Case Citation: (2026) ibclaw.in 5098 HC

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.18282 of 2026
and W.M.P.No.19622 of 2026

V.S. Lokendra Babu
S/o.Sri Ramalu,
B-34, Karthikeyan Salai,
Periyar Nagar, Jawahar Nagar,
Chennai – 600 082.

Petitioner(s)

Vs

Indian Overseas Bank
Asset Recovery Management Branch,
3rd Floor, Annexe Building, Central office,
763, Anna Salai, Chennai – 600 002.

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to quash the confirmation of sale dated 04.04.2026 issued by the respondent pursuant to the e-auction sale conducted on 26.03.2026 by the respondent and consequentially direct the respondent Bank to refund the entire amount of 25 percent i.e.Rs.67,25,000/- of the sale amount paid by petitioner to the respondent bank towards the e-auction sale dated 26.03.2026.

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For Petitioner(s): Mr.C.Santhosh Kumar

For Respondent(s): Mr.F.B.Benjamin George

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition has been filed by the petitioner, who is the successful bidder/auction purchaser in an e-auction sale conducted by the respondent/Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "*the SARFAESI Act*"] read with the Security Interest (Enforcement) Rules, 2002 [for brevity, "*the Rules*"], seeking to quash the confirmation of sale dated 04.04.2026 issued by the respondent/Bank pursuant to the e-auction held on 26.03.2026, and consequentially to direct refund of the entire 25% of the sale amount, i.e., Rs.67,25,000/-, paid by the petitioner towards the said e-auction sale.

2.1. The facts in a nutshell are that one Inno Infra Private Limited had availed credit facilities from the respondent/Bank, the repayment of which was secured, inter alia, by a mortgage over

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Item No.1a, being 55,048 sq. ft. of vacant site forming part of "*Millennium Square*" layout (DTCP approval No.11094/2011/LA2), comprised in various survey numbers at Kattawakkam Village, Kancheepuram Taluk, standing in the name of Inno Estates Private Limited, a corporate guarantor. Upon default, the respondent/Bank initiated action under the SARFAESI Act and issued a sale notice dated 07.03.2026 under the Rules, bringing the said property (along with other secured assets) to sale by e-auction.

2.2 The description of Item No.1a, as it appears in (i) the sale notice dated 07.03.2026 addressed to the borrower and guarantors, (ii) the paper publication effected on 07.03.2026 in terms of Rule 8(6) of the Rules, and (iii) the first confirmatory communication/e-mail dated 26.03.2026 acknowledging receipt of the 25% sale consideration, is uniform, and reads simply as "*55048 sq.ft. or thereabouts of vacant site... forming part of Millennium Square...*", without any reference whatsoever to the site being "*identified for Community Hall site*".

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2.3. On the basis of the description of the property as contained in the sale notice, the petitioner participated in the online e-auction conducted on 26.03.2026 and offered the highest bid of Rs.2,69,00,000/- for Item No.1a, and was declared the successful bidder. On the very same day, the respondent Bank, by e-mail and letter dated 26.03.2026, informed the petitioner that the sale was confirmed in his favour, and acknowledged receipt of the EMD of Rs.26,40,000/- together with a further sum of Rs.40,85,000/-, aggregating Rs.67,25,000/-, being 25% of the bid amount. It is not in dispute, and is indeed borne out by the bank statement placed on record, that the said amount was remitted by the petitioner to the respondent/Bank on 26.03.2026 itself.

2.4 To the petitioner's shock, when the respondent/Bank issued the confirmation of sale dated 04.04.2026, the description of Item No.1a, for the very first time, stood altered to read "*55048 sq.ft. or thereabouts of vacant site (identified for community hall site)...*". This qualifying description had never appeared, till that date, in any communication issued by the respondent/Bank, more particularly, not in the sale notice dated 07.03.2026, not in the

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paper publication dated 07.03.2026, and not even in the first confirmatory letter/e-mail dated 26.03.2026 acknowledging the sale in the petitioner's favour.

2.5 The petitioner immediately, by e-mail dated 06.04.2026, protested the said unilateral insertion and called upon the respondent/Bank to delete the same, pointing out that it did not find place in the newspaper advertisement or the sale notice dated 07.03.2026. Admittedly, the respondent Bank did not respond to the said e-mail. The petitioner thereafter filed this writ petition assailing the confirmation of sale dated 04.04.2026 and seeking refund of the 25% amount already paid.

