2026 INSC 943

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 8531 of 2015

Kotak Mahindra Bank Limited **… Appellant**

versus

Trupti Sanjay Mehta and others **… Respondents**

with

Civil Appeal No. ………………….. of 2026
(@ Special Leave Petition (C) No. 33113 of 2018)

&

Civil Appeal No. ………………….. of 2026
(@ Special Leave Petition (C) No. 9399 of 2022)

J U D G M E N T

SANJAY KUMAR, J

1. The issue for consideration in these appeals is whether a bank, as defined by Section 2(1)(c) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, Act, 2002[1], can take recourse to the provisions thereof for recovery of a debt assigned to or taken over by it from a financial entity that was not governed by the SARFAESI Act at the time of creation of such debt.

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[1] For short, 'the SARFAESI Act'

2. In Civil Appeal No. 8531 of 2015, Kotak Mahindra Bank Limited (KMBL) is the appellant. City Financial Consumer Finance Limited (CFCFL), a non-banking financial company (NBFC), respondent No. 3, was initially not a 'financial institution' notified under Section 2(1)(m) of the SARFAESI Act. During that initial stage, Amit Bipin Shah, respondent No. 4, availed a home loan from it to acquire a residential flat from Trupti Sanjay Mehta and her husband, Sanjay Walchand Mehta (together, 'the Mehtas'), respondent Nos. 1 and 2. He executed a loan agreement for ₹69,60,000/- with CFCFL and pursuant thereto, a sum of ₹66,72,360/- was said to have been transferred by CFCFL to the Mehtas. However, Amit Bipin Shah failed to repay his debt to CFCFL leading to arbitration proceedings, whereupon he was directed to pay a sum of ₹75,30,872/- to CFCFL with interest thereon, *vide* Award dated 31.07.2010.

3. While so, KMBL took over this loan account from CFCFL on 13.07.2012. KMBL then initiated proceedings under the SARFAESI Act by issuing a demand notice under Section 13(2) thereof on 03.07.2013. As per the said notice, Amit Bipin Shah was liable to pay a sum of ₹1,10,39,111/- as on 02.07.2013 along with interest thereon. Thereafter, in exercise of power under Sections 13(4) and 14 of the SARFAESI Act, KMBL secured order dated 11.07.2014 from the learned Chief Metropolitan Magistrate, Mumbai, enabling it to take physical possession of the secured asset, viz., the residential flat. KMBL claims that, at the time of taking possession, it found that the Mehtas were still in possession thereof despite having sold the property to Amit Bipin Shah.

4. The Mehtas challenged the measures taken by KMBL by filing Securitisation Application (S.A.) No. 39 of 2014 before the Debts Recovery Tribunal-II, Mumbai (DRT). The main ground urged by them was that KMBL had no right to invoke the provisions of the SARFAESI Act, being the assignee of CFCFL whose debt was not covered thereby. Upholding their contention, the DRT delivered judgment dated 28.11.2014, declaring that KMBL was not entitled to invoke the SARFAESI Act to recover the debt taken over by it from CFCFL and directed restoration of possession of the flat to the Mehtas. Aggrieved thereby, KMBL filed Appeal No. 335 of 2014 before the Debts Recovery Appellate Tribunal, Mumbai. However, by oral judgment dated 20.01.2015, the Appellate Tribunal dismissed the appeal. Challenging these decisions, KMBL filed WP No. 722 of 2015 before the Bombay High Court. By judgment dated 16.07.2015, a Division Bench affirmed the view taken by the DRT and the Appellate Tribunal and dismissed the writ petition, leading to the filing of the present appeal.

5. By order dated 10.08.2015, this Court directed *status quo* with regard to possession of the flat, obtaining as on that date, to be maintained. However, by its later order dated 24.08.2015, this Court directed the Mehtas to deposit a sum of ₹63,89,814/- with KMBL within six months, without prejudice to the rights and contention of the parties, and upon such deposit, KMBL was directed to handover possession of the flat to them. This order was not acted upon as the Mehtas did not make the deposit. By order dated 22.09.2015, this Court stayed the operation of the impugned judgment dated 16.07.2015 at the behest of the Indian Banks Association, which later came on record as respondent No.10. Thereafter, on 20.04.2017, this Court accepted the offer of the Mehtas that they would deposit ₹40 lakh with KMBL within six weeks and directed KMBL to restore possession of the flat to them upon their doing so. It was made clear that this was an interim arrangement, subject to final adjudication of this appeal, and was without prejudice to the contentions raised therein. The Mehtas were directed not to create any third party interests over the flat and to deposit the original documents in their possession with the Registry of this Court. Pursuant thereto, the Mehtas deposited ₹40 lakh with KMBL on 30.05.2017 and certain documents with the Registry. KMBL handed over possession of the flat to the Mehtas on 02.06.2017. We are informed that the Mehtas are in possession thereof as on date. At this stage, we may also note their contention that Amit Bipin Shah was never conveyed title over the flat and that they continue to be the owners thereof.

