BEFORE THE DEBTS RECOVERY TRIBUNAL, CUTTACK

PRESENT:- SHRI JITENDRA PRASAD SINGH

PRESIDING OFFICER.

S.A. No.84 OF 2023

DATE OF DELIVERY OF ORDER:15.10.2026

Mahendra Harichandan, aged about 75 years, S/o. Late Ananta Charan Hati, At-Plot No.138, Udayuagiri Vihar, Patrapada, Bhubaneswar, PS- Khandagir, Dist. Khurda.

... Applicant

Versus

1. Authorized Officer, Punjab National Bank, Plot No. A/32, Kharavel Nagar, Bhubaneswar, Dist. Khurda.
2. Chief Manager, Punjab National Bank, Bapuji Nagar Branch, Unit-III, Bhubaneswar, Dist. Khurda.
3. Smt. Rashmita Mohanty, aged about 40 years, W/o. Purna Chandra Mohanty, At Plot No.23/84/85, Vimpur Mouza, PO-Aerodrome Area. Near AirportBhubaneswar-751020, Dist- Khurda.

... **Respondents**

Counsel for the Applicant:- Shri N. K. Dash

Counsel for the Respondents No.1 to 2:- Shri A. K. Biswal

Counsel for the Respondent No.3:- Shri P. K. Satpathy

JUDGEMENT

1. This is an Application under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, filed by the applicant for quashing the sale process pursuance to the letter dated 11.01.2024 and e-auction sale notice dated 11.01.2024 as published in the Odia daily The Samaya dated

12.01.2024(Annexure-5 series) and further the entire action/process under the provisions of SARFAESI Act and the Security Interest (Enforcement) Rules, 2002 be struck down and for other reliefs.

2. The brief facts of the applicant case is that the applicant is a Govt. Pension holder but in his advanced age and to his misfortune, he stood as a guarantor against a cash credit loan of Rs.66,00,000/- incurred by M/s. Vermora marketing and the said firm is noticed to have been irregular in payment of loan dues for which the demand notice is served on him attaching his only residential house for e-auction sale in the event of non-compliance. Since the property of the applicant is mortgaged to the bank as collateral security, he has, as on date, made payment of Rs.40,000.00/-(Forth Lakhs) and undertakes to pay off the loan in One Time Settlement (OTS) mode or in any other suitable mode desirable in the given situation. The applicant has taken his recourse to the Hon'ble High Court of Orissa by filing W.P.(C) No.4277/2023 wherein the Hon'ble Court having taken cognizance of the matter have been pleased to pass a direction upon the bank to revisit the grievance and in pursuance thereto the applicant has submitted his grievance before the bank with his proposal to square off the loan dues by a schedule of payment but the bank has been deaf ear to this grievance dtd. 22.02.2023. The bank has not yet taken any decision on his representation under Annexure-3 despite the fact, the sale notice for the e-auction of his building situated in Plot No. 138 is scheduled to be held on dtd. 24.05.2023. The applicant has sole and only residential property in the city of Bhubaneswar and in the event the said property is taken away, he will be on the street and in such alarming old age of the applicant and his wife, he honestly craves for the indulgence of this Hon'ble Court for interference but the fact remains, with due regard to his financial stress, easy and lenient view informing the instalments is the need of the hour.

Since the applicant has the only residential building available for the stay of his family and since the sole property is scheduled to be sold away by e-auction on dtd. 24.05.2023 and since the applicant has been under financial stress and since the applicant has submitted his proposal for paying off the loans in its entirety, the applicant is left with no other option than to seek the interference of this Hon'ble Court.

During pendency of the SARFAESI Application the respondents-Bank issued a letter dated 11.01.2024 with subject "sale of secured asset". Besides an e-auction sale notice dated 11.01.2024 is also published in the Odia daily "The Samay" dated 12.01.2024. The letter dated 11.01.2024, purportedly issued under Section 13(4) of the SARFAESI Act read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, was received by the applicant on 19.01.2024, which was evidently issued (booked) on 18.01.2024. The impugned sale notice was issued fixing the date of auction as 30.01.2024 which is in less than, even 15 days, however since the notice under Rule 8(6) of the Rules, 2002 is required to be served prior to clear 30 days of the date of auction. The letter dated 11.01.2024 while stipulates its reserve price to be Rs.88.60 lakhs, at the same time the e-auction notice published in the newspaper fixed the reserve price at Rs.86.60 lakhs. The discrepancy in fixation of the reserve price tantamount to the violation of Rule 8(5) of the Rule, 2002. It is further worthwhile to mention here that the respondent-Bank has caused e-auction on 31.01.2022, 31.05.2022, 14.02.2023, 12.08.2022, 24.05.2023, 21.07.2023 & 22.08.2023. For the auction on 31.01.2022 the outstanding was Rs.80.17 lakhs whereas the outstanding amount went down/fluctuated in every attempt of sale. Lastly in the auction notice dated 06.08.2023 the outstanding was shown to be Rs.55,76,914/- whereas in the present auction notice dated 11.01.2024 the outstanding is shown to be Rs.52,27,973.52. That shows that the respondents have all the time manipulated the outstanding of the loan account. Admittedly a notice under Section 13(2) of the SARFAESI Act

