the terms of auction sale, the respondent bank has forfeited the EMD amount of Rs.8,60,000/- being 10% value of the upset price as earnest money paid by the applicant on 28.02.2015 vide applicant's account in AXIS BANK, G.T. Branch, Chennai.

4. On deposit of EMD amount, the Respondent on 13.03.2015 directed the Applicant to deposit further sum equaling 15% of the net auction amount on or before 14.03.2015. Hence, applicant on 14.03.2015 deputed his manager, Mr. K. Soundarrajan, to follow up the matter and arrange payment of 15% of the amount.

5. Accordingly, Mr. K. Soundarrajan attended the Respondent's office on the same day where no responsible officer was in bank as the Deputy Manager had gone to attend a Lok Adalat. As the amount to be deposited was substantial, Mr. K. Soundarrajan sought certain basic information regarding the property.

6. Even in an auction sale, the seller must disclose the names of the property owners, any known encumbrances, and the availability of title documents for handover at the time of registration and delivery of physical possession of the property. As the respondent bank failed to provide such details, the applicant was hesitant to proceed with further payment due to the risk involved. In the absence of title documents, the applicant requested refund of the deposit, being dissatisfied with the title of the property.

7. On 17.03.2015, the Respondent admitted the receipt of the EMD of Rs.8,60,000/- , however the respondent has stated that the Applicant with

oblique motive had not paid 25% of the bid amount which includes the EMD, within 24 hours of the e-auction, hence the EMI amount would be forfeited as per the Act. Aggrieved by the Act of forfeiture of the 10% of the EMD i.e Rs.8,60,000.00/ made by the Authorized Officer is challenged in the present appeal.

8. The applicant issued notice dated 11.05.2015 to the respondent expressing his willingness to pay the balance 90% of the sale consideration through RTGS, called upon the respondent to confirm acceptance to proceed with payment despite the risk involved.

9. Further the Applicant moved the High Court in W.P.No.5734 of 2016 for issue of Mandamus directing the Respondent to refund the earnest money deposit. The High Court dismissed the writ petition observing that the petitioner had made an offer dated 13.03.2015 who purchased the property and had deposited 10% value of the upset price amount as required as per the terms and conditions set out directed the petitioner to approach competent forum seeking refund.

10. The Applicant filed a suit before the Civil Court seeking a direction to the respondent to refund the earnest money deposit of Rs.8,60,000/-. The Civil Court vide judgment and decree dated 07.08.2017 in O.S.No.2433 of 2016 on the file of XIV Assistant City Civil Court, Chennai directed respondent to pay the amount. The respondent filed appeal in A.S.No.288 of 2017 against judgment and decree and the appeal came to be allowed vide order passed on 29.11.2018 setting aside the decree passed in

O.S.No.2433 of 2016 and granted liberty to the applicant to approach the Hon'ble DRT.

11. The Respondent bank has not followed the procedure for completing the auction sale as per the rules and has not followed Rules 9 and 10, has not obtained valuation from approved valuer to fix the reserve price under Rule 8[5]; has not issued 30 days' notice of sale of the property. It is further contended that

11.1 If the sale deed by tender, reserve price, description of the property including the encumbrance, if any and time and place of action, shall be notified.
11.2 Rule 9(1) a public notice of sale is to be published in two leading newspapers, one in vernacular language with details (8) (6) (also as per Rule 6)
11.3 Under Rule 9(2) the offer of the purchaser, who interest the highest price will be confirmed.
11.4 Rule 9(3) on every sale after the offer the purchaser shall immediately pay a deposit of 25%
11.5 Rule 9(5) if the balance amount of purchase is not paid within 15 days after confirmation of sale the deposit shall be forfeited.
11.6 Rule 9(7) If the property sold if subject to any encumbrances the purchaser shall deposit the money to discharge the encumbrance.
11.7 Rule 9(8) on deposit of money the authorized officer shall issue notice to the person interested or entitled to receive such money for discharge of encumbrances.
11.8 Rule 9(9) the authorized office shall deliver the property to purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.
11.9 Rule 9(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the

immovable secured asset free from any encumbrances known to the secured creditor or not.