6. In the appeal arising out of SLP (C) No. 33113 of 2018, the facts reveal that one Manohar Govind Sable; his son, Anil Manohar Sable; and his daughter-in-law, Jayashree Anil Sable, availed two housing loans of ₹28,50,000/- and ₹13,36,000/- respectively from CFCFL on 25.02.2009.

Manohar Govind Sable died on 30.05.2011. Anil Manohar Sable and Jayashree Anil Sable (together, 'the Sables'), remained in the picture. Upon their default in repaying the loan, CFCFL initiated arbitration proceedings against them, culminating in the *ex parte* Award dated 23.04.2012, which held the Sables liable to pay a sum of ₹43,57,965/- to CFCFL with future interest. Execution proceedings initiated by CFCFL before the learned Principal District Judge, Nagpur, were not followed up, resulting in the dismissal thereof on 27.11.2017, for want of prosecution. Meanwhile, on 09.04.2013, KMBL took over the Sables' loan account from CFCFL under a deed of assignment. KMBL thereupon issued them a demand notice under Section 13(2) of the SARFAESI Act on 13.11.2013. The Sables responded, *vide* letter dated 28.01.2014, seeking six months' time to settle their account. Their failure resulted in symbolic possession of their secured property being taken by KMBL on 25.06.2014, under Section 13(4) of the SARFAESI Act. Aggrieved thereby, the Sables filed a securitisation application on 10.09.2014 before the Debts Recovery Tribunal, Nagpur. They then filed M.A. No. 61 of 2014 therein seeking condonation of the delay of 32 days in its filing. According to KMBL, the Debts Recovery Tribunal dismissed the application on 23.11.2017 and the order attained finality as the Sables never challenged the same.

7. Meanwhile, KMBL filed an application in Case No. 14 of 2015 before the learned Additional District Magistrate, Nagpur, under Section 14 of the

SARFAESI Act, seeking to take possession of the secured property. Late Manohar Govind Sable was also shown as a party therein, as KMBL was unaware of his death. By order dated 03.10.2018, the learned Additional District Magistrate, Nagpur, directed the Executive Magistrate, Nagpur City, to take possession of the secured property and hand over the same to the authorised representative of KMBL. As this Court was already seized of KMBL's appeal, involving a debt taken over by it from CFCFL, the Sables approached this Court directly, by way of the present case, assailing the order dated 03.10.2018 of the learned Additional District Magistrate, Nagpur. By order dated 04.01.2019, this Court recorded KMBL's undertaking that it would not take coercive steps against the Sables. They, therefore, continue to remain in possession of the secured property.

8. In the appeal arising out of SLP (C) No. 9399 of 2022, the appellants are Poorti Rent a Car and Logistics Pvt. Ltd. and its Directors, Jagdish B. Khurana and Sucheta J. Khurana. They availed a loan of ₹2.98 crores from CFCFL in February, 2009. This loan was declared a non-performing asset by CFCFL in November/December, 2009. The loan account was taken over by KMBL from CFCFL under deed of assignment dated 18.07.2012. Thereupon, KMBL invoked the provisions of the SARFAESI Act and issued them a notice under Section 13(2) thereof on 22.04.2014. The appellants responded by disputing KMBL's power to take recourse to the provisions of the SARFAESI Act. However, acting at the behest of KMBL, the learned Chief Metropolitan Magistrate, Esplanade, Mumbai, passed an order on 01.10.2014, under Section 14 of the SARFAESI Act, directing delivery of possession of the appellants' property to KMBL. Assailing the said order, the appellants filed WP No. 11371 of 2014 before the Bombay High Court. By judgment dated 24.02.2022, a Division Bench dismissed the appellants' writ petition on the ground that the issue stood decided against them by the decisions of this Court in ***M.D. Frozen Foods Exports Private Limited and others vs. Hero Fincorp Limited***[2] and ***Indiabulls Housing Finance Limited vs. Deccan Chronicle Holdings Limited and others***[3]. The Bench held that the co-ordinate Bench's judgment in the Mehtas' case stood impliedly overruled thereby. Aggrieved thereby, the appellants approached this Court. Though notice was ordered on 23.05.2022 on their prayer for interim relief, this Court was informed on 03.06.2022 that possession of the property was taken over by KMBL on 26.05.2022. The appellants remained unsuccessful in their attempt to recover possession thereafter. KMBL issued a notice with regard to sale of the said property on 22.07.2022. We are informed that the secured property was sold in the year 2023.