was issued on 17.05.2021 claiming an outstanding of Rs.72,23,194.30, the due as on 01.04.2021. Thereafter, the applicant has paid Rs.49,80,000/- on several dates from 31.12.2021 to 21.08.2023, which would also be evident from the statement of account. Under the circumstances, showing outstanding of Rs. 52,27,973.52 as on 31.12.2023, shows that the defendants have not taken the payment made in between.

3. Notices were issue to the Respondent No.1 and 2 and subsequently to Respondent No.3 to show cause as to why the relief prayed for by the applicant be not granted. After receiving the notice, the Respondents No.1 to 2 and Respondent No.3 appeared and filed their counter affidavit.

4. The Respondents No.1 and 2 filed their counter affidavit contending that Loan was sanctioned in favour of Varmora marketing. The applicant is a guarantor to the said loan account and also his son. Manoranjan Harichandan is a partner to the said firm. Apart from that other loans are being taken by Manoranjan Harichandan from the Defendant/Respondent Bank and the same is also irregular in making payment of the loan account. The applicant and his son have not repaid the loan amount in time for which action has been taken by the Bank under the SARFAESI Act to recover the loan amount. Bank has not done any illegality by taking step for recovery of the huge amount which is public money. It is further submitted that the loan was declared NPA on 28.12.2020 and thereafter steps have been taken to recover the loan amount. The applicant has also made several communications to the bank for repayment of the loan amount but he failed to keep his commitment and bank has repeatedly requested to repay the loan amount and he failed to repay. The loanee has paid some amount irregularly in the loan account and now the outstanding is Rs.5348537.30 against the said loan account as on 30.04.2023. The OTS guideline as available is not applicable to the case of the

applicant.The respondent bank has put to auction the mortgaged property only to recover the loan amount by following the due procedure as prescribed under law. Before putting the property into auction valuation of the property has been made and also the notice has been issued to the guarantor. Due to Non-payment of the huge loan amount bank is proceeding to recover the loan amount. Due to non-availability of bidders the said auction is failed.

The firm namely Varmora Marketing has taken the loan and the property of the applicant is put to mortgage. Thereafter his son Manoranjan Harichandan has taken a loan which is still huge outstanding against him. There is no irregularity committed by the bank in putting the property into auction. The applicant has no locus standi to challenge the process of auction initiated by the bank under the SARFAESI Act. The outstanding amount as on today in respect of the loan taken by Varmora Marketing is Rs.5348537.30 and the outstanding amount of loan as taken by Manoranjan Harichandan is Rs.3670034/-. The applicant and other loanees are avoiding to make the repayment of the loan which is public money. So, the action taken by the bank is justified and the same is as per law.

5. Respondent No.3 filed counter and contended that the said auction was incomplete. Due to mis-representation and concealment of fact by the bank authorities, the present defendant No.3 did not agree to proceed with the auction and submitted application for cancellation of the auction with a request to refund the deposited bid amount to the tune of Rs.21,90,000/-.Since the request of the defendant No.3 was not considered, the petitioner approached the Hon’ble High Court in W.P.(C) No. 6505 of 2024. During hearing of the writ petition, the counsel for the bank disclosed about pendency of the SA No. 84 of 2023 in connection with sale of the secured asset. Therefore the present defendant No.3 withdrew the writ petition on 25.04.2024 with liberty to approach this Tribunal in the pending SA No. 84 of

2023. The defendant No.3 has also filed separate interim application with prayer for issuance of direction to the defendant bank to return the deposited 25% of the bid amount of Rs.21,90,000/-. As the defendant bank did not communicate any decision with regard to refund of the aforesaid amount taking plea of the pendency of this SA. Therefore on constraint, the defendant No.3 made interim application for direction for refund of the money in this pending SA. The auction sale notice did not disclose about existence of residential building. The applicant claimed there is existence of building. The applicant claimed the physical possession with the borrower. The bank claimed the possession is with the bank. The defendant No.3 while bonafidely believed the bank officers on the status of the property as per auction notice, with good faith, she participated in the auction. When the defendant No.3 demanded the approved plan of the existing building, the bank was unable to provide the same. On enquiry the present defendant No.3 came to know that there is no building plan of the existing building and the same is an unauthorized construction. There is every probability of demolition of such building by the Bhubaneswar Development Authority. This fact has been concealed by the officers of the bank intentionally to defraud the intending buyers. The present defendant No.3 is a scape goat of the action of the bank authorities. The present defendant No.3 participated in the auction held on 30.01.2024 and quoted the bid for Rs.87,60,000/- with impression that the bank has conducted the auction of the property in fair and transparent manner and the bank possessed the relevant documents. The defendant No.3 has deposited a sum of Rs.21,90,000/- before the bank as per sale intimation letter dated 31.01.2024.