12. It is contended that the Respondent bank has failed to disclose the encumbrance on the property and has to direct the purchaser to discharge such encumbrance if any. Moreover the bank has to receive 25% of the sale consideration after the offer made by the purchaser is accepted by them.

13. The respondent bank in their counter submits that the above SARFAESI application is filed against the forfeiture of Rs.8,60,000/- deposited by the applicant who participated in the e-auction proceedings held on 06.02.2015. It is absolutely unfair on the part of the applicant to address before this Hon'ble Tribunal that the respondent bank has not suffered any loss for conducting the e-auction proceedings.

14. The respondent bank had obtained valuation report from the registered valuers and effected publication in Tamil and English dailies. The applicant has approached this Tribunal with inordinate delay and cannot take advantage of the order passed in A.S. No. 288 of 2017 on the file of the V Additional City Civil Court, Chennai.

15. It is relevant to mention that the applicant had already approached the Hon'ble High Court, Madras in W.P. No. 5734 of 2016, and vide order dated 17.02.2016, the Hon'ble High Court directed the petitioner to work out his remedy before the competent forum in the manner known to law and in accordance with law.

16. Subsequently the applicant had filed a suit in O.S. No. 2433 of 2016 before the XIV Assistant City Civil Court, Chennai, for recovery of a sum of Rs. 8,60,000/-, which was allowed on 07.08.2017, the respondent bank preferred an appeal in A.S. No. 288 of 2017 before the V Additional City Civil Court, Chennai, which was allowed on 29.11.2018, in view of the statutory bar under Section 34 of the SARFAESI Act, the applicant cannot sustain any suit before the Civil Court.

17. Since there is a severe latch and lapses on the part of the applicant, this Hon'ble Tribunal may be pleased to dismiss the above application on the ground of limitation in terms of order dated 17.02.2016 passed by Superior Court (High Court) and not to take cognizance of liberty granted by co-ordinate court of this Tribunal. The respondent has rightly forfeited the amount deposited by the applicant in consonance with Rule 9(3), (4), & (5) of SIE Rules.

18. The applicant made diligent search and investigation with regard to secured property by making physical inspection of secured property in presence of Authorized Officer of the respondent bank. After satisfying with the property and other details furnished by the Authorized Officer, the applicant has participated in the e-auction proceedings. Subsequent to the remittance of EMD amount of Rs.8,60,000/- the applicant has not remitted the balance sale price amount within 24 hours of the e-auction proceedings.

19. The applicant has prevented other interested bidders from purchasing the secured property, hence respondent has rightly invoked the forfeiture

clause as contemplated in the impugned sale notice. Hence respondent bank prays for dismissal of the SA.

Heard both sides of the Counsels and perused the records of the case

20. The applicant is the unsuccessful bidder, who has impugned the letter dated 17.03.2015 whereby the respondent bank have forfeited the EMD amount of Rs.8,60,000/- paid by the applicant in the e-auction held on 13.03.2015. The applicant has participated in the e-auction sale conducted by the respondent bank pursuant to sale notice dated 06.02.2015 offering to purchase the property for a total price of Rs.86,25,000/- on 13.03.2015 and deposited a sum of Rs.8,60,000/- being 10% value of the upset price as earnest money.

21. The applicant, after depositing the EMD amount did not pay the balance amount of 15% of the sale consideration on or before 14.03.2015. Hence, in terms of the e-auction sale notice, the respondent bank forfeited the EMD amount of Rs.8,60,000/- being 10% value of the sale consideration.

22. The contention of the applicant that, since the balance sale consideration was huge, he had deputed his officer to verify and seeks certain information with regard to the property cannot sustain. As prudent purchaser would do the scrutiny of the title and all other relevant issues to be considered before participating in the auction.

23. Further, the respondent bank has countered in the said contentions of the applicant contending that the applicant before participating in the auction had physically verified the property along with the Authorized Officer and satisfied to the details of the property which was described in the sale notice, only after due satisfaction and due diligence the applicant has participated in the auction.