9. At this stage, it would be apposite to note the scheme and structure of the SARFAESI Act. The Statement of Objects and Reasons therein

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2 (2017) 16 SCC 741
3 (2018) 14 SCC 783

records that the financial sector is one of the key drivers in India's efforts to achieve success in rapidly developing the economy. Noting that banks and financial institutions in India, unlike international banks, do not have the power to take possession of securities and sell them, it was observed that our existing legal framework relating to commercial transactions has not kept pace with changing commercial practices and financial sector reforms. It was further observed that this had resulted in slow recovery of defaulting loans and in mounting levels of non-performing assets of banks and financial institutions. Reference was made to the various committees constituted by the Central Government for examining banking sector reforms, which had suggested enactment of a new legislation for securitisation and for empowering banks and financial institutions to take possession of securities and sell them without intervention of the Court. It was on this basis that the ordinance, which preceded the SARFAESI Act, was promulgated on 21.06.2002. The provisions of the ordinance aimed at enabling banks and financial institutions to realise long-term assets, manage problems of liquidity and asset liability mismatches so as to improve recovery, by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. The ordinance was replaced by a Bill and upon the same being passed by both houses of Parliament, the SARFAESI Act came into force with effect from 21.06.2002.

10. Section 2 of the SARFAESI Act contains definitions and states that, unless the context otherwise requires, for the purposes of the said Act, the terms used therein would be as defined under Section 2(1)(a) to 2(1)(zj) thereof. Section 2(1)(c) defines 'bank' to mean a banking company; or a corresponding new bank; or the State Bank of India; or a subsidiary bank; or a multi-State co-operative bank; or such other bank which the Central Government may, by notification, specify for the purposes of the SARFAESI Act. Section 2(1)(d) defines 'banking company' to have the meaning assigned to it in Section 5(c) of the Banking Regulation Act, 1949. Section 2(1)(f) defines 'borrower' to mean, amongst other things, a person who has been granted financial assistance by a bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes a borrower of an asset reconstruction company, consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance. Section 2(1)(ha) earlier defined 'debt' to have the meaning assigned to it by Section 2(g) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993[4] (renamed as Recovery of Debts and Bankruptcy Act, 1993, with effect from 01.12.2019) which, to the extent relevant, reads thus:

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[4] For short, 'the Act of 1993'

> "debt" means any liability (inclusive of interest) which is claimed as due from any person or a pooled investment vehicle as defined in clause (*da*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on the date of …..'

11. Section 2(ha) of the SARFAESI Act was thereafter amended, with effect from 01.09.2016, and the provision now reads as under:

> 'S.2(1)(ha): "debt" shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and includes—
>
> (i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;
>
> (ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset;'

12. Section 2(1)(k) of the SARFAESI Act defines 'financial assistance' to mean, amongst other things, any loan or advance granted or any other credit facility extended by any bank or financial institution, including funds provided for the purpose of acquisition of any tangible asset on hire or financial lease or conditional sale or under any other contract or obtaining assignment or licence of any intangible asset or purchase of debt securities. Section 2(1)(m) of the SARFAESI Act defines a 'financial institution' and reads thus:

> 'S.2(1)(m) "financial institution" means -
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> (i) a public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956);

(ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);

(iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958 (42 of 1958);

(iiia) a debenture trustee registered with the Board and appointed for secured debt securities;

(iiib) asset reconstruction company, whether acting as such or managing a trust created for the purpose of securitisation or asset reconstruction, as the case may be;

(iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act;'

13. Section 2(1)(o) of the SARFAESI Act defines 'non-performing asset' to mean an asset or account of a borrower, which has been classified by a bank or financial institution as a sub-standard, doubtful or loss asset, such classification having taken place as per the guidelines referred to in clauses (a) and (b) thereof. Section 2(1)(zb) of the SARFAESI Act defines 'security arrangement' to mean an agreement, instrument or other document or arrangement under which security interest is created in favour of the secured creditor, including the creation of mortgage by deposit of title deeds with the secured creditor. Section 2(1)(zc) defines 'secured asset' to mean the property on which security interest is created while Section 2(1)(zd) defines a 'secured creditor'. It reads as under:

'S 2(1)(zd) "secured creditor" means -

(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);

(ii) debenture trustee appointed by any bank or financial institution; or

(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or

(iv) debenture trustee registered with "the Board and appointed" for secured debt securities; or

(v) any other trustee holding securities on behalf of a bank or financial institution,

in whose favour security interest is created by any borrower for due repayment of any financial assistance.'

