**DEBTS RECOVERY TRIBUNAL, JAIPUR**

**PRESIDING OFFICER: SH. VIMAL GUPTA**

**SA No.- 800/2022**

**MS. YOGITA SHARMA** D/O LATE JAGDAMBA PRASAD SHARMA (LEGAL HEIR), R/O PLOT NO. 70, RAMDEV NAGAR, NIWARU ROAD, JHOTWARA, JAIPUR.

**.....Applicant**

**Versus**

1. **FINOVA CAPITAL PVT. LIMITED**, HAVING OFFICE AT FINOVA CAPITAL, 702, SEVENTH FLOOR, UNIQUE ASPIRE, PLOT NO. 13–14, COSMO COLONY, AMRAPALI MARG, VAISHALI NAGAR, JAIPUR - 302021, THROUGH ITS AUTHORIZED OFFICER.
2. **ABHAY PRATAP SINGH CHANDRAWAT** S/O SHRI DEEPENDRA SINGH CHANDRAWAT, R/O VILLAGE PALRI KHURD, POST KHARKARA, TEHSIL JAMWARAMGARH, DISTRICT JAIPUR - RAJASTHAN.

**.....Respondents**

Present: -

Sh. Bhrigu Sharma, Counsel for the Applicant

Sh. Akshat Kulshrestha, Counsel for the Respondent Bank

Sh. Ankit Kumar Sharma, Counsel for the Auction Purchaser

Court of the Presiding Officer
Debts Recovery Tribunal, Jaipur

**(Final Order)**
**(01.10.2026)**

1. **Counsel for the Applicant has filed this SA** and submitted that That the Applicant is the legal heir of the borrower in the mentioned loan account. The borrower died on 12.09.2018 and thus, the applicant has been named in the illegal notices issued by the defendant Fl in collusion with her brothers.
2. It is submitted that the Defendant accorded sanction vide letter for the following credit facilities :-

| S. No. | Name of Borrower | Type of Loan | Date of Sanction | Amount Sanction |
|---|---|---|---|---|
| 1. | Jagdamba Prasad Sharma | Car Loan | 03.06.2016 | 2,50,000/- |
| 2. | Jagdamba Prasad Sharma | Commercial Vehicle Loan | 03.06.2016 | 3,00,000/- |
| 3. | Ajay Kumar Sharma | Personal Loan | 04.06.2016 | 6,47,799/- |
| 4. | Ajay Kumar Sharma | Personal Loan (Top Up) | 12.02.2016 | 3,00,000/- |
| Total | | | | 14,97,799/- |

3. It is submitted that the Defendant towards the grant of the aforesaid Loan Accounts no security Mortgage of the Immovable Properties situated at Plot No. 70, Ramdev Nagar, Niwaru Road, Jhotwara, Jaipur was created nor any loan documents have been signed either by the applicant or his family or on behalf of defendant FI. Thus, the actions initiated by the defendant FI are grossly illegal and deserve to be penalized.
4. It is worthwhile to mention here that as per the terms and conditions of the Sanction Letter, the EMI was required to be paid for maintaining the Loan Facility in favor of the Applicant.

5. It is submitted that it is pertinent to note that the RBI in relation to the Non-Performing Asset (NPA) has issued a Master Circular dated 1.07.2015 on Income Recognition, Assets Classification and provision pertaining to advance.
6. It is submitted that the Applicant in compliance with the Sanction Letter and the RBI Master Circular, made repayment of instalments in the Loan Account which is prima facie evident from the bare perusal of the Statement of Account. It is pertinent to mention here that the Defendant Bank charged regular fees also.
7. It is submitted that the Defendant Bank adroitly and contrary to the RBI guidelines & without informing the humble Applicant, classified the account of the Applicant as NPA without completion of 90 Days' time and without any rhyme or reason and with a sole motive to harass the Applicant due to ulterior motives of the certain officials of the Bank having personal grudge with the Applicant. The Bank issued a Notice dated 13.09.2021 under section 13(2) of the SARFAESI Act of 2002 according to which the aforementioned Loan has been classified as NPA. It is humbly submitted that in the aforesaid notice dated 13.09.2021, the Bank demanded repayment in full of Rs. 26,74,159/- within a period of 60 days.
8. It is submitted that it was shocking to note that the Defendant Bank has issued illegal notice dated 13.09.2021 under Section 13(2) of SARFAESI where it was duly highlighted to the officials of the Defendant Bank that the Loan Accounts could not have been marked as NPA as the RBI has time and again asked banks to ignore minor deficiencies and be compassionate towards the genuine borrowers. Hence, the applicant loan account could not have been marked as NPA and the Notice u/s 13(2) of SARFAESI is illegal and bad in the eye of law.
9. It is important to highlight that the Hon'ble Apex Court in Small Scale Industrial Manufactures Association Vs. Union of India (UOI) & Ors., Writ Petition No. 476/2020 along with connected matters, vide order dated 23.03.2021 directed that there shall not be any charge of interest on interest/compound interest/penal interest for

the period during the moratorium and any amount already recovered under the same head, namely, interest on interest/penal interest/compound interest shall be refunded to the concerned borrowers and to be given credit/adjusted in the next instalment of the loan account. Interim relief granted earlier not to declare the accounts of respective borrowers as NPA stands vacated.

10. It is submitted that to bring the quietus to the dispute and differences, Applicant approached the Defendant Bank seeking the recall of the illegal notice dated 13.09.2021 in the light of the RBI circulars and guidelines on minor deficiencies and removal of these frivolous charges and remit the balance amount or adjust it towards EMI(s) and regularization of the Loan Facilities as applicant was maintaining the financial discipline. The applicant repeatedly approached the managers of the defendant to restructure the loan account but no heed was paid to the request made by the applicant and refused to offer any document or the sanction letter of the loan facility and loan documents. Hence, the averment made by the company are contrary to the assurances made and which shows malafide intent to harass applicant and to protect his legal rights the defendants are taking a U-turn and submitting false Demand Notice u/s 13(2) which is not expected from such esteemed Bank having a long tradition of excellence and transparency and ethics for redressal of his genuine and legal grievances. After notice when he approached the bank, he was threatened that he cannot do anything against them and they will take all his property and will also forfeit his amount deposited. The applicant money has been not properly appropriated and the Defendant Bank have committed fraud.

11. It is submitted that the Applicant was assured that no coercive steps would be taken. The Applicant believing in the representation and assurances of the Bank continued making payment and maintained the loan account.

12. It is submitted that the Applicant believing on the representations and assurances given by the Defendant Bank awaited for the regularization of the Loan account. To the utter shock and dismay of

the Applicant, it came into knowledge that the bank has been praying to take possession of the property which is not mortgaged with the loan accounts. The Applicant immediately approached the Bank in this regard and it came as a total shock and surprise that despite working and ongoing talks of OTS settlement and payments being made, the Bank has proceeded in a total malafide and whimsical manner for the possession of the property of the Applicant. Further, the Bank without serving of possession notice is attempting to take possession of the property i.e. dwelling house of the applicant. The applicant was shocked upon gaining knowledge that the defendant bank is illegally attempting to take possession of the property without following the due process of law.

13. It is submitted that the applicant was shocked upon gaining knowledge that an order dated 24.03.2022 has been passed by the District Magistrate seeking possession of the property which is not mortgaged with the loan accounts under section 14 of the SARFAESI Act, 2002 filed by the defendant bank, without making service or intimating the applicant. The defendant bank without serving upon the applicant with the intention to harass the Applicant and have attained the order and without serving the order dated 24.03.2022 are attempting to take the possession of the property which is not mortgaged with the loan accounts of the Applicant, without following the due process of law. The Applicant when approached the Bank, it was informed that an order has been passed in favour of the Bank u/s 14 of SARFAESI Act on 24.03.2022 has been issued in favour of the applicant and it came as a total shock and surprise that despite of working and ongoing talks of settlement, the Bank has proceeded in a total malafide and whimsical manner for the possession of the property of the Applicant.

14. It is further submitted that it is utterly shocking to note that the order passed by the DM under Section 14 of the SARFAESI Act is not in term of Section 14 of the SARFAESI Act, the possession of the property cannot be handed over to the Authorized Officer or the Police Officer. Thus, the order dated 24.03.2022 is grossly illegal

and deserves to be quashed. The applicant being aggrieved of the illegal actions initiated by the defendant FI filed a review application before the DM and the same was dismissed.

15. It is submitted that it came as a shock when the police officers came to the house of the applicant and informed that an FIR No. 1243/2022 has been registered by the Defendant FI in collusion with the brothers of the applicant to take away the rightful possession of the applicant for their unfruitful gains.

16. It is submitted that it is important to highlight that the applicant has been residing in the property which is not mortgaged with the loan accounts for the last 2016 years and her brothers with wrongful intentions are attempting to make unlawful gains from the property in collusion with the Defendant FI which displays the conduct of the defendants. The applicant is being wrongfully dragged into the proceedings to harm and cause losses upon the applicant.

17. It is submitted that while misusing the loan facility for their own gains the defendant has put the applicant to wrongful loss as he has been regularly making installment payments believing in the promises rendered by your office, but the installment payment rendered has been wrongly adjusted towards the Interest and default charges. The wrongful deduction of the installments and false charges implied on the applicant is grossly illegal and severely penalized under the criminal law.

18. It is submitted that the Applicant met the Bank Officials and the Applicant was assured that no coercive steps would be taken. The Applicant believing in the representation and assurances of the Bank, the applicant was continuing as per the assurances. The Defendant Bank inordinately classified the account of the Applicant Non-Performing Asset (NPA) which is grossly illegal as the Defendant Bank has marked the applicant account NPA with the intention to attach the secured immovable assets of the applicant. The Defendant Bank with the intention to attach the properties of the applicant falsely marked the applicant Loan Accounts as NPA and issued the illegal notice dated 13.09.2021 to defraud the humble

applicant. Therefore, the notice dated 13.09.2021 is grossly illegal and deserves to be set aside.

19. It is submitted that it is prima facie evident that the defendant has cheated, committed fraud & breach of trust by misusing the trust reposed in the Defendant Bank and have illegally appropriated the money for the personal gains as despite of paying the EMI(s), the Defendant Bank have illegally syphoned the money in interest which is not as per the terms and under default charges and benefiting from that have claimed of Rs. 26,74,159/- which is outrageous and shows that the defendant has used money for wrongful gain and putting the applicant to wrongful loss.

20. Further, the Supreme Court in Small Scale Industrial Manufactures Association Vs. Union of India (UOI) & Ors., Writ Petition No. 476/2020 along with connected matters, vide order dated 23.03.2021 directed that there shall not be any charge of interest on interest/compound interest/penal interest for the period during the moratorium and any amount already recovered under the same head, namely, interest on interest/penal interest/compound interest shall be refunded to the concerned borrowers and to be given credit/adjusted in the next instalment of the loan account. Interim relief granted earlier not to declare the accounts of respective borrowers as NPA stands vacated.