2.6. During the pendency of the writ petition, this Court, by order dated 24.06.2026, directed the petitioner to deposit the balance 75% of the sale consideration, which the petitioner accordingly remitted, of course, without prejudice to his contentions in this writ petition. It is, thus, not in dispute that the petitioner has, as on date, deposited the entire sale consideration of Rs.2,69,00,000/- with the respondent/Bank, though the sale

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certificate has admittedly not been issued in his favour for want of remittance of 1% TDS, which the petitioner has, for the reasons explained in paragraph 9 of his rejoinder, withheld pending disposal of this writ petition.

3.1. The respondent/Bank has filed a counter affidavit resisting the writ petition principally on the grounds: (i) that the writ petition is not maintainable, since the petitioner, being an "*auction purchaser*", falls within the expression "*any person*" under Section 17(1) of the SARFAESI Act and ought to have approached the Debts Recovery Tribunal ("DRT"), and that the extraordinary jurisdiction under Article 226 of the Constitution is not maintainable when an efficacious alternate remedy is available; and (ii) that, in any event, the omission to mention the community-hall reservation in the demand notice, possession notice and sale notice was purely "*inadvertent*", that such an omission does not vitiate the SARFAESI proceedings, that land reserved for a community hall is nevertheless saleable, and that there exists a statutory mechanism for change of land-use classification upon application to the competent local authority.

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3.2 The respondent has further averred that the petitioner has, pursuant to the order of this Court dated 24.06.2026, remitted the balance 75% of the sale consideration, but has not remitted the 1% TDS or obtained the sale certificate.

4. We have heard learned counsel appearing for the petitioner and learned counsel appearing for the respondent/Bank and perused the documents on record.

5. It is no doubt true that Section 17(1) of the SARFAESI Act enables "*Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor*" to approach the DRT, and it is well settled that an auction purchaser falls within the expression "*any person*" for this purpose. However, the grievance of the petitioner in the present case is confined to the conduct of the respondent/Bank in altering the description of the secured asset after the auction was over and after the petitioner had already been declared the successful bidder and had paid 25% of the sale price, in breach of the mandatory

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disclosure obligation cast on it by Rule 8(6) read with Rule 8(7)(a) of the Rules while issuing the sale notice.

6. The existence of a statutory remedy is an important consideration in the exercise of jurisdiction under Article 226 of the Constitution of India. It is not, however, an absolute bar. In the case at hand, the grievance of the petitioner pertains to a misleading sale notice issued by the secured creditor in its capacity as vendor, particularly where the defect surfaces for the first time in a communication issued after the confirmation of sale. Moreover, the facts giving rise to the grievance are not in serious dispute. The respondent/Bank has, in paragraph 7 of its own counter affidavit, candidly admitted the omission, albeit describing it as "*inadvertent*". Where the facts founding the cause of action stand admitted by the respondent/Bank, relegating the petitioner to the DRT would serve no useful purpose and would only multiply proceedings. Therefore, the objection to maintainability of the writ petition is rejected.

7. Rule 8(6) of the Rules mandates that the sale of immovable secured assets by public auction be preceded by a notice published

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in two leading newspapers, one in the vernacular language, setting out, *inter alia*, the terms of the sale. Rule 8(7)(a) of the Rules further requires that such notice shall contain, among other particulars, "*the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor*". These requirements are not directory, they exist to enable a prospective bidder to make an informed decision, and to ensure that the price fetched at the auction genuinely reflects the true nature, extent and marketability of the asset being sold.

8. In the present case, a comparison of (a) the sale notice dated 07.03.2026, (b) the paper publication dated 07.03.2026, (c) the confirmatory e-mail/letter dated 26.03.2026, and (d) the confirmation of sale dated 04.04.2026, leaves no manner of doubt that the description of Item No.1a stood materially altered between the date of auction and the date of confirmation. The words "*identified for community hall site*" make their first appearance only in the communication dated 04.04.2026, ten days after the auction and after the petitioner had already committed 25% of the bid amount in the *bona fide* belief that he was purchasing an

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unrestricted vacant site. The respondent/Bank does not dispute this chronology and it is borne out by records.