14. Section 2(1)(zf), an inclusive definition of 'security interest', states that it means right, title or interest of any kind, other than those specified in Section 31, upon property created in favour of the secured creditor and also includes the interests detailed in clauses (i) and (ii) thereunder.

15. Chapter II of the SARFAESI Act, titled 'Regulation of Securitisation and Reconstruction of Financial Assets of Banks and Financial Institutions', provides for registration of asset reconstruction companies. Section 5 therein deals with acquisition of rights or interest in financial assets by asset reconstruction companies from any bank or financial institution and Section 5(2) states that if a bank or financial institution is the lender in relation to any financial assets acquired by an asset reconstruction company under Section 5(1), such company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

16. This being the statutory milieu of the SARFAESI Act, we may note that the cases on hand turn on facts which do not fit squarely within the framework thereof. Admittedly, as on the date of lending by the CFCFL and creation of secured debts in its favour by its borrowers, CFCFL was not a 'financial institution' within the meaning of Section 2(1)(m) of the SARFAESI Act. The notification by the Central Government declaring it to be so under Section 2(1)(m)(iv) was issued only on 27.08.2018. However, KMBL, a banking company, that qualified as a 'bank' under Section 2(1)(c) of the SARFAESI Act, took over those loan accounts from CFCFL long before it was notified as a 'financial institution' under Section 2(1)(m)(iv) thereof. Having acquired such loan accounts, could KMBL take recourse to the SARFAESI Act for recovering the dues in relation to those loan accounts.

17. In this regard, as the Bombay High Court held in favour of KMBL in one instance, citing two decisions of this Court as squarely covering the issue, it would be apposite to take note of those decisions. In ***M.D. Frozen Foods*** (*supra*), this Court was considering a situation where the loan availed by the borrower was from a NBFC which thereafter came to be notified as a 'financial institution' under Section 2(1)(m)(iv) of the SARFAESI Act. The issue before this Court was whether the NBFC was entitled thereupon to take recourse to the provisions of the SARFAESI Act for recovery of that loan. The specific question framed by this Court was whether the NBFC could invoke the SARFAESI Act when it was notified as a 'financial institution' under Section 2(1)(m) after the account became a non-performing asset. It was noted that the SARFAESI Act was brought into force to solve the problem of recovery of large debts in non-performing assets and thus, the very rationale for the said Act to be brought into force, was to provide an expeditious procedure when there was a security interest. It was observed that the SARFAESI Act would apply to all claims that were 'alive' at the time that it was brought into force and, therefore, be it in relation to the respondent NBFC or other NBFCs, it would be applicable from the date when it was made applicable to them. It was noted that till the NBFC was not a 'financial institution' within the meaning of Section 2(1)(m) of the SARFAESI Act, it was not a 'secured creditor' as defined under Section 2(1)(zd) thereof and, thus, could not invoke its provisions but the right to proceed under the SARFAESI Act accrued once the notification was issued.

18. Further, this Court held that the definition clauses clearly conveyed the legislative intent that the SARFAESI Act applied to all existing loan agreements, irrespective of whether or not the lender was a notified 'financial institution' on the date of execution of the agreement with the borrower. Pointing out that the scheme of the SARFAESI Act sets out an expeditious procedural methodology enabling a bank to take possession of secured property for non-payment of dues without judicial intervention, this Court held that the mere fact that a more expeditious remedy was provided thereunder did not mean that it is substantive in character or that it created an altogether new right. It was observed that to accept such an argument would imply that borrowers have an inherent right to delay enforcement against a security interest. It was observed that the date on which a debt is declared to be a non-performing asset would have no impact as the SARFAESI Act would become applicable *qua* all debts owing and live when the SARFAESI Act became applicable to the NBFC.