21. It is submitted that the Applicant bonafidely wants to settle the legitimate dues in his loan account but due to the aforesaid illegal acts of the Defendant Bank by which they have illegally added false entries and fee, charges, interest by creating forged documents, the Applicant is illegally restrained from settling the dues. Despite of regular representations and proposals, the Defendant Bank is not considering the same which shows their malafide intent and arbitrariness.

22. It is submitted that the bank with sole motive to sell the assets of the Applicant is proceeding malafidely and have issued illegal demands contrary to the law. It is humbly submitted that above said impugned notices have been issued by the Defendant Bank illegally

and without following any procedure and notices contrary to the record have been concocted which is utterly malafide and illegal.

23. It is submitted that it is humbly submitted that it is a well settled principle of law and also the Hon'ble Apex Court in a catena of decisions has held that guidelines issued by RBI are binding in nature and have to be strictly followed by the banks. The Defendant Bank is bound to follow these directives issued by the RBI and have a duty to implement the same reason being that these guidelines are issued in larger public interest for ease of operations and also to narrow down the controversy in cases so filed by and/or against the Banks so as to ensure expeditious disposals of the cases and if the Financial Institutions/Banks is found in violation of these guidelines then they are liable for punitive actions. In the present case, the issue in hand squarely covered by the afore-stated master circular dated 01.05.2017 and the applicant cannot be termed as a defaulter as per the aforesaid RBI master circular. It is humbly submitted that the applicant has despite of unfavorable market conditions has deposited the outstanding dues of the loan account and the bank is creating undue hardships for the applicant and are demanding full amount of the loan facility which is not permissible.

24. It is submitted that the Applicant in the facts and circumstances of the matter crave the liberty to urge other arguments in the matter during the course of hearing which may take place in respect of interim as well as the main relief and also crave the liberty to modify, amend, supplement, add or alter the contents of this application.

25. It is submitted that it is necessary to submit that a Loan bearing Account No. HE-19 was availed by father of the Applicant i.e. late Shri Jagdamba Prasad Sharma and the above loan was sanctioned to the father of the SA Applicant and same was disbursed on 31.05.2016. At that time the brother of the SA Applicant i.e. Ajay Kumar Sharma was 21 years old and he was made the co-applicant in the above Loan Facility. It is relevant to mention here that as a collateral security in the above Loan Facility, a property situated at Plot No. 70, Ramdev Nagar-4, Niwaru Road, Jhotwara, Jaipur, in the

name of late Shri Jagdamba Prasad Sharma, was mortgaged with the Respondent F.I. It is needless to mention here that the father of the SA Applicant i.e. Shri Jagdamba Prasad Sharma met with an accident and due to the serious brain injuries he was bedridden and in coma and later his medical conditions aggravated, due to which he passed away on 12.09.2018.

26. Admittedly, by bare perusal of the Loan document as well as the statement of Accounts, it is clearly shown that an insurance against Loan was taken at the behest of the Respondent FI and the installment of that insurance against loan were also deducted in the Loan Account. The Respondent FI, in its reply, failed to produce a single document showing that the insurance amount was adjusted in the Loan Account or not.

27. It is submitted that it is worthwhile to note that the father of the SA Applicant was survived by two legal heirs i.e. Ms. Yogita Sharma (Present SA Applicant) being daughter and Ajay Kumar Sharma being son. Further, the father of the SA Applicant in whose name the subject property was registered and he was the sole owner, during his lifetime neither transferred the same to either of the legal heirs and he died intestate and there is no Will. Thus, as per the law of Succession, the property has to be divided equally amongst the legal heirs, therefore, the above two legal heirs become entitled for 50-50 undivided share in the subject property.

28. It is submitted that the Respondent FI in furtherance of their illegal actions created a fraudulent Loan Facility in January, 2018, wherein it is shown that the certain amount has been disbursed through Cheque/ Banking Transactions, but admittedly no such amount was received in any of the bank account of the Applicant or his family members. Further, in this regard, the Respondent FI has failed to produce a single document showing the proof of disbursement of the amount. So also, there is no reason forthcoming as to why the insurance claim was not adjusted in the Loan Facility when loan insurance was taken by late Shri Jagdamba Prasad Sharma. Further, prior to the so-called and alleged Loan Facility

granted in 2018, neither any permission of the other legal heirs was taken and further when since the year 2017, when late Shri Jagdamba Prasad Sharma met with an accident, he was in coma and bedridden, so he was legally incapable to execute any documents including the so-called Loan Agreements and no such document was executed by him.

29. It is submitted that the SA Applicant filed a Civil Suit before the learned Additional District and Sessions Judge No. 1, Jaipur Metropolitan-1, Jaipur, wherein vide order dated 22.03.2021, the learned Court directed that status quo as it exists today be maintained. The Suit is still pending before the learned Trial Court and the Stay Order dated 22.03.2021 is in force. On the basis of the above order dated 22.03.2021, the Office of the Sub-Registrar, in the online registration portal, also entered that there is stay on the property.

30. It is submitted that while the said stay was operative and so also the Stamp and Registration Authorities on its portal has entered the stay, on 25.10.2023, the Authorized Officer of the Respondent FI viz. Mr. Gaurav Kumawat submitted a false and fabricated letter stating that no stay is operative and on the basis of the false statement, the conveyance documents in favour of the Respondent No. 2 was registered and the SA Applicant immediately upon coming into knowledge of the said facts submitted its objections and finding the same to be true the concerned SRO again entered the Stay on the Web-Portal of the Stamp & Registration Department.

31. It is submitted that further, on the Complaint of the SA Applicant the matter was investigated and the Complaint was found to be true and on 12.07.2024 the Finance Department, Government of Rajasthan initiated proceedings against the concerned SRO, Jaipur-III and has commenced proceedings under Rule 16 of the Rajasthan Civil Services (CCA) Rules, 1958. It is also found that the Registry was being done against the provisions and despite of the Stay Order.

32. It is submitted that it is also relevant to note that the Bank illegally took the possession of the subject property in collusion with the

Respondent No. 2 and even did not allow the SA Applicant to take the valuable goods and articles lying therein despite the fact that the same were not mortgaged and the SA Applicant complained about the same. The Respondent FI, on 01.03.2024, issued an email for return of household goods as well as the other articles kept by Finova Capital Pvt. Ltd. in the custody of the Respondent F.I.

33. It is submitted that it is worthwhile to mention here that firstly, the proceedings as well as the actions of Finova Capital Pvt. Ltd. are illegal and on the basis of fraudulent & forged documents and without any legal charge, the fictitious demand was created and on the basis of the above fraudulent and forged documents, the residential house belonging to the father of the SA Applicant was sold to a favored third party without following any due process of law and even no intimation was issued before handing over the possession of the said house to the third party. It is falsely stated in the email dated 01.03.2024 that multiple reminders were issued to collect the belongings, whereas the true and correct facts of the matter are that behind the back of the SA Applicant and despite the stay of the Civil Court and by manipulating and misleading the registration authorities, despite having stay over the subject property, the order of status quo was violated and the registration was submitted before the concerned Registration Office by submitting a fake and false letter. With the above-referred email, a letter dated 30.11.2023 is annexed; however, no proof of service of the same is provided to the SA Applicant nor the same has been attached.

34. Further, neither before the Hon'ble Tribunal the proof of taking possession and taking over the articles in the above subject property (which are not even mortgaged) has not been filed. Only after submitting a complaint, the Respondent FI issued the malafide email dated 01.03.2024, which clearly shows the illegality of the Respondent. Moreso, in the above email, neither the details where the above articles taken from the above subject property is situated is mentioned, nor any number of any concerned person is stated. The

SA Applicant, in this regard, contacted multiple times but received no response.

35. It is submitted that subsequently, the SA Applicant again wrote to the Respondent Fl stating that as and by way of final notice, the undersigned hereby request you to direct the concerned official to allow the undersigned to inspect and verify the same and thereafter handover all and any items which are collected/taken from the subject property to the undersigned within a period of 7 days from receipt of this Letter. Further, as till date neither any list has been supplied to the undersigned, the undersigned be allowed to verify and collect the articles remaining in the subject property as admittedly even by the stand of Bank only property is claimed to be mortgaged not the articles/movables lying therein and it is needless to mention here that the mortgage as well as proceedings of the Bank itself is in challenge. Also, it is needless to mention here that in case your good self fails to do the same as stated hereinabove, then the undersigned will be constrained to avail the appropriate remedies under the applicable law for redressal of the rights, grievances, claims and other available remedy of the undersigned. However, it is sorry to submit that as on date neither any response is given nor any article/goods has been returned. Thus, it is clear that the Respondent FI, in a malafide manner and contrary to the law, even wants to sell and usurp the property which is not even allegedly covered under the Loan Facility.

36. It is humbly submitted that the present SA Applicant is suffering from anemia and being thrown out of the house and mental & physical agony, she was bedridden and after help from family and friends she recovered and obtained the documents and engaged counsel and she has filed the present MA.

37. It is submitted that the SA Applicant filed earlier an Application No. 2216/2023 wherein it is specifically prayed that the SA be allowed to be withdrawn with a liberty to file fresh.

38. It is necessary to mention here that the SA Applicant had represented to the Respondent FI and also made them aware that the Loan Facility was insured and thus, over and above even if any amount is due the SA Applicant is ready and willing to pay the same and so also, if any formalities are required from the SA Applicant for the said purpose of insurance claim she is ready and willing to do the same and the Respondent FI assured that if the amount is paid then they will restore the possession and will close the Loan Facility but till the time the SA is pending then their higher authorities cannot take any action in the litigated cases. On the basis of aforesaid representation and so also as the SA Applicant could not afford any advocate, believing the said representations to be true filed the above IA No. 2216 of 2023 as Petitioner in person and vide order dated 19.10.2023, the said SA in light of the I.A. No. 2216/2023 was withdrawn.

39. It is submitted that however when the SA Applicant approached the Respondent FI they on pretext of approval from the higher authorities and clearing of the insurance claim made the SA Applicant to run from one office to another and during this time actually the Respondent FI in manipulation with the Registration Authorities on 01.11.2023 got the Conveyance document registered in favour of Respondent No. 2 despite of the stay of the Civil Court which is evident from the enquiry conducted by the higher officials of the Stamp and Registration Department.

40. It is clear that the Respondent FI malafidely and fraudulently misrepresented the SA Applicant and on the basis of these false assurances and representation the SA was withdrawn whereas the SA Applicant on merits have a strong case and she has all hope to succeed in the matter.