24. However, the applicant now takes a contention that he had asked for certain documents without even clarifying the details of the documents as sought by the applicant from the respondent bank. Further, it is an admitted fact that the applicant participated and he did not complied with the terms of the auction sale in remitting the balance sale consideration amount as per the terms of the sale.

25. Having failed to do so the applicant has communicated to the respondent vide communications dated 18.03.2015, 28.03.2015 and also have sent the legal notice on 11.04.2015 foisting all baseless averments against the respondent bank.

26. In fact, the applicant ought to have made the balance payment on or before 14.03.2015 and admittedly have communicated the letters to the bank only on 14.03.2015 that is the last date of his paying the balance sale consideration amount which clearly reflects that the applicant was not keen in moving forward in concluding the successful sale which was conducted by the respondent bank.

27. The contention that the bank has to clarify with encumbrances on the property fails, as the applicant has not pointed out the nature of the encumbrances on the property nor has clarify the reason for non-payment of the balance sale consideration amount.

28. Subsequent to the issuance of the forfeiture letter of the amount Rs.8,60,000/-, the applicant has approached the Hon'ble High Court in WP.No.5734 of 2016. The said writ petition came to be dismissed, directing the applicant to approach the competent forum seeking refund the money.

29. Consequent to the disposal of the writ petition, the applicant has approached the Civil Court in OS.No.2433 of 2016 which directed the respondent bank to refund the earnest deposit amount vide judgment decree dated 07.08.2017. Aggrieved by the judgment in decree the bank has preferred an appeal in A.S.No.288 of 2017 which came to be allowed with cost setting aside the judgment and decree passed in O.S.No.2433/2016.

30. Though the applicant has raised contentions with regard to Rule 9(1) and have made allegations against the respondent bank for non-complying with the procedures in issuing the sale notice would not come to the aid of the applicant, as the applicant is not aggrieved by the issuance of the sale notice or by any of the measures taken by the respondent bank prior to issuance of sale, particularly when the applicant voluntarily has participated in the auction sale of the property.

31. In fact, the applicant had voluntarily admitted the measure taken by the bank and has participated willingly in the sale held by the respondent bank. Hence, he cannot have any grievance with regard to the measures and is not an aggrieved party to challenge the sale notice after having voluntarily participated in the auction and admittedly made the payment of the EMD amount of Rs.8,60,000/- for the sale consideration of Rs.86 lakhs.

32. The applicant having failed to pay the balance sale consideration within the stipulated period now raised untenable contentions with regard to the measure taken under Rule 9 of the SIE Rules. In fact, the terms and conditions of the sale notice clearly described the details of the property, the name of the borrower and the description of the property. The applicant on their own interest have satisfied and participated in the auction after ascertaining the title and the correctness of the property in presence of the Authorized Officer.

33. Further, the applicant after due diligence have participated in the auction and now contends that the respondent bank has clear the encumbrances without even mentioning the nature of the encumbrances on the property.

34. The terms and conditions of the sale clearly puts board on the auction purchaser to ascertain the title of the property and seek for any clarification before participating in the auction sale.

35. The issue of forfeiture of entire 25% of the bid amount, is considered by the Judgment of ***Hon'ble Supreme Court in "The Authorized Officer Central Bank of India Vs. Shanmugavel*** where it is held that the entire EMD amount paid by the auction purchaser would be forfeited as per Rule 9(5) of the SIE Rules and the balance sale consideration has to be paid within the stipulated period. Further it is held that the

> *"The consequence of forfeiture of 25% of the deposit under Rule 9(5) of the SARFAESI Rules is a legal consequence that has been statutorily provided in the event of default in payment of the balance amount. The consequence envisaged under Rule 9(5) follows irrespective of whether a subsequent sale takes place at a higher price or not, and this forfeiture is not subject to any recovery already made or to the extent of the debt owed. In such cases, no extent of equity can either substitute or dilute the statutory consequence of forfeiture of 25% of deposit under Rule 9(5) of the SARFAESI Rules," the Court stated.*