19. In ***Indiabulls*** (*supra*)**,** the issue was whether the SARFAESI Act would apply when Indiabulls Financial Services Limited (IFSL), the NBFC which disbursed the loan to the borrower in the year 2012, was then merged with its sister concern, Indiabulls Housing Financial Limited (IHFL), and upon sanction of the said merger, the assets and liabilities of IFSL stood vested in IHFL. Pursuant thereto, the borrowers of IFSL became the borrowers of IHFL. IFSL was not notified as a 'financial institution' under Section 2(1)(m) of the SARFAESI Act, whereas IHFL was. The question was whether IHFL, which had taken over the assets of IFSL, could invoke the SARFAESI Act for recovery of the loans inherited by it upon the merger. It was argued on behalf of the borrower, respondent No.1 therein, that it was not granted financial assistance by a 'bank' or 'financial institution', within the meaning of the SARFAESI Act, and the loan agreements entered into by it with IFSL could not be classified as 'security arrangements' within the meaning of Section 2(1)(zb). It was also contended that respondent No.1 therein could not be treated as a 'borrower', as defined under Section 2(1)(f) of the SARFAESI Act.

20. Having considered these contentions, this Court opined that the entire edifice was built on pleas which were squarely answered in ***M.D. Frozen Foods*** (*supra*) and there was no reason to take a different view therefrom. This Court observed that ***M.D. Frozen Foods*** (*supra*) made it clear that a successor-in-interest would be entitled to take recourse to the SARFAESI Act even if the original lender was not a 'financial institution' covered by the Act at the relevant time. This Court found force in the contention urged by IHFL that the debt, with the underlying security, was an asset of IFSL which had the right to transfer/assign the same to any person, without seeking the consent of the borrower. As IHFL was the assignee of such debt through the process of merger, this Court opined that there would not be any difference from ***M.D. Frozen Foods*** (*supra*), as far as the consequences in law were concerned and that ***M.D. Frozen Foods*** (*supra*) would apply with all force. This Court, accordingly, held that respondent No. 1 therein would be a borrower within the meaning of Section 2(1)(f) of the SARFAESI Act and its arrangement qualified as a 'security arrangement' under Section 2(1)(zb), as the same created a 'security interest' under Section 2(1)(zf) and IFHL became a 'secured creditor' within the meaning of Section 2(1)(zd) of the SARFAESI Act.

21. Presently, the issue is whether a loan/debt secured by a mortgage in favour of a NBFC which was not, at that point of time, a 'financial institution' under Section 2(1)(m) of the SARFAESI Act, would get converted into a 'secured debt' thereunder if the said loan/debt is acquired by a 'bank' under Section 2(1)(c) thereof and whether the said bank could, thereupon, initiate measures under the SARFAESI Act for recovery of that loan/debt.

22. We may also note that, in so far as the Mehtas' S.A. No.39 of 2014 is concerned, the DRT did not examine the matter on merits as it held against KMBL at the very threshold and the issues raised therein were never looked into. It was submitted on behalf of the Mehtas that, in the event this Court holds in favour of KMBL, the securitization application filed by them may be restored for consideration of the other issues raised therein on their own merits. It was pointed out that, pursuant to the order passed by this Court, the Mehtas deposited ₹40 lakh with KMBL and it is stated that they are willing, without prejudice to their rights and contentions, to deposit a further sum of ₹25 lakh with KMBL, subject to the final orders that would be passed in their securitization application.

23. Further, we find that the Mehtas filed applications seeking to implead Punjab National Bank and the Assets Reconstruction Company of India Limited on the ground that Amit Bipin Shah availed financial assistance from these entities also on the strength of his agreement of sale with them. However, we are not inclined to go into those aspects. The impleadment applications are, therefore, liable to be dismissed.

24. As regards the loan accounts of the Sables, KMBL pointed out that their loan agreements with CFCFL authorized the assignment of their debts and entitled the assignee to exercise all the rights of the original lender. KMBL would, therefore, contend that it is not open to the Sables to dispute its right to enforce the 'security interest' created by them for recovery of its dues pursuant to such assignment. KMBL claims that their outstanding dues as on 21.07.2026 stood at ₹1,55,02,922/-.

25. Poorti Rent A Car and Logistics Pvt. Ltd. and its Directors contend that 'banks/financial institutions' covered by the SARFAESI Act which acquire non-performing assets of entities not covered thereby cannot be permitted to enforce their acquired security interests under the provisions thereof. They would argue that doing so would be without jurisdiction and that the measures initiated by KMBL pursuant to acquisition of such debts are liable to be quashed. They assert that the SARFAESI Act was held to constitutionally valid in ***Mardia Chemicals Ltd. and others vs. Union of India and others***[5], because of the adverse impact of non-performing assets on the economy as a whole and banks cannot be permitted to acquire such non-performing assets so as to invoke the recovery mechanisms thereunder. They point out that a harsh and lopsided recovery mechanism is prescribed under the SARFAESI Act, empowering 'banks/financial institutions' to enforce a security interest without judicial intervention and such drastic provisions were held to be valid, primarily on the ground that such non-performing assets adversely impacted the