41. It is submitted that it is settled law that any consent or any action obtained by fraud and misrepresentation are invalid and any proceedings.

42. Counsel for the Applicant filed grounds for the present SA and submitted that the classification of the loan account of the applicant

as NPA is ex-facie illegal and against the principles enumerated by the Reserve Bank of India in their Master Circulars published from time to time.

43. It is submitted that the notice dated 13.09.2021 u/s 13(2) of the Act of 2002 is false and fabricated and is illegal, arbitrary, unjustified and not tenable in eyes of law. The Applicant has regularly maintained the loan account. The Defendant Bank could not have marked the loan account as NPA and charge interest in the loan account in the period the Supreme Court had granted blanket stay. The Loan account could not have been marked NPA and the SARFAESI proceedings initiated against the applicants should be quashed and set aside. Therefore, the aforesaid Demand Notice dated 13.09.2021 is not in terms of Section 13(2) of the Act of 2002 and being defective is illegal and unenforceable and no proceedings can be initiated on the basis of the same.

44. It is submitted that the applicant approached the Defendant Bank and submitted his stated grievance but the same were not duly answered. Hence, in view of the provisions of the SARFAESI proceedings are lapsed and continuation of the same is not impermissible.

45. It is submitted that pursuant to the payments made to the Bank the humble Applicant repeatedly urged the Bank to regularize the Loan Facilities and open the Account so that the humble applicant can use and utilize the same. The said regularization was of utmost importance for the survival and running of the business. The Loan Facilities was not regularized and despite of period of Moratorium granted by the RBI and the Hon'ble Supreme Court in Gajendra Sharma Vs. Union of India & Anr., vide its order dated 03.09.2020. Yet, the Applicant was not allowed to use the Loan Facility and arbitrarily interest amount was charged which otherwise they could not have levied and the Loan Account couldn't have been classified as NPA.

46. It is submitted that the RBI Master Circular dated 01.07.2015, clearly provides that the Bank should not classify Accounts of NPA merely due to existence of some deficiencies which are temporary in nature and in the event that the arrears are paid by the borrower in the case of Loan Account classified NPA - then the upgradation of Loan Accounts shall be immediately done and shall be classified as Standard Account and accordingly restructured/rescheduled.

47. It is submitted that the Bank has miserably failed to provide the exact bifurcation of the outstanding dues as to the bifurcation of principal, interest, charges etc. which is in complete contradiction of the rules and policies laid down by the Reserve Bank of India from time to time.

48. It is submitted that the bank has further miserably failed to provide the detailed statement of account held by Applicants along with the demand notice so as to enable him to understand the transactions in his account, which is also in complete contravention of the guidelines laid down by the RBI. It is further submitted that the aforesaid impugned proceedings are not in terms of the Act of 2002 and being defective is illegal and unenforceable and no proceedings can be initiated on the basis of the same.

49. It is submitted that the Hon'ble Gujarat High Court in the matter of Punjab National Bank Vs. M/s Mithilanchan Industries Pvt. Ltd. (R/Letters Patent Appeal No. 159 of 2020 in R/Special Civil Application No. 19920 of 2019) vide order dated 17.08.2020 deprecated the practice of the Bank in not providing the necessary details. The Bank has miserably failed to provide the exact bifurcation of the outstanding dues as to the bifurcation of principal, interest, charges etc.

50. It is submitted that the Defendant Bank has miserably failed to place the signatures of the Defendant Bank official along with the seal of the bank on each page of the Section 13(2) of the SARFAESI Act notice dated 13.09.2021, which is grossly illegal and hence, the Notice dated 13.09.2021 deserves to be quashed and set aside.

51. It is submitted that the authorized officer of the bank is working in complete haste and in a hurried manner which is quite apparent from the impugned notices. That the act of the bank is so enmities and mischievous towards the Applicant that they are illegally attempting to take the possession of the valuable property and are attempting to sell it further for a meagre amount in collusion with the brothers of the applicant.

52. It came as a shock when the police officers came to the house of the applicant and informed that an FIR No. 1243/2022 has been registered by the Respondent FI in collusion with the brothers of the applicant to take away the rightful possession of the applicant for their unfruitful gains which is grossly illegal and displays illegal conduct of the FI and the brothers of the applicant.

53. It is submitted that the Applicant has bonafidely despite of adverse market conditions maintained the loan amount and thereafter restructured the Loan Account but the Bank in a malafide and arbitrary manner due to ulterior motive have malafidely created a notice dated 13.09.2021 which is not in existence and clearly shows that fraud and ill intent of the Defendant Bank. Thus, the acts of Defendant Bank are malafidely just with the intention to harass the Applicant and settle the personal scores are creating false accounts and levying arbitrarily fee, charges, interest which is grossly illegal and needs to be seriously looked into by the Hon'ble Tribunal.

54. It is submitted that the Applicant bonafidely wants to settle the legitimate dues in his loan account but due to the aforesaid illegal acts of the Defendant Bank by which they have illegally added false entries and fee. That it is humbly submitted that it is a well settled principle of law and also the Hon'ble Apex Court in a catena of decisions has held that guidelines issued by RBI are binding in nature and have to be strictly followed by the Banks. The Defendant bank is bound to follow these directives issued by the RBI and have a duty to implement the same reason being that these guidelines are

issued in larger public interest for ease of operations and also to narrow down the controversy in cases so filed by and/or against the Financial Institutions/banks so as to ensure expeditious disposals of the cases and if the Financial Institutions/banks is found in violation of these guidelines then they are liable for punitive actions. In the present case, the issue in hand squarely covered by the aforestated master circular dated 01.05.2017 and thus the Applicant cannot be made to suffer in the hands of adroit acts of the authorized officer of the Defendant Bank.

55. It is submitted that the Applicant met the Bank Officials and they directed him to continue making payments and upon doing so his loan account will be regularized and restructured. Also, the Applicant was assured that no coercive steps would be taken. The Applicant believing on the representation and assurances of the Bank continued making payment and maintained the loan account.

56. It is submitted that even otherwise it will be worthwhile to mention herein that the value of the property proposed to be attached is much more than the amount due as stated by the defendant. Further, while not stopping the adroit acts the Defendant Bank is harassing the Applicant on daily basis and is threatening the family that they will take over the physical possession of the property and shall auction the said property which is not mortgaged with the loan accounts at throw away prices.

57. It is submitted that the actions of the respondent are ex-facie illegal and arbitrary in view of the fact that the said illegal actions taken by the respondent have been challenged before the Debts Recovery Tribunal, which is pending for adjudication.

58. It is submitted that the Respondent Bank illegally issued E-Auction Sale Notice and as per the SARFAESI Act and rules made thereunder, the Secured Creditor is required to follow certain steps prior to selling the property and is also required to publish the Sale Notice in the newspaper both in Hindi and English having large circulation in the area but the same was not done by the Respondent Bank to frustrate the rights of the applicant.

59. It is pertinent to mention here that by way of the aforesaid Public E-Auction Notice just to frustrate the rights of the Applicant, the Respondents have auctioned the property of the applicant which could not have been done. Also, the reserve price is fixed without any basis and way below the market price to illegally provide advantage and sell the property of the applicant on throw away prices so that to further harass him.

60. It is submitted that the notices issued by the Bank are illegal, contrary to records and not as per procedure. Moreover, the tall claims of the Respondent regarding the publication of the said notice in 2 leading newspapers is also in sheer violation of the settled principles as enshrined under Rule 3(1) of the Security Interest (Enforcement) Rules, 2002 as the same provides for publication of the contents of the demand notice in 2 leading newspapers, one in vernacular language, having sufficient circulation in that locality in the event when the authorized officer has the reason to believe that the notice under Section 13(2) has not been served on the borrower.

61. As such in view of the aforesaid provision and the present circumstances, the notice under Section 13(2) is not served upon the borrower resulting into the proceedings thereafter under the SARFAESI Act, 2002 inconsequential and is liable to be quashed on this short ground alone.

**Reply and written arguments filed by the Respondent No. 2 are reproduce as below:**

62. Counsel for the Respondent No. 2 i.e. Auction Purchaser has filed reply to the S.A and submitted that the Auction Purchaser that the captioned SA is devoid of any merit and the statements, contents, allegations and/or averments as made by the Applicant in the captioned SA are strongly and vehemently denied and may not be deemed to have been accepted and/or admitted by the Auction Purchaser unless so expressly admitted in the present reply to SA.

63. It is submitted that contents regarding non observance of mandatory provisions of law are wholly devoid of any merits in as much as the Defendant has complied with all the prerequisites of law while issuing the said Auction notice.

64. It is further submitted that the said notice has been duly served on to the Applicants and the same was even published in two newspapers as per law and the same was even affixed on the conspicuous part of the property on 26.8.2023 itself.

65. It is also submitted that the pasting on the property was done on 26.08.2023 when the property was illegally under the possession of the Applicant herein thus by virtue of the same, she has got the information of the Auction on 26.08.2023 itself from which a clear 15 days' notice is given to the applicant. It may be worthwhile to note that post pasting of the Auction Notice the Respondent FI has taken the reassumed the physical possession of the property on 31.08.2023, thus, a clear 15 days' notice is effectuated on the Applicants as mandated under law. As such, said Auction notice is wholly valid and legal in the eyes of law. It is further submitted that the Present Auction Purchaser has purchased the disputed property in concern through the said auction which was conducted by the Respondent Bank and the said auction was successfully taken place and through the rightful auction proceeding, the subject property was purchased by the Answering Auction Purchaser.

66. It is submitted that it is clear that auction notice was fixed at the subject mortgaged property on 26.08.2023, when the subject mortgaged property was in the possession of SA applicant and possession of the subject mortgaged property was taken by the Respondent FI on 31.08.2023. On second occasion again SA applicant took forcible possession of the subject mortgaged property by breaking locks put by Respondent FI as on earlier occasions they took physical possession of the subject mortgaged property, it is important to mention here that it is second round of litigation and SA filed by Mr. Ajay Kumar Sharma in the same account and for the same property has already been disposed of as dismissed.

67. It is submitted that Respondent FI has already lodged an FIR on 01.12.2022 on account of illegal possession of the subject mortgaged property taken by SA applicant. In totality, now the Respondent FI has successfully auctioned the subject mortgaged property for an amount of Rs. 29.75 Lac, still the SA applicant does not have any offer to deposit at least the amount which has been offered by the highest bidder and applicant is still praying for settlement of account for an amount of Rs. 15.00 Lac to 20.00 Lac. Therefore, the prayer for settlement as well as prayer to quash and set aside the auction notice is not liable to be accepted. There is nothing illegal in the auction so conducted by the Respondent FI and therefore IA no. 1882/2023 stands disposed of as dismissed. In view of the preliminary submissions, the captioned SA is devoid of merit and the same is liable to be dismissed with cost.