36. The secured creditor's right to forfeit the earnest deposit amount by the auction purchaser doesn't arise due to loss or damage suffered due to a breach of contract but under a statutory requirement mentioned under SARFAESI Rules. Further it is held that;

> *The Court observed that the SARFAESI Act is a special legislation with an overriding effect on the general law more particularly the Indian Contract Act, 1872.*
> *"Being so, the underlying principle envisaged under Section(s) 73 & 74 of the 1872 Act which is a general law will have no application, when it comes to the SARFAESI Act more particularly the forfeiture of earnest-money deposit which has been statutorily provided*

under Rule 9(5) of the SARFAESI Rules as a consequence of the auction purchaser's failure to deposit the balance amount."

The auction purchaser could not claim back the earnest money deposited with the secured creditor in the event of non-payment of the remaining amount of the total value of the auction sale.

"Once the afore-stated conditions are satisfied i.e., the auction purchaser after confirmation of sale fails to deposit the balance amount within the stipulated time, the secured creditor is required to forfeit the original auction purchaser's earnest money deposit and the secured assets have to be resold."

Rule 9(5) of the SARFAESI Rules puts a mandatory requirement on the successful auction purchaser to deposit a 25% amount after the sale is confirmed by the secured creditor in favor of the auction purchaser. Moreover, the Rule makes it clear that in default of payment of the remaining 75% amount by the auction purchaser within the period mentioned in Rule 9(4) i.e., 15 days, the deposit shall be forfeited by the secured creditor and the auction purchaser would not be entitled to receive the 25% deposited earnest money.

37. Further, the Tribunal also relies on the judgment of ***Hon'ble High Court of Karnataka in the Case title of Kalyanamurthy K Vs. State Bank of India*** where it is held that respondent bank cannot forfeit more than 25% of deposit amount made by auction purchaser who fails to deposit remaining amount. Further it is also explained that

Why banks should be entitled to forfeit entire amount:

(i) Firstly, it would be quite preposterous to suggest that in an auction which is a process meant for recovery of debt due to default of the borrower, the balance amount if not paid by the successful auction purchaser, another recovery proceeding would have to be initiated by the secured creditor in terms of Section(s)

73 and 74 of the 1872 Act to recoup the loss and expenditure occasioned to it by the defaulting successful auction purchaser.

(ii) Secondly, such an interpretation would allow unscrupulous borrowers being hands-in-glove with the auction purchasers to use subversive methods to participate in an auction only to not pay the balance amount at the very end and escape relatively unscathed under the guise of Section(s) 73 and 74 of the 1872 Act, thereby gaming the entire auction process and leaving any possibility of recoveries under the SARFAESI Act at naught.

The consequence of forfeiture is not a matter of breach of contract but an operation of the statutory provision.

"No doubt, the forfeiture is a result of a breach of obligation, but the consequence of forfeiture in such case is taking place not because of the breach but because of operation of the statutory provision providing for forfeiture that is attracted as a result of the breach"

"However, the legislature has consciously provided for only one consequence in the event of failure of the successful auction purchaser in depositing the balance amount i.e., forfeiture and has not provided for imposition of any other stipulation by the secured creditor in the event of a breach. This has been done, keeping in mind the larger object of the SARFAESI Act, which is to facilitate recovery of debt in a time-bound manner by giving teeth to the measures enumerated within Section 13 of the SARFAESI Act, more particularly sale of the secured asset in the event the borrower fails to repay the debt.", the court added.

Accordingly, the court held that the mandate to forfeit the entire 25% deposit amount in the event of failure to deposit the remaining amount by the auction purchaser would not be due to a breach of contract and therefore, cannot be held to the extent of loss or damages incurred by the Bank but only according to the statutory requirement i.e., entire 25% deposit amount.