When the applicant gone to the physical site, he found there is existence of two storied building over the land. But the bank advertised only land for sale without disclosing the existence of

building. The auction notice is silent about the existence of building which is concealment of truth and lack of non disclosure of material particulars. There is no approach road to the property as per revenue records and maps. Hence the auction is itself not in accordance with law and rules. In the situation the defendant No.3 immediately approached on 04.02.2024 to the bank through e-mail to cancel the auction dated 30.01.2024 on 12.02.2024, she submitted written application for cancellation of auction and refund of the deposited 25% of bid amount of Rs.8,66,000 + Rs.13,24,000=Rs.21,90,000/-. As on date no written communication received from the bank regarding refund of the deposited amount. The present defendant No.3 is a lady and in order to arrange a shelter for her family, she deposited the amount to purchase a house for her personal use. But there is serious defect and irregularity pointed out in the auction, which vitiates entire auction proceeding. As the documents are in custody of the bank, they should disclose in the auction notice and to the defendant No.3 before the date of auction. Due to non disclosure, the defendant No.3/lady with good faith participated in the auction believing the bank officers followed the procedure and documents available with them. But subsequently they are unable to provide the documents relates to building plan approval and the communication to the existing house. There is less chance of taking physical possession of the property, since there is no Govt. approach road to the land. In that situation the defendant No.3 has no other option to seek refund of the deposited amount. The SA applicant has also raised the ground of valuation and fixation of reserve price as low. In such situation on the face of record, the auction notice dated 30.01.2024 being appears to be defective and not valid one, the same is liable to be cancelled. The present defendant No.3 is entitled to get back her deposited money of Rs.21,90,000/-.

6. On the perusal of the pleadings of the rival parties, the following issues arise for consideration.

(i) Whether the Respondent Bank has violated Rule 8(6) & 9(1) of Security Interest Enforcement Rues, 2002?

(ii) Whether the Respondent Bank has taken proper valuation of the property before putting the property into auction sale and fixing the reserve price?

(iii) Whether the applicant is entitled to the reliefs as claimed?

7. **Issue No.(i):-** Whether the Respondent Bank has violated Rule 8(6) & 9(1) of Security Interest Enforcement Rues, 2002?

The contention of the applicant is that the during the pendency of the SARFAESI Application the respondent-Bank issued a letter dated 11.01.2024 with subject "sale of secured asset". Besides an e-auction sale notice dated 11.01.2024 is also published in the Odia daily "The Samay" dated 12.01.2024. The letter dated 11.01.2024, purportedly issued under Section 13(4) of the SARFAESI Act read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, was received by the applicant on 19.01.2024, which was evidently issued (booked) on 18.01.2024. The impugned sale notice was issued fixing the date of auction as 30.01.2024 which is in less than, even 15 days, however since the notice under Rule 8(6) of the Rules, 2002 is required to be served prior to clear 30 days of the date of auction

The contention of the Respondent Bank is that the Respondent has put to auction the mortgaged property only to recover the loan amount by following the due procedure as prescribed under law. Before putting the property into auction valuation of the property has been made and also the notice has been issued to the guarantor. Due to non-availability of bidders the said auction is failed.

From the perusal of the record it is seen that the notice under Rule 8(6) of the Security Interest(Enforcement) Rules, 2002 was

received by the applicant on 19.01.2024 issued on 18.01.2024 fixing the date of auction as 30.01.2024 which is less than 15 days. As such it violates Rule 8(6) of the Security Interest(Enforcement) Rules wherein it has been stated that the Authorised Officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets under sub-Rule(5). Respondent Bank has also not filed any document regarding service of notice giving clear 30 days or 15 days notice.

In view of the aforesaid discussion, this Tribunal is of the view that the Respondent Bank has not given clear 30 days notice nor 15 days clear notice to the applicant before effecting sale of the mortgaged property. As such it violates Rule 8(6) of the Security Interest(Enforcement) Rules, 2002 Accordingly issue No.(i) is answered.