68. It is submitted that content of para 3 of the SA are not admitted as stated. It is submitted that it is not a case where the account of the SA Applicants was classified as NPA, and the Demand notice and Possession notice were issued as the SA Applicants have failed to maintain the financial discipline. It is submitted that the SA applicant does not have any cause of action to file this S A.

69. It is submitted that the contents of para 4 of the SA are not admitted as stated by the SA Applicant, it is submitted that the present SA is seriously barred by limitation and the reason so mentioned in the Application for condonation of delay are completely vague. It is further submitted that the submissions made in reply to the limitation application are reiterated as reply to this para also.

70. It is submitted that the content of para no. 1 of the SA is not disputed as stated to the extent that the SA Applicants themselves admitted that they have availed the loan facilities and have also furnished the land as security. However, it is submitted that the SA Applicants have approached this Hon'ble Tribunal at a delayed stage just to delay and derail the recovery proceedings of the bank.

71. It is submitted that the content of Para No.2 and 3 of the SA are not admitted as stated, it is submitted that the SA applicant cite "unfavorable market conditions" as an excuse for their failure to make timely repayments on their credit facilities. It is not the bank's responsibility to manage the applicants' business or financial stability. The applicants' claim that they explained their "financial disabilities" to the bank is a hollow and fabricated statement, and a self-serving excuse for their non-payment." The bank's action of classifying the loan account as an NPA, was in accordance with standard banking procedures due to the applicants' failure to maintain their loan accounts properly. It is also submitted that the claims made by the applicants in paragraph 3 are not admitted.

72. The demand notice, was properly served upon the applicant. The applicant had the opportunity to submit their objections under Section 13(3A) of the SARFAESI Act, 2002, but chose not to. The applicants' failure to exercise their rights in a timely manner is their own responsibility, and the bank cannot be held accountable for their inaction.

73. It is submitted that the contents of para 5 and 6 are not admitted a stated. It is submitted that the contents regarding non observance of mandatory provisions of law are wholly devoid of any merits in as much as the Defendant has complied with all the prerequisites of law while issuing the said Auction notice. It is further submitted that the said notice has been duly served on to the Applicants and the same was even published in two newspapers as per law and the same was even affixed on the conspicuous part of the property on 26.8.2023 itself.

74. It is also submitted that the pasting on the property was done on 26.08.2023 when the property was illegally under the possession of the Applicant herein thus by virtue of the same, she has got the information of the Auction on 26.08.2023 itself from which a clear 15 days’ notice is given to the applicant. It may be worthwhile to note that post pasting of the Auction Notice the Respondent FI has taken the reassumed the physical possession of the property on

31.08.2023, thus, a clear 15 days' notice is effectuated on the Applicants as mandated under law. As such, said Auction notice is wholly valid and legal in the eyes of law.

75. It is further submitted that the Present Auction Purchaser has purchased the disputed property in concern through the said auction which was conducted by the Respondent Bank and the said auction was successfully taken place and through the rightful auction proceeding, the subject property was purchased by the Answering Auction Purchaser.

76. It is also submitted that the humble auction purchaser has bought the property in question through the following payment which was made by the auction purchaser in favour of the respondent FI: -

1. 1st. DD issued on 10/9/2023 (2,60,000) from Indusind Bank Account no 100203695864 Branch Vaishali Nagar •
2. 2nd. RTGS On 13/9/2023 (5,00,000) From Kotak Mahindra Bank Account no 3648676033 Branch Vaishali Nagar
3. 3rd IMPS on 23/9/2023 (5,00,000) From Kotak Mahindra Bank Account no 3648676033 Branch Vaishali Nagar
4. 4th. IMPS ON 24/9/2023 (5,00,000) From Kotak Mahindra Bank Account no 3648676033 Branch Vaishali Nagar
5. 5th. IMPS ON 25/9/2023 (5,00,000) From Kotak Mahindra Bank Account no 3648676033 Branch Vaishali Nagar
6. 6th. RTGS On 27/9/2023 (7,15,000) From Kotak Mahindra Bank Account no 3648676033 Branch Vaishali Nagar

Total Amount Paid: - 29,75,000 to Finova Capital Private Limited.

So here it is clear that the Auction Purchaser has made all the above-mentioned transactions in favour of the Respondent FI just to purchase the property in question. It is also submitted that the possession of the disputed property has also been handed over to the Auction Purchaser from the Respondent FI and presently the Auction Purchaser is residing in the property in question.

77. It is submitted that the contents of para no. 7 of the S.A. are not admitted in the manner stated. It is submitted that the EMIs were not

paid on time and the payment was delayed by the S.A. Applicants. The SA Applicants have failed to maintain the financial discipline in the subject loan account. As such, the account of the S.A. Applicants was rightly classified as NPA by the Respondent Bank. Therefore, there is no illegality in the action of the Bank. As such, thereafter the bank has initiated the proceedings under the provisions of the SERFAESI Act and then conducted the Auction of the property in question. Thereafter the Auction Purchaser participated in the auction proceeding and being the highest bidder, the Auction Purchaser has purchased the property in question.

78. It is further submitted that the SA Applicant was very well aware regarding their liability however, despite they committed default and failed to pay the EMI on time. As such, the Respondent Bank has duly complied with the SARFAESI Act and Rules made thereunder. Therefore, the captioned SA is devoid of merit and the same is liable to be dismissed with cost.

79. It is submitted that the contents of para no. 8 of the S.A. are not admitted in the manner contended by the SA Applicant hence denied. In this regard it is respectfully submitted that Respondent FI has already lodged an FIR on 01.12.2022 on account of illegal possession of the subject mortgaged property taken by SA applicant. In totality, now the Respondent FI has successfully auctioned the subject mortgaged property for an amount of Rs. 29.75 Lac, still the SA applicant does not have any offer to deposit at least the amount which has been offered by the highest bidder and applicant is still praying for settlement of account for an amount of Rs. 15.00 Lac to 20.00 Lac. Therefore, the prayer for settlement as well as prayer to quash and set aside the auction notice is not liable to be accepted. There is nothing illegal in the auction so conducted by the Respondent FI and therefore IA no. 1882/2023 stands disposed of as dismissed.

80. It is submitted that the contents of para no. 9 to 24 of the S.A. are not admitted in the manner stated. In this regard it respectfully submitted that the Defendant has issued the Auction notice of the

mortgaged property while keeping the reserve price of the property as Rs.25,05,437/-.

81. It is however, submitted that reserve price of the property has been kept by Defendant as per the valuation report obtained by the Defendant from the authorized valuer, thus the allegations made by Applicants are unfounded and baseless.

82. It is also alleged that the applicant's version of the Defendants having kept the reserve price of property less than half of the original value of property as against the value of Rs.70,00,000/- is wholly baseless and unfounded. It may be submitted herein that the Applicant has not produced any documentary evidence with regard to the above valuation. Thus, the allegation made by Applicant falls flat on its face.

83. It is further submitted that the said notice has been duly served on to the Applicants and the same was even published in two newspapers as per law and the same was even affixed on the conspicuous part of the property on 26.8.2023 itself.

84. It is also submitted that the pasting on the property was done on 26.08.2023 when the property was illegally under the possession of the Applicant herein thus by virtue of the same, she has got the information of the Auction on 26.08.2023 itself from which a clear 15 days' notice is given to the applicant. It may be worthwhile to note that post pasting of the Auction Notice the Respondent FI has taken the reassumed the physical possession of the property on 31.08.2023, thus, a clear 15 days' notice is effectuated on the Applicants as mandated under law. As such, said Auction notice is wholly valid and legal in the eyes of law.

85. It is further submitted that the Present Auction Purchaser has purchased the disputed property in concern through the said auction which was conducted by the Respondent Bank and the said auction was successfully taken place and through the rightful auction proceeding, the subject property was purchased by the Answering Auction Purchaser.

86. It is submitted that the contents of ground no. (A) to (P) of the SA are not admitted in the manner stated. The aforementioned Reply is reiterated in Reply to the Grounds (A) to (P). There is no illegality in the action initiated under the SARFAESI Act. Even the S.A. Applicant has failed to point out any legal infirmity in the action of the Respondent Bank and on that the Present Auction Purchaser has purchased the disputed property in concern through the said auction which was conducted by the Respondent Bank and the said auction was successfully taken place and through the rightful auction proceeding, the subject property was purchased by the Answering Auction Purchaser. As such, the S.A. is liable to be dismissed with cost.

87. It is submitted that the aforesaid reply is reiterated in reply to the relief clause no. 6 sub clauses (i) to (vi). From bare perusal of the aforesaid reply, it would become clear that the S.A. Applicants are not entitled for any relief from the Hon'ble Tribunal.

88. It is submitted that the aforesaid reply is reiterated in reply to the interim relief clause no. 7 sub clauses (a) to (i). From bare perusal of the aforesaid reply, it would become clear that the S.A. Applicants are not entitled for any relief from the Hon'ble Tribunal. It is also reiterated the SA a grossly time barred therefore the same needs to be dismissed without any interference. therefore, the captioned SA is not maintainable.

89. Counsel for the Respondent No. 2 filed written arguments and submitted that the Auction Purchaser is a bona fide purchaser for valuable consideration who participated in the auction proceedings conducted by the Bank in good faith and deposited the entire auction consideration amount.

90. It is submitted that the Bank issued a Sale Certificate in favour of the Auction purchaser despite the existence of a stay order/legal impediment over the subject property/documents, which fact was never disclosed to the Auction Purchaser.

91. It is submitted that the Auction Purchaser had no knowledge regarding pendency of any litigation, stay order or title dispute and

acted solely on the representation, auction notice and assurance issued by the Bank.

92. It is submitted that due to the negligence, suppression of material facts and fraudulent conduct of the Bank, the Auction Purchaser has suffered immense financial loss, mental harassment and uncertainty regarding title and possession of the property.

93. It is submitted that the Auction Purchaser has been residing in the property for the last approximately three years under the bona fide belief that the title conveyed by the Bank through Sale Certificate was legal and valid.

94. It is submitted that the Auction Purchaser has incurred huge expenses towards stamp duty, registration charges, maintenance, repairs, municipal taxes and other incidental charges, all due to the illegal and negligent acts of the Bank.

95. It is submitted that the Bank cannot escape its liability after illegally conducting auction proceedings and issuing sale certificate in violation of existing stay orders/legal restraints. The Bank is fully liable to compensate the Auction Purchaser.

96. It is submitted that the acts of the Bank amount to deficiency in service, suppression of material facts, negligence and fraud upon the Auction Purchaser, for which the Bank is liable to pay adequate compensation and damages.