[5] (2004) 4 SCC 311

economy. They would argue that, when the primary objective behind the SARFAESI Act was to reduce non-performing assets impacting the economy in the context of the 'banks/financial institutions' recognized thereunder, permitting such 'banks/financial institutions' to deliberately acquire non-performing assets from entities not governed by the SARFAESI Act would run contrary to the very basis on which the validity of the said enactment was upheld. Reference was made, in this regard, to 'non-performing asset' as defined under Section 2(1)(o) and 'borrower' under Section 2(1)(f) and 'security arrangement' under Section 2(1)(zb) of the SARFAESI Act, to contend that a non-performing asset would mean an asset or account of a borrower classified by a 'bank' or 'financial institution' as sub-standard, doubtful or loss asset and, therefore, at the time of such classification, the 'borrower' as well as the 'financial institution' must qualify as such under the provisions of the SARFAESI Act.

26. We may note that, in ***Mardia Chemicals Ltd.*** (*supra*), a 3-Judge Bench of this Court upheld the validity of the SARFAESI Act, except for Section 17(2) thereof, which was held to be *ultra vires*. It was observed that, for the financial assistance rendered to industries by financial institutions, liquidity is essential, failing which there would be a blockade of large sums of money, creating circumstances that retard economic progress, followed by a large number of other consequential ill-effects. Noting that liquidity of finances and flow of money is essential for any healthy/growth-oriented economy, it was observed that what must kept in mind is that the law should not be in derogation of the rights guaranteed to the people under the Constitution and the procedure should also be fair, reasonable and valid, though it may vary looking to the different situations that need to be tackled and the object to be achieved. Noting that expert committees had recommended having a law which provides a speedier remedy for improvement of general financial flow of money necessary for the economy of the country, the Bench observed that the SARFAESI Act was in public interest and individual interest had to be subservient to it. It was held that, even if a few borrowers are affected here and there, that would not impinge upon the Act's validity, which otherwise serves larger interest. It was observed that though presumption is in favour of validity of a legislation and it would not be declared unconstitutional lightly and, more so, in matters relating to fiscal and economic policies resorted to in public interest, but while resorting to such legislation it would be necessary to see that the persons aggrieved get a fair deal at the hands of those who have been vested with powers to enforce drastic steps to make recovery.

27. Reserve Bank of India (RBI), respondent No. 6 in Civil Appeal No. 8531 of 2015, is a statutory corporation constituted under Section 3 of the Reserve Bank of India Act, 1934. It regulates and supervises commercial and cooperative banks in the country in accordance with the provisions of the Banking Regulation Act, 1949. RBI issued broad regulatory guidelines on the purchase/sale of non-performing assets, *vide* Circular dated 13.07.2005, in exercise of powers conferred by Sections 21 and 35A of the Reserve Bank of India Act, 1934. It addressed letter dated 13.07.2025 to all commercial banks; all India term-lending and refinancing institutions; and all NBFCs. Therein, it was stated that, in order to increase the options available to banks for resolving their non-performing assets and to develop a healthy secondary market for such non-performing assets, where securitization companies and reconstruction companies are not involved, it was decided to issue guidelines to banks on purchase/sale of non-performing assets. This process was directed to be initiated with due diligence and care, warranting existence of a set of clear guidelines which should be complied with by all entities so that the process of resolving non-performing assets by sale and purchase of such non-performing assets proceeds on smooth and sound lines. The guidelines circular, in the form of an annexure, was attached to the letter.

28. Before us, RBI stated that it had no objection to banks purchasing non-performing assets from financial institutions and NBFCs. It pointed out that, in ***ICICI Bank Limited vs. Official Liquidator of APS Star Industries Limited and others***[6], this Court held that assignment of debts is a permissible activity under the Banking Regulation Act, 1949. Further, this Court took note of the guidelines issued by the RBI, *vide* Circular

6 (2010) 10 SCC 1

dated 13.07.2005, and observed that the said guidelines have the statutory force of law. This Court further observed that the RBI, by way of these guidelines, allowed banks to engage in trading in non-performing assets with the purpose of cleaning the balance sheets, so that they could raise the capital adequacy ratio. It was held that all these would come within the ambit of Section 21 of the Reserve Bank of India Act, 1934, which enabled the RBI to frame policy in relation to advances to be followed by banking companies.