"What can be discerned from the above is that the SARFAESI Act is a special legislation with an overriding effect on the general law, and only those legislations which are either specifically mentioned in Section 37 or deal with securitization will apply in addition to the SARFAESI Act. Being so, the underlying principle envisaged under Section(s) 73 & 74 of the 1872 Act which is a general law will have no application, when it comes to the SARFAESI Act more particularly the forfeiture of earnest-money deposit which has been statutorily provided under Rule 9(5) of the SARFAESI Rules as a consequence of the auction purchaser's failure to deposit the balance amount."

38. In the instant matter the applicant had read and understood the terms and conditions of the sale notice have voluntarily participated and made payment of 25% of the bid amount and failed to comply the with balance payment of and balance of 75% which the respondent bank as secured creditor has already forfeited the amount as per Rule 9(5) of the SIE Rules which reads as under:

Rule 9(5): In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

39. Accordingly, the court held that the mandate to forfeit the entire 25% deposit amount in the event of failure to deposit the remaining amount by the auction purchaser would not be due to a breach of contract and therefore, cannot be held to the extent of loss or damages incurred by the Bank but only according to the statutory requirement i.e., entire 25% deposit amount.

40. Further, it held that respondent bank cannot forfeit more than 25% of deposit amount made by auction purchaser who fails to deposit remaining amount. But in the instant matter the applicant has paid only 10% of EMD amount and failed to pay the balance 15% of the sale consideration amount.

41. The Tribunal placing reliance on the judgments mentioned supra comes to conclusion that the respondent as secured creditor is statutorily entitled for forfeiture of 10% of bid amount in the instant matter. Further the applicant has paid only 10% of the bid amount and not even the 25% of the sale consideration as per the terms of the auction sale. The respondent bank has forfeited the EMD amount as per terms and conditions of sale as prescribed under Acts and Rules made there under.

42. For the foregoing reasons, the present SA fails and accordingly SA stands dismissed. Interim Order granted, if any stands vacated, pending IAs are disposed of in terms of this final order. No order as to cost.

Sd/-
(S.V. GOWRAMMA)
PRESIDING OFFICER,
DRT-III, CHENNAI

(*Dictated to Steno (Suriya), transcribed by him, corrected, signed and pronounced by me on this the 28th day of September, 2026)*

ANNEXURES

LIST OF DOCUMENTS PRODUCED BY THE APPLICANT

Sl. No.	Description of Documents	Documents No.
1.	E-Auction Notice by the respondent dated 06.02.2015.	A-1

2.	Remittance Advice by Plaintiffs' Bank dated 28.02.2012.	A-2
3.	Email letter to the Plaintiff by the support e-auctions dated 12.03.2015.	A-3
4.	Letter to the defendant by the Plaintiff dated14.03.2015.	A-4
5.	Letter to the defendant by the plaintiff dated 14.03.2015.	A-5
6.	Reply to the plaintiff by the defendant dated 17.03.2015.	A-6
7.	Letter to the defendant by the plaintiff dated 18.03.2015.	A-7
8.	Letter to the defendant by the plaintiff dated 28.03.2015.	A-8
9.	Legal Notice issued to the defendant dated 11.04.2015.	A-9
10.	Order passed in W.P. No.5734 of 2016 by the Hon'ble High Court dated 17.02.2016.	A-10
11.	Judgment and Decree passed in O.S. No.2433 of 2016 by the XIV Asst judge, City Civil Court, Chennai dated 07.08.2017.	A-11
12.	Judgment and Decree passed in A.S. No.288 of 2017 by the V Addl judge, City Civil Court, Chennai dated 29.11.2018.	A-12

SCHEDULE OF PROPERTY

All that piece and parcel of the vacant land situated at Sholinganallur Village Tambaram Taluk, Kanchipuram District Comprised in Survey No.177/1B2A and 177/1B2B measuring 10 cents (Eastern Side) out of 16 cents, Land being bounded on the North by: S.No.177/1A, South by: Road, East by: S.No.177/1B2A and 177/1B2B, West by: S.No.177/1A, 177/1B1A, 177/1B1B, within the Registration District of Chennai South and Sub Registration District of Neelangarai.

Sd/-
(S.V. GOWRAMMA)
PRESIDING OFFICER,
DRT-III, CHENNAI