**Heard arguments and peruse the record.**

***The notice under Section 13(2) and its service: -***

This Tribunal does not accept the submission that the Demand Notice was not addressed to the S.A. Applicant. It was the notice dated 13.09.2021 names her in terms, as the second addressee, described as *"Legal heir's of Jagdamba Prasad Sharma",* at Plot No. 70 Ramdev Nagar - the very premises in which she was then residing. To that extent the Respondent F.I. is right.

97. What is entirely absent, however, is any ***proof of service***. Rule 3(1) prescribes service by registered post with acknowledgement

due, speed post, courier or other permitted means, and the proviso prescribes, where service is not effected, affixation coupled with publication in two leading newspapers, one in the vernacular. The Respondent F.I. has produced before this Tribunal no acknowledgement card, no postal receipt, no speed-post track report and no newspaper publication.

98. That omission is the more striking because the Respondent F.I. told a different court that it possessed precisely those documents. The order dated 24.03.2022 of the learned Chief Metropolitan Magistrate records, on the Respondent F.I.'s own representation, that ***"नोटिस, रजिस्टर्ड डाक की रसीदों, ट्रैक रिपोर्ट, हिन्दी व अंग्रेजी अखबार में प्रकाशित सूचना की फोटोप्रतियां प्रार्थना पत्र के साथ पेश की गयी हैं"*** - that photocopies of the notice, the registered post receipts, the track report, and the notice published in Hindi and English newspapers had been filed with that application. Those very documents would have answered the case on service completely. They were placed before the Magistrate in March 2022. They have never been placed before this Tribunal, in a proceeding pending since December 2022 in which service was put in issue from the outset (Grounds T and U of the Securitization Application) and in which a last opportunity to complete pleadings was granted on 04.04.2026.

99. A secured creditor which asserts service, which tells a Magistrate that it holds the proof, and which then withholds that proof from the Tribunal before which service is contested, must take the consequence. This Tribunal holds that valid service of the Demand Notice dated 13.09.2021 and of the Corrigendum dated 15.09.2021, and compliance with the proviso to Rule 3(1), are **not established** on this record. Point No. 4 is answered accordingly.

***The conditional order under Section 14 and the possession taken thereunder: -***

This point admits of no debate. The order dated **24.03.2022** under Section 14 is in terms conditional. Its operative direction to the Commissioner of Police to render police assistance is prefaced by the words ***"यदि हस्तगत प्रकरण में वर्णित सम्पत्ति के सम्बन्ध में किसी अन्य न्यायालय से स्थगन न हो तो..."*** - ***"if there be no stay from any other court in respect of the property described in the present matter, then..."***

100. On 24.03.2022 there was a stay from another court. The learned Additional District and Sessions Judge No. 1, Jaipur Metropolitan-I, had on **22.03.2021** - a full year earlier - restrained the alienation and transfer of the very same Plot No. 70, and had restrained the forcible dispossession of the S.A. Applicant therefrom. That order was recorded upon the State's own e-Panjiyan portal. It has never been vacated.

101. ***The condition upon which the order under Section 14 was made to operate therefore failed at the very moment it was passed.*** A conditional order does not spring into life until its condition is satisfied. It follows that no possession could lawfully be delivered to, or taken by, the Respondent F.I. in purported execution of that order, and that the possession so taken was possession without the authority of law.

102. The Respondent F.I.'s answer - that it *"was not aware of any such stay"* - is, on this record, contradicted by its own document, as is dealt with under Point No. 7. But even assuming an absence of knowledge, the position would be unaltered. The Respondent F.I. was the applicant before the learned Magistrate; it obtained an order in that conditional form; and the burden of satisfying itself that the condition stood satisfied before acting upon the order lay squarely upon it. A party which obtains a conditional order and acts upon it without verifying the condition does so at its own peril.

103. The record further discloses irreconcilable assertions as to when possession was taken - 18.01.2022 (asserted before this Tribunal in March 2023 with an inventory), on or about 18.11.2022 (as recited

in FIR No. 1243/2022), and 31.08.2023 (as recorded in this Tribunal's order dated 13.09.2023 upon the Respondent F.I.'s own reply). The first of these precedes by more than two months the very order by which police assistance to obtain possession was sought. If true, it would mean that possession was taken before any authority to take it existed; if untrue, that a false assertion was made to this Tribunal. Neither alternative assists the Respondent F.I.

104. ***Non-compliance with Rules 8(6) and 9(1):-***

The E-Auction Sale Notice is dated **25.08.2023** and the auction was held on **13.09.2023**. The interval is ***nineteen days***. Rule 9(1) prohibits a sale in the first instance before the expiry of thirty days from the date of publication of the public notice or from the date of service of the notice of sale upon the borrower. It may be noted in passing that no newspaper publication bearing a date has been placed on this file at all, so that even the thirty days under the main limb of Rule 9(1) cannot be computed from any proved date of publication; the nineteen days are computed from the date of the notice itself, which is the most favourable computation available to the Respondent F.I.

105. The Respondent F.I., supported by Respondent No. 2, seeks the benefit of the proviso to Rule 9(1), contending that this was a "subsequent sale" following the failure of the auctions notified on 15.12.2022 and 10.07.2023. Respondent No. 2 puts the point with precision: the notice was affixed on the property on 26.08.2023 while the S.A. Applicant was in possession, so that she had notice from that date, and the auction on 13.09.2023 gave "*a clear 15 days' notice*". The contention founders for four reasons.

106. ***First***, the proviso to Rule 9(1) does not dispense with the notice required by **Rule 8(6)**, which is a distinct and independent obligation cast upon the authorised officer: *"The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets."* The proviso to Rule 9(1) shortens the period for *"any subsequent sale"*; it does not delete Rule 8(6) from the Rules.

107. ***Secondly***, and conclusively, this Tribunal recorded on **18.04.2026**, in the course of noting the rival contentions at the final hearing, that ***"No notice under Rule 8(6) has been produced even if the bank wish to rely upon the judgment of Hon'ble Supreme Court in the case of M. Rajendra, even if bank has not issued separate notice, at least composite notice should have been issued, which is not placed on record."*** The position has not altered since. There is, on this record, **no notice under Rule 8(6) at all** - neither a separate notice nor a composite notice - served upon the S.A. Applicant, in whom the equity of redemption vested.

108. ***Thirdly***, the proviso itself requires the authorised officer to ***"serve, affix and publish"*** notice of not less than fifteen days. All three limbs are conjunctive. Affixation alone will not do. And the affixation relied upon is itself revealing: this Tribunal has recorded, upon the Respondent F.I.'s own reply, that the notice was affixed on 26.08.2023 *"when the subject mortgaged property was in the possession of SA applicant"*, and that the Respondent F.I. took possession only on 31.08.2023. A secured creditor which was not in possession of the secured asset when it published its sale notice, and which relies upon pasting a notice on a house occupied by the very person entitled to redeem instead of serving her, has not complied with the Rules.

109. ***Fourthly***, the authority upon which Respondent No. 2 relies is against him on this point. In ***Govind Kumar Sharma v. Bank of Baroda*, 2024 INSC 326** (decided on 18.04.2024), the Hon'ble Supreme Court affirmed the setting aside of an auction sale for non-compliance with the mandatory thirty days' notice under Rules 8(6) and 8(7), and directed refund of the auction money to the auction purchaser with **compound interest at 12% per annum** from the date of deposit until payment. Respondent No. 2 seeks to distinguish that case on the footing that there the bank had *admitted* non-compliance. The distinction is immaterial: what matters is whether compliance is *established*, and the burden of establishing it is on the secured creditor. Here the Respondent F.I. has, through its counsel,

been unable to produce any Rule 8(6) notice at all - which is, for practical purposes, the same position.

110. This is, moreover, the settled law. In ***Mathew Varghese v. M. Amritha Kumar*, (2014) 5 SCC 610**, the Hon'ble Supreme Court held that the prescriptions in Rules 8 and 9 are mandatory and not directory; that the borrower is entitled to a clear thirty days' notice to enable him to arrange funds and to protect his right to property; and that a sale conducted in breach of that requirement is legally unsustainable. In ***Vasu P. Shetty v. Hotel Vandana Palace*, (2014) 5 SCC 660** and ***J. Rajiv Subramaniyan v. Pandiyas*, (2014) 5 SCC 651**, the Court reiterated that non-compliance vitiates the sale even where the sale has been confirmed and a sale certificate issued in favour of an auction purchaser, and directed restitution. Point No. 6 is answered in favour of the S.A. Applicant.

111. ***Fraud upon the registering authority, and the sale in defiance of a subsisting injunction: -***

This is the heart of the case, and it is here that the conduct of the Respondent F.I. passes beyond procedural irregularity into a different order of illegality altogether.

112. The facts are not in dispute, because they emerge from the Respondent F.I.'s own document, from a document filed by Respondent No. 2 himself, and from the official records of the Registration and Stamps Department. Restated with the dates, they are these:

**22.03.2021** - The learned Additional District and Sessions Judge No. 1, Jaipur Metropolitan-I, restrains the alienation and transfer of Plot No. 70 and the forcible dispossession of the S.A. Applicant, until the final disposal of the suit. The order is entered upon the e-Panjiyan portal.

**24.03.2022** - The learned Chief Metropolitan Magistrate passes a Section 14 order operative only *"if there be no stay from any other court."*

**13.09.2023** - The auction is held; Respondent No. 2 is the highest bidder.

**29.09.2023** - The Sale Certificate is issued.

**16.10.2023 at 14:12 hours** - The e-Registration Fee Receipt is generated at SRO Jaipur X in the names of Finova Capital Pvt. Ltd. as seller and Abhay Pratap Singh Chandrawat as buyer, for a "Certificate Of Sale Executed In Case Of Public Auction". **The Securitization Application is at this date still pending before this Tribunal.**

**19.10.2023** - The Securitization Application is withdrawn by the S.A. Applicant, appearing in person and without counsel.

**25.10.2023** - **Six days later.** Shri Gaurav Kumawat, Authorized Officer of the Respondent F.I., applies in writing to the Sub-Registrar, Jaipur-III, expressly for the *removal of the stay note*, recording in terms that *"it came to be known that a note has been placed on the new registry of the said property pursuant to the court order of 22.3.2021"*, and praying that the stay note be removed *"so that the said registry may be effected in favour of the auction purchaser Abhay Pratap Singh."*

**Between 25.10.2023 and 01.11.2023** - The stay note is removed. No order of any court directs, permits or authorises its removal.

**01.11.2023** - The Sale Certificate is registered, **not before the Sub-Registrar Jaipur-III from whose record the stay has just been erased, but before the Sub-Registrar Jaipur X**, as Document No. 202303190116467.