29. RBI pointed out that it would be in the interest of the financial system that banks are enabled to enforce security interests of non-performing assets acquired by them from other institutions. It asserted that, if the provisions of the SARFAESI Act are interpreted in a restrictive manner, as was done by the Bombay High Court in the impugned judgment dated 16.07.2015, it would result in a situation where an assignee bank would not be able to take recourse to the provisions thereof for enforcing the security interest on the default of a borrower. It pointed out that the rights and liabilities of a borrower under a loan agreement would not be affected by the fact that such loan account is assigned to a 'bank', whereupon the provisions of the SARFAESI Act can be invoked for the purpose of effecting recovery, as the borrower is liable, in any case, to return the dues of a secured creditor and the assignee bank cannot be restrained from resorting to the SARFAESI Act for liquidating such dues.

30. We find that ***M.D. Frozen Foods*** (*supra*) and ***Indiabulls*** (*supra*) turned more upon the identity of the financial entity rather than the change in the status of the loan/debt. However, the common factor is that the NBFC in question, at the time it extended financial assistance to the borrowers and accepted security for repayment thereof, as in the present cases, was not a 'financial institution' notified under Section 2(1)(m) of the SARFAESI Act. In ***M.D. Frozen Foods*** (*supra*), the same NBFC thereafter came to be notified as a 'financial institution' under Section 2(1)(m) of the SARFAESI Act while the NBFC in ***Indiabulls*** (*supra*) merged with a 'financial institution' covered by Section 2(1)(m) of the SARFAESI Act. The issue for consideration in both those cases was whether in relation to such a debt, which was not a 'secured debt' covered by the SARFAESI Act at the time of its inception, in the hands of NBFCs, that were not 'financial institutions' covered by the SARFAESI Act at that time, but which thereafter came to be held by NBFCs notified under Section 2(1)(m) of the SARFAESI Act, such NBFCs could invoke the provisions thereof to recover those debts.

31. The situation obtaining presently is a little different, as stress is more upon the legal status of a loan/debt backed by security taken from a NBFC, not covered by Section 2(1)(m) of the SARFAESI Act at the time of inception of such loan/debt, when the said loan/debt is taken over thereafter by a 'bank' covered by Section 2(1)(c) thereof. The argument advanced before us is that when such a debt was not one covered by the SARFAESI Act at the time of its creation, it would not assume the status of a 'secured debt' thereunder merely because it was then assigned to or taken over by a 'bank' covered by the SARFAESI Act. Interestingly, CFCFL, the NBFC which extended the loans in these cases, was notified as a 'financial institution' under Section 2(1)(m)(iv) of the SARFAESI Act on 27.08.2018. Had the loans in question remained with CFCFL, the situation would have straightaway been covered by the edict in ***M.D. Frozen Foods*** (*supra*) and the loans would have been recoverable by it under the provisions of the SARFAESI Act. The question is whether the taking over of such loans prior to that date by KMBL, a 'bank', under Section 2(1)(c) of the SARFAESI Act, disentitled it from invoking the provisions thereof for effecting recovery.

32. The SARFAESI Act facilitates liquidation of non-performing assets and bad debts by 'banks' and 'financial institutions' so as to aid in the growth of the economy. No doubt, it provides for harsh measures in that regard, minimizing the scope of judicial intervention to a great extent. However, the objective of the enactment cannot be lost sight of. The argument of the borrowers before us, if accepted, would mean that those who avail financial assistance from NBFCs not covered by Section 2(1)(m) of the SARFAESI Act enjoy greater freedom to commit default in repayment of such loans, as recovery could only be through ordinary, time-consuming civil processes, when compared with those who avail financial assistance from NBFCs covered by Section 2(1)(m) of the SARFAESI Act, entailing quicker and easier recovery thereunder. Irrespective of whether a financial institution comes under the SARFAESI Act or not, the failure on the part of borrowers to repay their loans to such institution invariably sets off a chain reaction resulting in an adverse impact on the whole economy. As pointed out by the RBI, every borrower is bound to honour his commitment and repay his loan along with the interest payable thereon. There can be no deviating from this legal and moral obligation of a borrower, irrespective of the mode of recovery in the event of default by such borrower in repaying the loan. The fundamental premise on which the borrowers before us seek to escape the rigours of the SARFAESI Act is, therefore, without legal foundation.

33. Though ***M.D. Frozen Foods*** (*supra*) and ***Indiabulls*** (*supra*) looked at the applicability of the the SARFAESI Act from a different angle, the core issue in those cases and the present appeals is the same, i.e., whether a loan/debt which was not covered by the SARFAESI Act in its inception could change its status thereafter, whereby its provisions would be applicable in the context of recovery thereof. Those decisions were concerned more with the identities of the entities which gave the loans and those that thereafter invoked the provisions of the SARFAESI Act, whereas in the present appeals, we are more concerned with the status of the loan/debt itself. However, semantics aside, the issue is the same, i.e., applicability of the SARFAESI Act to a loan/debt, which was originally not a loan/debt covered thereby. In this context, the observations made by this Court in the aforestated decisions clinch the issue.