8. **Issue No.(ii):-**Whether the Bank has taken proper valuation of the property before putting the property into auction sale and fixing the reserve price?

The contention of the applicant is that the letter dated 11.01.2024 while stipulates its reserve price to be Rs.88.60 lakhs, at the same time the e-auction notice published in the newspaper fixed the reserve price at Rs.86.60 lakhs. The discrepancy in fixation of the reserve price tantamount to the violation of Rule 8(5) of the Rule, 2002.

The contention of the Respondent Bank is that the Respondent Bank before putting the property into auction valuation of the property has been made and also the notice has been issued to the guarantor.

From the perusal of the record it is seen that the applicant has challenged the valuation of the property. In the letter dated 11.01.2024 reserve price has been fixed at Rs.88.60 lakhs in the e-auction notice published in the newspaper fixed the reserve price at

Rs.86.60 lakhs lowering the valuation. Further more the Respondent Bank has not filed any valuation report to prove its case. Hence the contention of the applicant that the property has not been valued properly and fixation of the reserve price not as per valuation holds good. Accordingly issue No.(ii) is answered

09. Issue No.(iii):-Whether the applicant is entitled to the reliefs as claimed?

From the perusal of the record it is seen that after availing the credit facilities from the bank, the applicants did not adhere to the terms and conditions of the sanction and did not clear the amount despite several correspondences and request from the bank for which the said loan accounts of the applicant became NPA. Thereafter the Respondent Bank had initiated the actions against the applicant under the provisions of the SARFAESI Act. But the Respondent Bank failed to prove that 30 days notice under Rule 8(6) has been served on the applicant. Further more the Respondent Bank has sold the property fixing the reserve price in violation of Rule 8(5).

The contention of the auction purchaser is that the bank advertised only land for sale without disclosing the existence of building. The auction notice is silent about the existence of building which is concealment of truth and lack of non disclosure of material particulars. There is no approach road to the property as per revenue records and maps. Hence the auction is itself not in accordance with law and rules. In the situation the defendant No.3 immediately approached on 04.02.2024 to the bank through e-mail to cancel the auction dated 30.01.2024 on 12.02.2024, she submitted written application for cancellation of auction and refund of the deposited 25% of bid amount of Rs.8,66,000 + Rs.13,24,000=Rs.21,90,000/-. But there is serious defect and irregularity pointed out in the auction, which vitiates entire auction proceeding. As the documents are in custody of the bank, they should disclose in the auction notice and to

the defendant No.3 before the date of auction. Due to non disclosure, the defendant No.3/lady with good faith participated in the auction believing the bank officers followed the procedure and documents available with them. There is less chance of taking physical possession of the property, since there is no Govt. approach road to the land. In that situation the defendant No.3 has no other option to seek refund of the deposited amount. The SA applicant has also raised the ground of valuation and fixation of reserve price as low. In such situation on the face of record, the auction notice dated 30.01.2024 being appears to be defective and not valid one, the same is liable to be cancelled. The present defendant No.3 is entitled to get back her deposited money of Rs.21,90,000/-.

In view of the aforesaid discussion made above, and the issues already answered in the preceding paragraphs and considering the facts and circumstances of the case and the material available on record, this Tribunal is of the view that the Respondent Bank failed to prove its defence and the applicant established its case against the Respondent Bank. Therefore, the instant SA bearing SA No.84/2023 is allowed and the letter dated 11.01.2024 and the e-auction sale notice dated 11.01.2024 as published in the Odia daily 'The Samaya" dated 12.01.2024 being violative of the provisions enshrined in the SARFAESI Act are hereby quashed. Accordingly Issue No.(iii) is answered.

O R D E R

In the result, S.A. No.84 of 2023 is allowed and the letter dated 11.01.2024 and the e-auction sale notice dated 11.01.2024 as

published in the Odia daily 'The Samaya" dated 12.01.2024 being violative of the provisions enshrined in the SARFAESI Act are hereby set aside. Respondent Bank is at liberty to take fresh steps as per law. Respondent Bank is further directed to refund the amount deposited by the auction purchaser along with interest @7% p.a. simple from the date of deposit till the date of payment within 30 days from today. Registrar is directed to return the amount of Rs.21,90,000 deposited by the applicant which is kept in the fixed deposit interest bearing account along with accrued interest within 30 days from the date of this order to the applicant.

Since the main SA is disposed of, hence all the IAs, pending, if any, stands disposed of and interim order, if any, stands vacated.

Let a copy of this order be supplied to the parties forthwith as per rules.

Let the file of SA No.84 of 2023 be consigned to the record room.

This order is dictated and corrected by me and pronounced in the open Court under my signature, this the 15th day of October, 2026.

(Jitendra Prasad Singh)
Presiding Officer.