**18.11.2023** - Upon the S.A. Applicant's objections, and upon those objections being found to be true, the stay is **restored** upon the portal, bearing the endorsement *"87/2019 Received on 18/11/2023."*

113. The Respondent F.I.'s stand before this Tribunal on 18.04.2026 was that *"they were not aware of any such stay"*, and, when confronted, that *"they have only given this much intimation that there is no stay from the DRT, but no copy of any such letter is available with them."*

114. That stand is falsified by the Respondent F.I.'s own document. The application dated 25.10.2023 is written by its own Authorized Officer, on its behalf, under his signature and mobile number. It does

not speak of the Debts Recovery Tribunal at all. It speaks, in terms, of *the note placed on the registry pursuant to the court order dated 22.3.2021* - which is the order of the learned Additional District and Sessions Judge. Its subject line is *"regarding removal of the stay note"*. Its prayer is *"kindly remove that stay note"*. A party cannot plead ignorance of a fact which its own officer has reduced to writing and made the very foundation of an application to a public authority. The submission of "no knowledge" is not merely untenable; it is contradicted by the writer's own hand.

115. It must further be recorded that the officer who wrote that application is the same Shri Gaurav Kumawat who signed the Demand Notice of 13.09.2021, who signed the Corrigendum of 15.09.2021, who presented the application under Section 14 before the learned Magistrate, and who lodged FIR No. 1243/2022. He was, on the Respondent F.I.'s own record, the Authorized Officer throughout. His knowledge is the Respondent F.I.'s knowledge.

116. The chronology contains one further feature which cannot pass without notice. The **e-Registration Fee Receipt of 16.10.2023** establishes that the machinery of registration had been set in motion three days *before* the Securitization Application was withdrawn on 19.10.2023, and nine days before the stay note was sought to be removed. Read with the pleading in paragraph 5(xxxv) - that the withdrawal was obtained upon assurances that the loan would be closed and possession restored, and that "till the time the SA is pending their higher authorities cannot take any action" - the sequence of 16.10.2023, 19.10.2023, 25.10.2023 and 01.11.2023 is not a series of coincidences. It is a plan; and its object was to complete a conveyance which could not lawfully have been completed while either the Securitization Application or the entry of the civil court's order stood in the way.

117. That the removal of the stay was without any lawful authority is not a matter of inference. It is the recorded conclusion of the State's own supervisory authority. The Deputy Inspector General,

Registration & Stamps, Jaipur Circle-I, in his report dated 08.05.2025, found that *"even though there was no decision of any civil court, the stay in respect of the said property was removed by the Office of the Sub-Registrar, Jaipur-III between 25.10.2023 and 01.11.2023, in consequence whereof, on 01.11.2023, the document 'Sale Certificate' relating to the disputed property came to be registered in the office of the Sub-Registrar, Jaipur Dasham - whereas on the said date of 01.11.2023 there subsisted upon the property in question the stay of the Hon'ble Additional District and Sessions Judge No. 1, Jaipur Metropolitan First"*; and that *"the Sub-Registrar, Jaipur-III has not, even in his factual report, made available any document or order which would establish by the order of which court the stay was removed."*

118. The consequences within the Department have followed: disciplinary proceedings under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 stand proposed against Smt. Sheela Choudhary, the then Sub-Registrar, Jaipur-III, and have been forwarded to the Board of Revenue, Ajmer; and a charge-sheet under the same Rule has been served upon Shri Dinesh Gupta, the then Registration Clerk, vide Departmental letter No. 333 dated 21.06.2025, with an Enquiry Officer appointed. The Sub-Registrar's own report concedes that the audit data as to the recording and removal of the stay is unavailable, and the National Informatics Centre has furnished nothing.

119. The letter dated 13.08.2025 does record that the State Government and the Sub-Registrar were not parties to Civil Miscellaneous Case No. 87/2019 and were not restrained by the order of 22.03.2021 from registering documents; and Departmental Circular No. 3/2015, point 12(vii), does direct that registration is not to be *stopped* unless a competent court has issued an injunction at the time of registration treating the Sub-Registrar as a party. This Tribunal has considered that passage carefully. It does not assist the Respondents, for four reasons.

120. The circular governs the **duty of the registering officer** - it tells him when he may or may not refuse to register a document presented to him. It says nothing whatever about the **validity of the transfer** as between the parties to it and as against a person holding an injunction. The question whether the Sub-Registrar was obliged to refuse registration is entirely distinct from the question whether the Respondent F.I., with recorded knowledge of a subsisting injunction restraining alienation of the property, could lawfully alienate it.

121. The circular addresses the *stopping* of registration. It nowhere authorises the **erasure of an existing recorded entry** of a court order from the public register. That is a different act altogether, and it is the act complained of here. The very passage of the circular relied upon points the other way: it directs that where a fact comes to the Sub-Registrar's notice under Rule 39 of the Rajasthan Registration Rules, 1955, he shall **make an endorsement upon the document together with proceedings under Section 60 of the Registration Act, 1908, and register it** - that is, he shall *record*, not *delete*. Had the circular been followed, the entry would have remained and an endorsement would have been made.

122. The State's own supervisory authority, having the circular before it, nonetheless concluded that the removal was without any court order and that the then Sub-Registrar and the Registration Clerk are prima facie guilty. That departmental conclusion is on this record and is unrebutted.

123. Above all, the circular is addressed to registering officers. It confers no licence upon a **litigant** who knows of an injunction to procure the deletion of its record. The conduct of the Authorized Officer falls to be judged not by a departmental circular addressed to somebody else, but by the general law.

124. Upon these facts, three settled principles apply with full force.

125. **(i) Fraud vitiates everything.** In ***S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1**, the Hon'ble Supreme Court, quoting Chief Justice Edward Coke, held that *"fraud avoids all judicial acts, ecclesiastical or temporal"*, and that a judgment or order obtained

by playing fraud on a court or on a statutory authority is a nullity and *non est*. In ***Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319**, relying upon the observations of Lord Denning in ***Lazarus Estates Ltd. v. Beasley*, (1956) 1 QB 702** - *"No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud."* - the Court held that *"fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence."* In ***A.V. Papayya Sastry v. Government of A.P.*, (2007) 4 SCC 221** and ***Meghmala v. G. Narasimha Reddy*, (2010) 8 SCC 383**, it was reiterated that where an order or benefit is obtained by misrepresentation or by playing fraud upon a competent authority, such order cannot be sustained. In ***United India Insurance Co. Ltd. v. Rajendra Singh*, (2000) 3 SCC 581**, the maxims ***fraus et jus nunquam cohabitant*** and ***fraus et dolus nemini patrocinari debent*** were applied. See also ***Union of India v. Ramesh Gandhi*, (2012) 1 SCC 476**.

126. Applying that principle, the registration of the Sale Certificate on 01.11.2023 was obtained by an active *suggestio falsi* and *suppressio veri* practised upon a statutory authority acting under the Registration Act, 1908. It is void and *non est*. It confers nothing.

127. **(ii) A transfer made in defiance of a judicial restraint order must be treated as never having taken place.** In ***Surjit Singh v. Harbans Singh*, (1995) 6 SCC 50**, the Hon'ble Supreme Court held that where a party, in defiance of a restraint order, alienates the suit property, the court has to treat the alienation as having not taken place at all, for otherwise no court order would have any sanctity. That principle was reaffirmed in ***Jehal Tanti v. Nageshwar Singh*, (2013) 14 SCC 689**. In ***Delhi Development Authority v. Skipper Construction Co. (P) Ltd.*, (1996) 4 SCC 622**, it was held that no person may reap the fruits of a transaction entered into in violation of orders of the court, and that such transactions can be undone.

128. It is no answer that the Respondent F.I. was not a party to Civil Miscellaneous Case No. 87/2019. **Section 52 of the Transfer of**

**Property Act, 1882** independently visits a transfer effected during the pendency of a suit in which a right to immovable property is directly and specifically in question with the consequence that it cannot affect the rights of the other party under the decree that may be made therein. And whatever the position of a stranger acting in innocence might be, the Respondent F.I. was not innocent: its own Authorized Officer recorded his knowledge of the order in writing on 25.10.2023 and acted upon that knowledge by seeking to have the record of the order removed.

129. **(iii) No one may take advantage of his own wrong.** ***Nullus commodum capere potest de injuria sua propria*** - see ***Union of India v. Major General Madan Lal Yadav*****, (1996) 4 SCC 127** and ***Kusheshwar Prasad Singh v. State of Bihar*****, (2007) 11 SCC 447**. The Respondent F.I. procured the removal of the record of a court order in order to obtain a registered conveyance, and now invokes that very conveyance, and the vested rights said to flow from it, as a shield. The law does not permit it.

130. Point No. 7 is answered emphatically in favour of the S.A. Applicant. This Tribunal holds that the sale of the secured asset in favour of Respondent No. 2, its confirmation, the Sale Certificate dated 29.09.2023 and its registration as Document No. 202303190116467 dated 01.11.2023 in the office of the Sub-Registrar, Jaipur Dasham (X), are vitiated by fraud, are in defiance of a subsisting order of a competent civil court, and are void and *non est* in law.

***The position of Respondent No. 2, and restitution:-***

131. Two things must be said about Respondent No. 2, and they must be said separately.

132. **First, as a matter of title, the plea of a bona fide purchaser for value without notice is not available to him.** The injunction of 22.03.2021 was a matter of public judicial record and was electronically recorded upon the registration portal of the State. A

purchaser is fixed in law with constructive notice of what a reasonable enquiry into the public records affecting the property would have revealed - see Explanation II to Section 3 of the Transfer of Property Act, 1882. Independently, Section 52 of that Act attaches to the property itself during the pendency of the suit. And most fundamentally, a title derived from a void transaction is itself void: *ex nihilo nihil fit*. Rights cannot vest upon a foundation which the law treats as never having existed.

133. **Secondly, and equally importantly, Respondent No. 2 is himself a victim of the Respondent F.I.'s conduct, and he says so himself.** In his Written Synopsis he pleads, in terms, that *"the Bank issued a Sale Certificate in favour of the Auction Purchaser despite the existence of a stay order / legal impediment over the subject property / documents,* ***which fact was never disclosed to the Auction Purchaser****"*; that he *"had no knowledge regarding pendency of any litigation, stay order or title dispute and acted solely on the representations, auction notice and assurances issued by the Bank"*; that *"the Bank cannot escape its liability after illegally conducting auction proceedings and issuing Sale Certificate in violation of existing stay orders / legal restraints"*; and that *"the acts of the Bank amount to deficiency in service, suppression of material facts, negligence and fraud upon the Auction Purchaser."*

134. This Tribunal is conscious that Respondent No. 2's Reply of 18.04.2026 takes the contrary position that the sale is valid and must be protected. There is no impropriety in a party pleading in the alternative, and this Tribunal treats the two documents as what they plainly are: a primary case that the sale should stand, and an alternative case that if it does not, the Respondent F.I. must answer for having concealed the stay from him. Both have been considered. The primary case fails for the reasons given under Points 6 and 7. The alternative case succeeds, and it succeeds on Respondent No. 2's own pleading, which the Respondent F.I. has never answered.