34. In ***M.D. Frozen Foods*** (*supra*), this Court observed that the definition clauses in the SARFAESI Act clearly conveyed the legislative intent that it applies to all existing loan agreements, irrespective of whether or not the lender was a notified 'financial institution' on the date of execution of the agreement with the borrower. It was also observed that the date on which the loan/debt is declared to be a non-performing asset has no relevance, as the SARFAESI Act would become applicable *qua* all loans/debts 'owing and live' when the Act became applicable.

35. In ***Indiabulls*** (*supra*), this Court went further and vetoed the argument of the borrower that it was not granted financial assistance by a 'financial institution' within the meaning of SARFAESI Act and, therefore, its loan agreement could not be classified as a 'security arrangement' The earlier decision in ***M.D. Frozen Foods*** (*supra*) was applied, observing that it was held therein that a successor-in-interest to the loan/debt would be entitled to take recourse to the SARFAESI Act even if the original lender was not a 'financial institution' covered by the said Act at the relevant time.

36. The decisions in ***M.D. Frozen Foods*** (*supra*) and ***Indiabulls*** (*supra*), therefore, put it beyond the pale of doubt that once a claim is 'live and owing' as on the date of coming into force of the SARFAESI Act, the provisions thereof would be available, as and when it becomes applicable to the institution holding that loan account. By the same logic, when the institution is one to which the SARFAESI Act is already applicable, acquisition of a non-performing secured loan account by such institution from an entity, that does not come within the ambit of the SARFAESI Act, would immediately clothe the said loan account with the attributes of a 'secured debt' covered by the provisions of the SARFAESI Act. In essence, it makes no difference as to whether it is the loan/debt along with the institution that comes within the ambit of the SARFAESI Act, as in the earlier two decisions, or it is the loan/debt alone which comes within the ambit thereof, by virtue of it being taken over by a 'bank' to which the SARFAESI Act is already applicable. In both cases, the provisions of the SARFAESI Act would be available for effecting recovery of the loan/debt.

37. Further, in the light of the earlier decisions of this Court, it is not open to the borrowers to dissect and nit-pick the definitions in Section 2(1) of the SARFAESI Act to claim that their loans/debts cannot be subjected to recovery measures thereunder. The purposive interpretation of such definitions by this Court in the earlier judgments forecloses any such argument being advanced once again.

38. On the above analysis, we find that the Bombay High Court was not correct in taking the view that it did in the case of the Mehtas. Further, we may note that the High Court held in their favour and against KMBL at the threshold. We have now held to the contrary but we are informed that other factual and legal issues raised by the Mehtas in their securitisation application, S.A. No. 39 of 2014, were never considered on merits. It would, therefore, be appropriate to allow them an opportunity to urge all such issues now. In the light of the fair offer made by them, we allow them to do so by depositing a further sum of ₹25 lakh with KMBL within eight weeks from today. This deposit shall be without prejudice and shall abide by the final decision in their securitisation application. The judgment dated 16.07.2015 of the Bombay High Court along with the underlying judgments are accordingly set aside. S.A. No. 39 of 2014 shall stand restored to the file of the Debts Recovery Tribunal, Nagpur, for consideration in accordance with law. The original documents submitted by the Mehtas shall be returned to them by the Registry under proper acknowledgement and in accordance with due procedure.

39. Insofar as the Sables are concerned, we hold that KMBL was legally entitled to invoke the provisions of Section 14 of the SARFAESI Act to take over the physical possession of the secured property. Further, as their securitisation application was already dismissed on the ground of delay, it is for them to take recourse to legal remedies in accordance with law as and when a fresh cause of action arises.

40. As regards the case of Poorti Rent a Car and Logistics Private Limited, the Bombay High Court was fully justified in holding that the issue stood squarely covered by the decisions of this Court in ***M.D. Frozen***

Foods (*supra*) and ***Indiabulls*** (*supra*). Further, as the secured property has already been sold in the year 2023, we need say no more.

41. In consequence, Civil Appeal No. 8531 of 2015 is allowed and the other two appeals are dismissed.

Pending impleadment/intervention applications are also dismissed.

Parties shall bear their respective costs.

.............................., J.
SANJAY KUMAR

.............................., J.
SANJEEV SACHDEVA

September 02, 2026
New Delhi.