9. The respondent's explanation, that the omission was "*inadvertent*" and does not vitiate the sale, cannot be accepted. The reservation of the site for a community hall is not a trivial detail, but it goes to the very root of the transaction, since it restricts the purpose for which the property may be developed. An omission of this magnitude cannot be dismissed as a mere clerical slip. The touchstone under Rule 8(7)(a) of the Rules is not the intention of the secured creditor, but the adequacy and accuracy of the disclosure made to the bidding public and any liberal construction of the said Rule in favour of the secured creditor would defeat the very object of the Rule, which is bidder-protective.

10. Learned counsel for the respondent/Bank placed strong reliance upon a decision of the Supreme Court in *Rajendra Kumar Barjatya and Another v. U.P. Avas Evam Vikas Parishad and Others*[1], for the proposition that the doctrine of caveat emptor

1 *2024 SCC OnLine SC 3767*

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squarely applies to purchasers of property; that it is the primary obligation of a purchaser to satisfy himself as to the nature, title and permissible use of the property before purchase; that no consideration can be shown to a purchaser where the user of the property is in variance with the sanctioned purpose; and that illegality cannot be regularised or protected merely on account of delay or expenditure incurred.

11. On a true appreciation of facts and ratio laid down, we are of the view that the decision in *Rajendra Kumar Barjatya* (supra) has no application to the present case. In the said case, the appellants, who are purchasers of commercial shops, had purchased the constructed shops not from the statutory authority, but from a private individual, who had raised unauthorised commercial construction on a residential plot, in flagrant breach of the terms of allotment and of the sanctioned building plan. There was no privity whatsoever between the Parishad, as the authority possessing the power to regulate and demolish unauthorised construction and the appellants therein. In the present case, by contrast, the respondent/Bank is not a third party at all. The relationship

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between the petitioner and the respondent/Bank is one of direct privity as seller and purchaser under a statutory sale, attracting the full rigour of the disclosure obligations cast on the secured creditor by Rule 8(6) and Rule 8(7)(a) of the Rules. The doctrine of caveat emptor, which places the burden of verification on the purchaser, cannot be pressed into service by a vendor who has himself failed to make an accurate disclosure, particularly when such disclosure is a matter of positive statutory obligation as per Rule 8(7)(a) of the Rules.

12. The facts of the present case, on the other hand, bear close parallel to the decision of the Supreme Court in *Delhi Development Authority v. Corporation Bank and Others*[2]. In that case, the Supreme Court held that the failure of disclose encumbrance vitiated the e-auction notice, the proclamation of sale, and the consequent confirmation of sale and sale certificate, rendering them without sanctity. It was further held that restitution to such a purchaser was not merely a legal device but a "*moral imperative*", observing that the Auction Purchaser "*entered the*

2 *2025 SCC OnLine SC 2071*

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auction in good faith, placed its bid and deposited its hard-earned money in the belief that the law clothed the auction with legitimacy".

13. In the case at hand, the sale notice and proclamation issued by the respondent/bank failed to disclose the restriction on the property known to it, namely, the reservation of the property for community-hall use, in gross violation of Rule 8(7)(a) of the Rules. The petitioner entered the auction in good faith, relying upon the description furnished by the respondent/Bank, paid the requisite sums promptly and, indeed, upon the direction of this Court, has paid the entire balance sale consideration pending disposal of this writ petition and he is still unable to make any use of the property. In our considered view, the petitioner is a wholly innocent party "*caught in the undertow of circumstances, not of its making*", and is entitled to full restitution.

14. For the reasons set out above, the writ petition is allowed. The confirmation of sale dated 04.04.2026 issued by the respondent and the e-auction sale dated 26.03.2026 insofar as it relates to

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Item No.1a are quashed. The respondent/Bank is directed to refund to the petitioner the entire sale consideration deposited by the petitioner together with interest at the rate of 9% per annum, in terms of the direction of the Supreme Court in *Delhi Development Authority* (supra) and such interest shall be computed from the respective dates of deposit of each of the said amounts till the date of repayment. The respondent/Bank shall comply with the said direction within a period of four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs. Consequently, connected interim application stands closed.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)

25.08.2026

Index : Yes
Neutral Citation : Yes
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To:
Indian Overseas Bank
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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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