135. The consequence is striking. **The impugned Sale Certificate has, in the end, no defender before this Tribunal.** The S.A.

Applicant assails it. Respondent No. 2, its sole beneficiary, says on his own written case that it was issued in violation of a stay order concealed from him. The Respondent F.I., which alone executed it, has filed no reply to the amended Securitization Application and could offer only that no copy of its own Authorized Officer's letter was available with it and that *"the consequences will be seen."* In a proceeding under Section 17, where the burden of demonstrating that the measures were in accordance with the Act and the Rules lies upon the secured creditor, that is the end of the matter.

136. Respondent No. 2 having parted with Rs. 29,75,000/- in good faith through traceable banking channels, having paid stamp duty of Rs. 1,02,050/- and registration and allied fees of Rs. 30,090/-, and having occupied the premises since the possession was handed over to him by the Respondent F.I., the setting aside of the sale must carry with it full restitution to him at the hands of the Respondent F.I. The doctrine of restitution - *actus curiae neminem gravabit*, and the principle explained in ***South Eastern Coalfields Ltd. v. State of M.P.*, (2003) 8 SCC 648** - requires that a party be restored to the position he would have occupied but for the wrongful act. This Tribunal has ample power to so direct under Section 17(3)(c) of the SARFAESI Act read with Section 19(25) of the Recovery of Debts and Bankruptcy Act, 1993. The measure of that restitution is supplied by ***Govind Kumar Sharma v. Bank of Baroda*, 2024 INSC 326**, the very authority upon which Respondent No. 2 relies, in which the Hon'ble Supreme Court directed refund of the auction money with **compound interest at 12% per annum** from the date of deposit until payment. Point No. 8 is answered accordingly.

***Sections 13(8), 34 and 35 of the SARFAESI Act:-***

**As to Section 13(8).** This Tribunal accepts, without reservation, that after the substitution of Section 13(8) by Act 44 of 2016 the borrower's right of redemption stands extinguished upon publication of the notice for public auction, and that this is the settled law laid

down in ***Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd.*, (2024) 2 SCC 1 : 2023 INSC 838**, followed in ***Celir LLP v. Sumati Prasad Bafna*, 2024 INSC 978**, and most recently in ***M. Rajendran v. KPK Oils and Proteins India Pvt. Ltd.*, 2025 INSC 1137** (decided on 23.09.2025; cited in the written submissions of the S.A. Applicant as 2025 INSC 1144).

137. But that principle presupposes a lawful publication of a lawful notice by a secured creditor lawfully exercising a subsisting security interest. It is a rule about the *timing* of redemption; it is not a charter of immunity for an invalid sale. In *Celir LLP* the Hon'ble Supreme Court was protecting the sanctity of a concluded and lawful auction against a belated attempt at redemption. It was not laying down, and could not have laid down, that a secured creditor which never served the statutory notice of sale upon the person in whom the equity of redemption vested may nonetheless plead that the publication of that very notice destroyed her right to redeem.

138. The Respondent F.I.'s position on this record is that (i) it never served any notice under Rule 8(6), separate or composite, upon the S.A. Applicant; (ii) it dated its sale notice 25.08.2023 and sold nineteen days later, without proving any newspaper publication; (iii) it was not in possession of the secured asset when it issued that notice; and (iv) it thereafter procured the erasure of a court order from a public record to complete the conveyance. To permit such a creditor to invoke Section 13(8) would be to allow it to take advantage of its own wrong.

139. **As to Section 34.** The bar in Section 34 operates in respect of *"any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine."* Civil Miscellaneous Case No. 87/2019 was instituted in 2019, before any measure under Section 13(4) was taken, between two Class-I heirs *inter se*, and concerns rights in inherited property. The division of an intestate's estate between his heirs is emphatically not a matter which a Debts Recovery Tribunal is empowered under the SARFAESI Act to determine. Section 34 therefore has no

application to the order dated 22.03.2021. In any event, the Hon'ble Supreme Court in ***Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311** expressly preserved the jurisdiction of the civil court where the action of the secured creditor is alleged to be fraudulent, or so absurd and untenable as to be wholly outside the scope of the Act. The present is such a case.

140. **As to Section 35.** Section 35 resolves an inconsistency between the SARFAESI Act and *another law*. It does not, on any construction, authorise a secured creditor to disobey a subsisting order of a competent court, still less to procure the removal of the record of that order from a public register. A statute which overrides other statutes does not thereby override the judicial process. Were it otherwise, the rule of law would be at the mercy of whichever litigant held the benefit of a non-obstante clause.

141. **And finally, the Respondent F.I.'s own enabling order defeats it.** Even if every argument founded upon Sections 13(8), 34 and 35 were accepted, the Respondent F.I. would still have to answer the plain words of the order dated 24.03.2022 which it itself obtained and upon which alone it entered the property: *"if there be no stay from any other court..."*. There was. Point No. 9 is answered against the Respondent F.I.

142. For the reasons recorded above, this Securitization Application deserves to be, and is, allowed on each of the following grounds, several of which are independently sufficient and all of which are cumulatively reinforcing:

143. **Fraud upon a statutory authority at the behest of the Authorized Officer of the Respondent F.I.** Shri Gaurav Kumawat, Authorized Officer, by his written application dated 25.10.2023, with knowledge of the subsisting injunction of 22.03.2021 recorded in his own hand, procured the erasure of the record of that judicial order from the e-Panjiyan portal of the Registration and Stamps Department in order to enable the conveyance to be registered. Fraud vitiates every solemn act - *S.P. Chengalvaraya Naidu*, *Ram Chandra Singh v. Savitri Devi*, *A.V. Papayya Sastry*, *Meghmala*, *Lazarus*

*Estates v. Beasley*. The Sale Certificate and its registration are void and *non est*.

144. **Manipulation of the public record: removal of the stay entry and its restoration immediately after registration.** The stay stood recorded from 22.03.2021; its removal was solicited in writing on 25.10.2023; the registration was effected on 01.11.2023 in that window, before a different Sub-Registrar from the one holding the record; and the stay was restored on 18.11.2023. The State's own supervisory authority has found that no order of any court authorised the removal, that the Sub-Registrar could produce no such order, and that prima facie the then Sub-Registrar, Jaipur-III and the Registration Clerk are guilty; proceedings under Rule 16 of the Rajasthan Civil Services (CCA) Rules, 1958 are on foot against both. A transaction squeezed into an artificially created window in a public register is not one the law will countenance.

145. **The chronology of 16.10.2023, 19.10.2023, 25.10.2023 and 01.11.2023.** The registration fee was paid and the registration process set in motion on 16.10.2023, while the Securitization Application was still pending; the Securitization Application was got withdrawn on 19.10.2023 upon assurances pleaded and uncontroverted; the stay note was got removed on 25.10.2023; and the conveyance was registered on 01.11.2023. That sequence is not coincidence.

146. **Sale in the teeth of a subsisting injunction of a competent civil court.** The order dated 22.03.2021 of the learned Additional District and Sessions Judge No. 1, Jaipur Metropolitan-I, restraining alienation and dispossession, has never been vacated. An alienation in defiance of a restraint order must be treated as never having taken place - *Surjit Singh v. Harbans Singh*, *Jehal Tanti v. Nageshwar Singh*, *DDA v. Skipper Construction*. Section 52 of the Transfer of Property Act, 1882 applies independently.

147. **Failure of the condition on which the Section 14 order operated.** The order dated 24.03.2022 was expressly conditional upon there being no stay from any other court. There was such a

stay, passed a full year earlier and recorded on the State's own portal. The condition failed at the moment the order was passed. No possession could lawfully be taken thereunder, and every possession proceeding derived from it is without authority of law.

148. **Total non-compliance with Rule 8(6).** No notice of thirty days for the sale of the immovable secured asset - whether separate or composite - was ever served upon the S.A. Applicant, in whom the equity of redemption vested. This Tribunal recorded that fact on 18.04.2026 and nothing has been produced since. Rules 8 and 9 are mandatory - *Mathew Varghese*, *Vasu P. Shetty*, *J. Rajiv Subramaniyan* - and non-compliance with the thirty days' notice under Rules 8(6) and 8(7) is a ground on which the Hon'ble Supreme Court has set aside a completed auction sale in *Govind Kumar Sharma v. Bank of Baroda*, the very authority relied upon by Respondent No. 2.

149. **Breach of Rule 9(1).** The sale notice is dated 25.08.2023 and the sale was held on 13.09.2023, an interval of nineteen days; no dated newspaper publication has been produced at all. The proviso permitting fifteen days for a subsequent sale requires the authorised officer to *serve, affix and publish* - all three, conjunctively - and the affixation relied upon was effected on 26.08.2023 upon premises then in the possession of the S.A. Applicant, the Respondent F.I. itself taking possession only on 31.08.2023.

150. **Service of the notice under Section 13(2) not established.** Although the notice dated 13.09.2021 was addressed to the S.A. Applicant as a legal heir, no acknowledgement, postal receipt, track report or newspaper publication has been produced before this Tribunal - notwithstanding that the Respondent F.I. represented to the learned Chief Metropolitan Magistrate on 24.03.2022 that it had filed precisely those documents with its Section 14 application.

151. **Absence of a proved, valid and enforceable security interest.** On the Respondent F.I.'s own Demand Notice, the security interest enforced was created by Shri Jagdamba Prasad Sharma in connection with a facility of 31.01.2018. It is pleaded on affidavit,

and stands wholly uncontroverted, that he was then lying comatose and legally incapable of executing any document - Sections 11 and 12 of the Indian Contract Act, 1872. No proof of the disbursal of Rs. 4,23,564/- to him has been produced, and the loan documents, sanction letter and mortgage deed have never been produced despite a specific prayer to that effect pressed since December 2022.

152. **The demand is not shown to have been lawfully quantified.** The Annexure to a notice issued on 13.09.2021 stated the dues "as on 09-11-2021", a date then in the future; Rs. 5,77,937/- of the Rs. 26,74,159/- demanded, being 21.6 per cent, is unexplained "bounce, collection and late payment charges"; no bifurcation of principal, interest and charges has ever been furnished; and the Respondent F.I., having itself mandated and financed an insurance cover, has accounted for it in no manner whatsoever.

153. **Suppression from, and fraud upon, the auction purchaser.** Respondent No. 2 pleads in writing, and this Tribunal accepts, that the existence of the stay order was concealed from him by the Respondent F.I. and that the Sale Certificate was issued in violation of it. A sale procured by concealing a judicial restraint from the bidder is not a fair, transparent or lawful sale within the meaning of Rules 8 and 9.

154. **Sections 13(8), 34 and 35 afford no protection.** The extinguishment of redemption under Section 13(8) presupposes a lawful notice lawfully served and published. Section 34 does not touch a dispute between heirs *inter se* instituted before any measure under Section 13(4) was taken, and *Mardia Chemicals* preserves recourse where fraud is alleged. Section 35 does not license disobedience of a judicial order. And no party may take advantage of its own wrong - *nullus commodum capere potest de injuria sua propria*.

155. **Non-return of unmortgaged movables.** The household goods and articles removed from the premises were never mortgaged, no inventory was furnished to the S.A. Applicant, no proof of service

of any reminder or of the letter dated 30.11.2023 exists, and the articles have not been restored notwithstanding her final notice.

156. Before recording the operative directions, this Tribunal considers it necessary to say a word about the seriousness of what this record discloses. The SARFAESI Act confers upon a secured creditor an extraordinary power - the power to seize and sell a citizen's property without the intervention of a court. That power is conferred upon the express statutory condition, contained in Section 17(2), that it be exercised strictly *"in accordance with the provisions of this Act and the rules made thereunder."* A creditor which uses that power to circumvent a subsisting order of a civil court, and which procures the erasure of the record of that order from a public register in order to complete its transaction, does not merely commit a procedural default. It strikes at the foundation of the rule of law; it defrauds the citizen whose property it takes; it defrauds the bidder to whom it sells; and it draws public functionaries into disciplinary proceedings. Such conduct cannot be met with a mere setting aside of the sale. It must be visited with costs, and it must be reported.

157. Respondent No. 2, the auction purchaser, has submitted in his written arguments that the Bank conducted the auction proceedings illegally and issued the Sale Certificate in violation of the subsisting stay orders and legal restraints. Respondent No. 2 has further contended that the Bank is fully liable to compensate him for the loss suffered on account of such illegal proceedings.

158. **Accordingly, this Securitization Application is allowed, in the following terms:**

(I) The Demand Notice dated 13.09.2021 issued under Section 13(2) of the SARFAESI Act and the Corrigendum dated 15.09.2021 are hereby quashed and set aside.

(II) It is **declared**, in exercise of the power conferred by Section 17(3)(a) of the SARFAESI Act, 2002, that the recourse taken by Respondent No. 1 under Section 13(4) of the Act in respect of the secured asset being **Plot No. 70, Ramdev Nagar-4, Niwaru Road, Niwaru, Jhotwara, Police Station Jhotwara,**

**Jaipur, admeasuring 101.2 square yards, bounded on the East by a public road 40 feet wide, on the West by Plot No. 65, on the North by Plot No. 71 and on the South by other land**, is **not in accordance with the provisions of the Act and the Rules made thereunder, and is invalid.**

(III) It is **declared** that, the condition contained in the order dated **24.03.2022** passed by the learned Senior Civil Judge & Chief Metropolitan Magistrate, Jaipur Metropolitan-II, in Application No. 179/2022 under Section 14 of the SARFAESI Act - namely, that there be no stay from any other court in respect of the subject property - having failed by reason of the subsisting order dated 22.03.2021 of the learned Additional District and Sessions Judge No. 1, Jaipur Metropolitan-I, **no possession of the secured asset could lawfully be taken thereunder**; and all possession proceedings taken by Respondent No. 1 in purported exercise of that order are **without authority of law and are nullified**.

(IV) The **E-Auction Sale Notice dated 25.08.2023**, the **e-auction held on 13.09.2023**, the **confirmation of sale** in favour of Respondent No. 2 and the **Sale Certificate dated 29.09.2023** are hereby **quashed and set aside** as being violative of Rules 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002 and as being vitiated by fraud.

(V) The registration of the said Sale Certificate as **Document No. 202303190116467 dated 01.11.2023** in the office of the Sub-Registrar, Jaipur Dasham (X), in favour of Respondent No. 2 Shri Abhay Pratap Singh Chandrawat, is hereby **declared null, void *ab initio* and *non est* in the eyes of law**, and is **cancelled**. This order shall constitute an order of cancellation passed by a competent Tribunal for the purposes of **Rule 181 of the Rajasthan Registration Rules, 1955**, and the concerned registering officer is directed to record the entry of such cancellation in his record against the copy of the

registered document and in the relevant index, upon production of a certified copy hereof.

(VI) Respondent No. 1 and Respondent No. 2 shall, **within thirty (30) days** of the date of this order, **restore peaceful, vacant and physical possession** of the said secured asset to the S.A. Applicant.

(VII) Simultaneously with the handing over of possession under direction (VI), Respondent No. 1 shall pay to Respondent No. 2, by way of restitution:

(VIII) The entire auction consideration of **Rs. 29,75,000/-** (Rupees Twenty Nine Lakh Seventy Five Thousand only), **no interest to be paid** as he was involved in fraud to gain the unlawful benefit & enjoyed the property.

(IX) The **stamp duty of Rs. 1,02,050/- and the registration and allied fees of Rs. 30,090/-**, aggregating **Rs. 1,32,140/-**, as evidenced by the stamp certificate No. KC 0036663993 and the e-Registration Fee Receipt No. RJ1245262892656 dated 16.10.2023 filed by Respondent No. 2, together with simple interest at the rate of 12% per annum from 16.10.2023 until payment, and in addition such municipal taxes and mutation charges as Respondent No. 2 may establish by original receipts; and

(X) A consolidated sum of **Rs. 50,000/-** (Rupees Fifty thousand only) by way of compensation for the loss, inconvenience and harassment occasioned to Respondent No. 2 by the concealment from him of the subsisting judicial injunction.

(XI) The said amounts shall be paid within **forty-five (45) days** of this order. The obligation of Respondent No. 2 to deliver possession under direction (VI) and the obligation of Respondent No. 1 to make payment under direction (VII) shall be **reciprocal and concurrent**; Respondent No. 2 shall be entitled to remain in possession until payment is made or secured to his satisfaction, upon his filing before the Registrar of this Tribunal an undertaking to deliver vacant possession

forthwith upon receipt. Respondent No. 2 is granted **liberty** to pursue, before the appropriate forum and in accordance with law, the balance of the claims made in his Written Synopsis, this Tribunal having granted only that measure of restitution which is incidental to the setting aside of the sale.

(XII) Respondent No. 1 shall, **within thirty (30) days**, return to the S.A. Applicant all household goods, articles and movables removed from the secured asset, strictly in accordance with the inventory filed by its Authorised Representative before this Tribunal on 04.03.2023, and shall furnish a copy of that inventory to her. In the event any article is not returned, Respondent No. 1 shall pay its value as assessed by an independent valuer to be appointed by the Registrar of this Tribunal at the cost of Respondent No. 1.

(XIII) Respondent No. 1 shall, **within sixty (60) days**, provide to the S.A. Applicant, a **complete and duly certified statement of account** in respect of all the loan facilities from inception till date, which shall: (a) give a full bifurcation of principal, interest, penal interest, fees and charges, and in particular an itemised justification of the sum of Rs. 5,77,937/- shown as "Bounce Charges, Collection Charges, Late payment Charges and other charges"; (b) reverse all interest, penal interest, charges and fees debited after the classification of the account as a non-performing asset, in accordance with the applicable prudential norms of the Reserve Bank of India, and give effect to the directions of the Hon'ble Supreme Court in ***Small Scale Industrial Manufactures Association v. Union of India*** so far as interest on interest, compound interest and penal interest for the period 01.03.2020 to 31.08.2020 are concerned; (c) disclose the complete particulars of every insurance policy procured against the said facilities, the premia debited, the insurer, the sum assured, the nominee, and the intimation, claim, repudiation or settlement, if any; and (d) disclose the proof of actual disbursal of the facility bearing Account No.

FIJPLALONS000005001074, including proof of encashment of Cheque Nos. 000895 and 000896 and of NEFT CMS788279602.

(XIV) It is clarified that nothing in this order shall preclude Respondent No. 1 from initiating fresh proceedings under the SARFAESI Act, 2002 in respect of such debt, if any, as may lawfully be found due, **provided that** such proceedings are taken **strictly in accordance with law.**

(XV) The findings recorded in this order upon the competence of the late Shri Jagdamba Prasad Sharma to contract in January 2018, and upon the validity of the security interest, are rendered **for the limited purpose of the adjudication under Section 17 of the SARFAESI Act** and shall not preclude the learned Additional District and Sessions Judge No. 1, Jaipur Metropolitan-I, seized of Civil Miscellaneous Case No. 87/2019, or any other competent civil court, from finally determining the questions of title, of the identification of the Class-I heirs and their respective shares, and of the validity and enforceability of the mortgage.

(XVI) A certified copy of this order shall be forwarded by the Registry, **within seven (7) days**, to: The **Inspector General, Registration and Stamps Department, Government of Rajasthan, Ajmer**, and the **Deputy Inspector General, Registration and Stamps, Jaipur Circle-I**, for information, for such further action as may be warranted in the departmental proceedings referred to in the reports dated 08.05.2025 and 13.08.2025, and for the purposes of Rule 181 of the Rajasthan Registration Rules, 1955; The **Sub-Registrar, Jaipur-III** and the **Sub-Registrar, Jaipur Dasham (X)**, for compliance with direction (V);

(XVII) Liberty is reserved to the S.A. Applicant and to Respondent No. 2 to initiate such civil, criminal or other proceedings as they may be advised in respect of the conduct recorded in this order, including proceedings under **Section 82 of the**

**Registration Act, 1908** and under **Order XXXIX Rule 2A of the Code of Civil Procedure, 1908** before the Court which granted the injunction. Nothing stated in this order shall be construed as an expression of opinion upon the merits of any such proceeding, nor shall it prejudice the pending Civil Miscellaneous Case No. 87/2019.

(XVIII) Respondent No. 1 shall file an **affidavit of compliance** in respect of directions (V) to (X) within **seventy-five (75) days** of this order. **The Registry shall list the matter before this Tribunal on 20.11.2026** for reporting compliance, on which date it shall be open to any party to apply for further directions.

159. Accordingly, this Securitization Application stands **disposed of as allowed** in the above terms. All pending interlocutory applications, if any, stand disposed of.

160. File be consigned to record, as per rules. Copy of order be uploaded on website.

**(Vimal Gupta)**
**Presiding Officer**
**Debts Recovery Tribunal, Jaipur**